



Planning and Development Acts 2000 to 2020

Planning Authority: Clare County Council

Planning Register Reference Number: P18/811

Appeal by John Madden of Glencairn House, Hermitage, Ennis, County Clare against the decision made on the 13th day of November, 2019 by Clare County Council to grant subject to conditions a permission to Abadair Investments Limited care of Arnold Leahy Architects Limited of 1 Crescent Villas, O'Connell Avenue, Limerick in accordance with plans and particulars lodged with the said Council:

Proposed Development: Revised public notice received by the planning authority on the 19th day of September, 2019 and a further revised public notice was submitted to An Bord Pleanála on the 10th day of August, 2020 providing for development comprising 98 number residential units, (two number detached houses, 36 number semi detached houses, 12 number terraced houses, 16 number duplexes and 32 number apartments); ancillary surface car parking; provision of a creche and ancillary outdoor play area; car parking; vehicular, pedestrian and cyclist access to the proposed development via a new junction on Circular road (R474); and all associated access works thereto on the public road network; pedestrian and cycle link to adjoining lands to the south; traffic calming measures on Circular Road (R474);

connection to existing public water supply; surface water drainage services including the provision of a surface water attenuation pond and treatment of surface waters prior to outfall; proposed foul drainage network to include construction of a foul water pumping station with emergency storage and rising main with discharge to the public foul sewer at Cahercalla Road; and all associated site development and landscape works; all at Ballymacaula Keelty, Drumbiggle, Circular Road, Ennis, County Clare.

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

In coming to its decision, the Board had regard to the following:-

- (a) the location of the site on lands in a suburban area at the edge of Ennis, a key town within the Mid-West Region according to the Regional Spatial and Economic Strategy for the Southern Region, and county town in the Clare County Development Plan, 2017-2023,

- (b) the policies and objectives of Clare County Development Plan 2017-2023 (as varied),
- (c) the National Planning Framework, which sets the achievement of compact growth as a priority,
- (d) the “Guidelines for Planning Authorities on Sustainable Residential Developments in Urban Areas (Cities, Towns and Villages)” and the accompanying Urban Design Manual – a Best Practice Guide, issued by the Department of the Environment, Heritage and Local Government in May, 2009, which provides for net residential densities in the general range of 35-50 dwellings per hectare in outer suburban/greenfield sites, in the interest of land efficiency,
- (e) pattern of existing and permitted development in the wider area,
- (f) the Design Manual for Urban Roads and Streets (DMURS) issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government in April, 2013,
- (g) the “Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities” issued by the Department of Housing, Planning and Local Government in March, 2018,
- (h) the Urban Development and Building Heights Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in December, 2018,
- (i) the layout and increased density details in the revised plans and particulars submitted by the applicant to the Board in accordance with the notice issued under Section 137 of the Planning and Development, 2000, as amended, and
- (j) the reports of the inspector.

Stage 1 Appropriate Assessment 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 was satisfied that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on any other European sites in view of the sites' conservation objectives other than the following sites:- Lower River Shannon Special Area of Conservation (Site Code 002165), Pouldatig Cave Special Area of Conservation (Site Code 000037), and the Newhall and Edenvale Complex Special Area of Conservation (Site Code 002091) which are the European sites for which there is a likelihood of significant effects.

Stage 2 Appropriate Assessment

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the following sites: Lower River Shannon Special Area of Conservation (Site Code 002165), Pouldatig Cave Special Area of Conservation (Site Code 000037), and the Newhall and Edenvale Complex Special Area of Conservation (Site Code 002091) are the European sites 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 nearby European Sites as follows in view of the sites' conservation objectives:- Lower River Shannon Special Area of

Conservation (Site Code 002165), Pouldatig Cave Special Area of Conservation (Site Code 000037), and the Newhall and Edenvale Complex Special Area of Conservation (Site Code 002091). 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, the

- (a) likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- (b) mitigation measures which are included as part of the current proposal, and
- (c) 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 sites, having regard to the sites' conservation objectives.

In the overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of European sites in view of the sites' conservation objectives.

Environmental Impact Assessment Screening

The Board completed an environmental impact assessment screening of the proposed development and considered that the Environment Impact Assessment Screening Report submitted by the developer, identifies and describes adequately the direct, indirect, secondary, and cumulative effects of the proposed development on the environment.

Having regard to:

- (a) the nature and scale of the proposed development on a site served by public infrastructure,
- (b) the absence of any significant environmental sensitivities in the area, and
- (c) the location of the development outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),

the Board concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment. The Board decided, therefore, that an environmental impact assessment report for the proposed development was not necessary in this case.

Conclusions on Proper Planning and Sustainable Development

The Board considered that, subject to compliance with the conditions set out below, the proposed development as set out in the response received by An Bord Pleanála on the 22nd day of June, 2020 in accordance with Section 137 of the Planning and Development, 2000, Act, as amended, would constitute an acceptable residential density in this suburban location, would not seriously injure the residential or visual amenities of the area or the amenities of property in the vicinity, would provide for connectivity through the site and to the surrounding areas, would respect the existing character of the area and would be acceptable in terms of traffic and pedestrian safety, and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board considered that the revised layout submitted to the Board on the 22nd day of June, 2020 in accordance with section 137 of the Act substantially addresses the concerns of the Inspector with regard to an appropriate level of density on this serviceable site in a suburban area at the edge of the key town of Ennis, and would be acceptable in terms of dwelling mix, quantity and quality of open amenity space, pedestrian and cyclist connectivity through the site and to the surrounding area and would provide a sense of place.

Furthermore, the Board had regard to concerns raised in relation to commuting corridors for the bat population in the area, the contents of the Habitats Directive Screening Statement and Natura Impact Statement dated the 15th day of September, 2018, Natura impact statement dated 6th day of September, 2019, Bat Survey Report dated 17th September 2018, Bat Survey dated the 6th day of September, 2019, and their conclusion that there would be no negative impact on the Lesser Horseshoe Bat, that mitigation measures are not required, and that there is no requirement for provision of a compensatory habitat. The Board considered that the proposed development layout, as revised, would not result in an increased impact on the Lesser Horseshoe Bat population of the Pouldatig Cave Special Area of Conservation (Site Code 000037), given that the revised layout reduces the foot print of the development and is located at the southern end of the site, further away from their commuting routes. The other bat species identified in the area, which regularly roost and forage in urban areas, would not be negatively impacted upon and may benefit from provisions within the proposed development.

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 to the planning authority on the 11th day of September, 2019 and by the further plans and particulars received by An Bord Pleanála on the 22nd day of June, 2020, 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. The proposed development shall be amended so that the open area to the south of house number 30, as shown on drawing number 102C received by An Bord Pleanála on the 22nd day of June, 2020, shall be incorporated into the rear garden of house number 30.

Revised drawings showing compliance with this requirement shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of residential amenity.

3. Details of the materials, colours and textures of all the external finishes to the proposed dwellings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

4. The mitigation measures contained in the Natura impact statement dated the 6th day of September, 2019 shall be implemented in full.

Reason: In the interest of clarity and the proper planning and sustainable development of the area, and to ensure the protection of the European sites.

5. The development shall be carried out on a phased basis, in accordance with a phasing scheme which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any development.

Reason: To ensure the timely provision of services, for the benefit of the occupants of the proposed dwellings.

6. Prior to commencement of development, the following shall be submitted to, and agreed in writing with, the planning authority and the works shall subsequently be carried out in accordance with this agreement: -

- (a) the Boundary Type 4 wooden post and rail fencing shall be altered to include wire mesh on the housing estate side of same. This additional wire mesh on the fencing shall not extend below the bottom horizontal wooden rails of the fence,
- (b) details of the proposed construction method and structural integrity of "Boundary Type 8", as indicated on drawing number 103A "Site Layout Plan part 'B' and Boundary Types" submitted to the planning authority on the 11th day of September, 2019 at the entrance to the site accompanied by certification of same from a structural engineer or suitably qualified professional,

- (c) revised drawings and particulars which remove the proposed four piped access points for mammals to the surface water attenuation ponds and which also demonstrates a minimum freeboard of 500 millimetres on the attenuation ponds from the level of the 1:100 year water level to the inside edge of the embankment,
- (d) details of the proposed surface treatment to the hard stand area to the north of the open space area at Junction 10 as indicated on the drawings and particulars received on the 11th day of September, 2019,
- (e) revised drawings and particulars that include a plastered finish on the western side of “Boundary Type 2” as indicated on drawing number 103A “Site Layout Plan part ‘B’ and Boundary Types” submitted to the planning authority on the 11th day of September, 2019 where same faces the N85 national road.

Reason: In the interest of visual amenities, and public health and safety, and to prevent flooding.

7. The developer shall comply with all requirements of the planning authority in relation to roads, access, lighting and parking arrangements.

In particular:

- (a) the roads and traffic arrangements serving the site (including signage) shall be in accordance with the detailed requirements of the planning authority for such works and shall be carried out at the developer’s expense,
- (b) the roads layout shall comply with the requirements of the Design Manual for Urban Roads and Streets, in particular, carriageway widths and corner radii,
- (c) pedestrian crossing facilities shall be provided at all junctions,

- (d) the materials used in any roads/footpaths provided by the developer shall comply with the detailed standards of the planning authority for such road works, and
- (e) a detailed construction traffic management plan, including a mobility management plan, (including an interim or temporary strategy reflecting any requirements or adjustments relating to Covid-19 movement and travel patterns) shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The plan shall include details of arrangements for routes for construction traffic, parking during the construction phase, the location of the compound for storage of plant and machinery and the location for storage of deliveries to the site.

Details shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of traffic, cyclist and pedestrian safety and to protect residential amenity.

- 8. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any dwelling.

Reason: In the interests of amenity and public safety.

- 9. A minimum of 10% of all communal car parking spaces shall be provided with functioning electric vehicle charging stations/points, and ducting

shall be provided for all remaining car parking spaces facilitating the installation of electric vehicle charging points/stations at a later date. Where proposals relating to the installation of electric vehicle ducting and charging stations/points has not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted to, and agreed in writing with, the planning authority prior to the occupation of the development.

Reason: To provide for and/or future proof the development such as would facilitate the use of electric vehicles.

10. All the proposed car parking spaces shall be for occupants of the development and shall be sold off with the relevant units and not sold separately or let independently from the residential development.

Reason: In the interest of orderly development.

11. Proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

Reason: In the interest of urban legibility and to ensure the use of locally appropriate place names for new residential areas.

12. (a) A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities for each apartment unit shall be submitted to, and agreed in writing with, the planning authority not later than six months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.
- (b) This plan shall provide for screened communal bin stores, the locations and designs of which shall be included in the details to be submitted.
- (c) This plan shall provide for screened bin stores, which shall accommodate not less than three standard sized wheeled bins within the curtilage of each house plot.

Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

13. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

14. 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.

15. Development described in Classes 1 or 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, shall not be carried out within the curtilage of any of the proposed dwellinghouses without a prior grant of planning permission.

Reason: In the interest of residential amenity.

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

Reason: In order to prevent overdevelopment of the site in the interest of residential amenity.

17. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that 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,

- (b) employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works, and
- (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

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 site and to secure the preservation and protection of any remains that may exist within the site.

18. The site shall be landscaped in accordance with a landscaping scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The developer shall retain the services of a suitably qualified Landscape Architect throughout the life of the site development works. The approved landscaping scheme shall be implemented fully in the first planting season following completion of the development or each phase of the development and any plants that die or are removed within three years of planting shall be replaced in the first planting season thereafter.

Reason: In the interest of residential and visual amenity.

- 19 Bat roosts shall be incorporated into the site and the recommendation of the Bat Survey reports shall be carried out on the site to the written satisfaction of the planning authority.

Reason: To ensure the protection of the natural heritage on the site.

20. The areas of public open space shown on the lodged plans shall be reserved for such use and shall be levelled, contoured, soiled, seeded, and landscaped in accordance with the landscape scheme submitted to An Bord Pleanála on the 22nd day of June, 2020, unless otherwise agreed in writing with the planning authority. This work shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open space by the developer until taken in charge by the local authority or management company.

Reason: In order to ensure the satisfactory development of the public open space areas, and their continued use for this purpose.

- 21 The developer shall enter into water and/or waste water connection agreement(s) with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

22. Drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. Prior to commencement of development, the developer shall submit to the Planning Authority for written agreement a Stage 2 - Detailed Design Stage Stormwater Audit.

Upon Completion of the development, a Stage 3 Completion Stormwater Audit to demonstrate that Sustainable Urban Drainage System measures have been installed, and are working as designed and that no misconnections or damage to storm water drainage infrastructure occurred during construction, shall be submitted to, and agreed in writing with, the planning authority.

Reason: In the interest of public health and surface water management.

23. The construction of the development shall be managed in accordance with a Final Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide, inter alia, details and location of proposed construction compounds, details of intended construction practice for the development, including noise management measures, details of arrangements for routes for construction traffic, parking during the construction phase, and off-site disposal of construction/demolition waste and/or by-products.

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

24. Site development and building works shall be carried out only between 0700 to 1900 hours Mondays to Fridays and between 0800 to 1400 hours on Saturdays, and not at all on Sundays and 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.

25. The site development and construction works shall be carried out in such a manner as to ensure that the adjoining roads are kept clear of debris, soil and other material, and cleaning works shall be carried on the adjoining public roads by the developer and at the developer's expense on a daily basis.

Reason: To protect the residential amenities of property in the vicinity.

26. 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 in this regard shall be submitted to, and agreed in writing with, the planning authority prior to occupation of the development.

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

27. 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 housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) 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 96(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 current Development Plan for the area.

28. 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 and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public 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 or maintenance 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 and maintenance of the development until taken in charge.

29. The developer shall pay the sum of €87,840.46 (eighty seven thousand eight hundred and forty euro forty-six cent) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, in respect of improvements to public footpaths to Cahercalla Road from Circular Road which are necessary to facilitate the development of the site. This contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition 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.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

30. The developer shall pay the sum of €91,458.51 (ninety-one thousand four hundred and fifty eight euro fifty one cent) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and

Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, in respect of improvements to public lighting facilities in the area which are necessary to facilitate the development of the site. This contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition 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.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

31. The developer shall pay the sum of €25,458.51 (twenty five thousand four hundred and fifty eight euro fifty one cent) (updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, in respect of improvements to traffic calming measures on Circular Road which are necessary to facilitate the development of the site. This contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition 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.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by

the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

32. 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.

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

Dated this day of 2020.