



Planning and Development Acts 2000 to 2018

Planning Authority: Tipperary County Council

Planning Register Reference Number: 17/601357

Appeal by McKeogh Brothers (Ballina) Limited care of Michael Barker and Company of Riverpoint, Lower Mallow Street, Limerick against the decision made on the 26th day of September, 2018 by Tipperary County Council to refuse a permission to the said McKeogh Brothers (Ballina) Limited for the proposed development.

Proposed Development: Construction of the final phase of the Ard Coillte housing development, approved under planning references 07/51/0573 and 08/51/0300 and extension of duration references 13/51/0027 and 13/51/0028. This phase of the development consists of 10 detached houses, four garages, connection to the public services, roads, footpaths, open space areas and ancillary site development works, all at Ard Coillte, Ballina, County Tipperary, as revised by the further public notice received by the planning authority on the 6th day of July, 2018.

Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

Having regard to the residential zoning objective for the site in the varied North Tipperary County Development Plan, the planning history of the site, the scale, design and layout of the proposed development, and the mitigation measures set out in the Natura impact statement, and subject to compliance with the conditions set out below, it is considered that the proposed development would not adversely affect the character and setting of the adjoining National Monument, would not seriously injure the residential amenities of adjoining properties or give rise to water pollution, and would, therefore, be in accordance with the proper planning and sustainable development of the area.

Stage 1 Screening

In completing the screening for Appropriate Assessment, the Board accepted and adopted the screening assessment and conclusion carried out in the Inspector's report in respect of the identification of the European sites which could potentially be affected, and the identification and assessment of the potential likely significant effects of the proposed development, either individually or in combination with other plans or projects, on these European sites in view of the sites' Conservation Objectives.

The Board considered that having regard to the nature and scale of the proposed development, and the separation distance of the application site from a European site, the close proximity to a tributary that is directly connected to the European site, and given the information presented in the application, that the proposed development has the potential to affect the Lower River Shannon Special Area of Conservation (Site Code: 002165) and that a Stage 2 Appropriate Assessment (Natura impact statement) is required.

Stage 2 Appropriate Assessment

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the Lower River Shannon Special Area of Conservation (Site Code: 002165) is the European site for which there is a likelihood of significant effects.

The Board considered the Natura impact statement and all other relevant submissions and carried out an Appropriate Assessment of the implications of the proposed development for the Lower River Shannon Special Area of Conservation.

The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment.

In completing the assessment, the Board considered, in particular,

- (i) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- (ii) the mitigation measures which are included as part of the current proposal, and
- (iii) the conservation objectives for these European Sites.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Site. In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of the Lower River Shannon Special Area of Conservation (Site Code: 002165) or any other European site in view of the site's conservation objectives

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 6th day of July, 2018 and by the further plans and particulars received by An Bord Pleanála on the 23rd day of October, 2018, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. No development of the proposed dwelling houses shall commence until the upgrading works at the Ballina Wastewater Treatment Plant to facilitate the development are completed, and the developer has obtained a Connection Agreement from Irish Water to connect into the upgraded Waste Water Treatment Plant.

Reason: To ensure there are no adverse effects on the integrity of the Lower River Shannon Special Area of Conservation.

3. The dwelling houses shall be constructed and completed using the same palette of materials, colours and textiles as the existing adjoining dwellings within the housing scheme unless otherwise agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

4. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

5. All rear gardens shall be bounded by block walls, 1.8 metres in height, capped, and rendered on both sides, to the written satisfaction of the planning authority.

Reason: In the interests of residential and visual amenity.

6. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

7. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

8. Site development and building works shall be carried out only between the hours of 0800 and 1900 from Mondays to Fridays inclusive, between 0800 and 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

9. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of social and affordable housing in accordance with the requirements of section 96 of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 97(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan for the area.

10. Notwithstanding the provisions of Article 10(4) of the Planning and Development Regulations, 2001–2013, or any statutory provision modifying or replacing them, no room in the proposed houses shall be used for the purpose of providing overnight paying guest accommodation without a prior grant of planning permission.

Reason: In order to prevent overdevelopment of the site in the interests of residential amenity and traffic safety and convenience.

11. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of the development.

12. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company, or by the local authority in the event of the development being taken in charge. Detailed proposals for this shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure the satisfactory completion and maintenance of this development.

13. The open space area to the west and south of the proposed development shall be provided in accordance with the plans and particulars submitted as part of the further information submitted on 6th day of July, 2018. The open space area and play area shall be provided within twelve months of the completion of the proposed development.

Reason: In the interest of clarity.

14. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:
 - (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and

- (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site,
and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

15. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

16. The developer shall pay to Irish Water a financial contribution in respect of the necessary works required to upgrade the Ballina Waste Water Treatment Plant in order to facilitate the proposed development. The contribution shall be paid prior to commencement of development or in such phased payments as the Irish Water may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the amount payable shall be agreed between Irish Water and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine an equitable sum payable for the required works.

Reason: To ensure an equitable contribution is paid by the developer towards public infrastructure serving the proposed development.

Paul Hyde

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this day of 2019.