

Planning and Development Acts 2000 to 2021

Planning Authority: Clare County Council

Planning Register Reference Number: P20/158

Appeal by Gort Leamhán Residents Committee care of Paul Coffey, Treasurer of 50 Gort Leamhán, Tulla Road, Ennis, County Clare and by others against the decision made on the 3rd day of February 2021 by Clare County Council to grant subject to conditions a permission to J. J. Fahey care of Michael Keating of 20 Park Row/Francis Street, Ennis, County Clare in accordance with plans and particulars lodged with the said Council:

Proposed Development: Construction of 22 number houses, to include the following: (a) three number two-bedroom detached bungalows; (b) four number blocks to include a total of eight number three-bedroom semi-detached houses; (c) three number blocks of three number terrace type houses to include two number three bedroom and one number four-bedroom house in each terrace (nine number houses in total); (d) two number three-bedroom detached houses; connection to public foul sewer; surface water to discharge to stream; connection to public water supply; connection to public services (telephone and electricity). Permission is also required to access the development via development previously granted under planning register reference number 99/232; previous permission granted on this site under planning register reference number 06/161; all at Roslevan, Ennis, County

Clare as amended by the revised public notice received by the planning authority on the 7th day of January 2021 which provide for 21 number houses.

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.

Reasons and Considerations

Having regard to the provisions of-

- (a) the National Planning Framework and the Regional Spatial & Economic Strategy for the Southern Region (RSES),
- (b) Circular Letter: NRUP 02/2021,
- (c) the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns & Villages) issued by the Department of the Environment, Heritage and Local Government in 2009 and the accompanying Urban Design Manual,
- (d) the Planning System and Flood Risk Management Guidelines for planning authorities issued by the Department of the Environment, Heritage and Local Government in November 2009,
- (e) the Design Manual for Urban Roads and Streets issued in 2013,
- (f) and the provisions of the Clare County Development Plan 2017 - 2023 including the sites LDR Low Density Residential zoning and the site-specific zoning objective LDR73,

it is considered that, having regard to the general pattern of development in the area and to the nature and scale of the proposed development, and

subject to compliance with the conditions set out below, the proposed development would constitute an acceptable quantum of development, housing mix, design, layout and appropriate density for the area, would not seriously injure the residential and visual amenities of the area and would be acceptable in terms of traffic and road safety, and convenience. The proposed development, would, therefore, be in accordance with the proper planning and sustainable development of the area.

Stage 1 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 possibility of significant effects and must, therefore, be subject to Stage 2 Appropriate Assessment (and submission of a Natura impact statement).

The Board noted that the Natura impact statement received from the applicant and the Inspector's addendum report included an assessment of fourteen Special Areas of Conservation designated for the protection of Lesser Horseshoe Bats within 15 kilometres of the proposed development site; however, the Board considered, given the distance of these sites from the proposed development which ranged from 4.5 kilometres to 13.5 kilometres and the known foraging range of 2.5 kilometres for these bats, that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on these European sites, in view of the sites' conservation objectives and that a Stage 2 Appropriate Assessment (and submission of a Natura impact statement) is not, therefore, required for these fourteen Special Areas of Conservation.

Stage 2 Appropriate Assessment

The Board considered the Natura impact statement submitted by the applicant and all other relevant submissions and carried out an appropriate assessment of the implications of the proposed development for the European site Lower River Shannon Special Area of Conservation (site code: 002165) in view of the site's conservation objectives. The Board considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the site's conservation objectives using the best available scientific knowledge in the field.

In completing the assessment, the Board considered, in particular, the site-specific conservation objectives for this European site, the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects, the view of the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, and the mitigation measures which are included as part of the current proposal. In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's addendum report in respect of the implications of the proposed development on the integrity of the aforementioned European site, having regard to the site's conservation objectives.

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) in view of the site's conservation objectives and there is no reasonable scientific doubt as to the absence of such effects.

This conclusion is based on the following:

- (a) a full and detailed assessment of all aspects of the proposed project including the proposed mitigation measures for the protection of water quality at Gaurus River, the commitment to undertake pre-construction

ecological surveys and the commitment that the works will be overseen by a site ecologist,

- (b) a detailed assessment of combined effects of other plans and projects including historical projects, current proposals, and future plans, and
- (c) no reasonable scientific doubt as to the absence of adverse effects on the integrity of the Lower River Shannon Special Area of Conservation (Site Code: 002165).

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 15th day of December 2020 and by the Natura impact statement submitted to An Bord Pleanála on the 22nd of March 2022 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.

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2. Prior to commencement of development, revised drawings shall be submitted to, and agreed in writing with, the planning authority clarifying:
 - (a) discrepancies between the road layout of drawing number 20397/CE/001/PL and the site layout drawing number PL1.2, and
 - (b) elevations and floor plans for house numbers 20-21.

Reason: In the interests of clarity, visual amenity and orderly development.

3. All mitigation measures identified in the Natura impact statement submitted to An Bord Pleanála on the 22nd day of March, 2022 and the Preliminary Construction Management Plan submitted to the planning authority on the 15th day of December, 2020, shall be implemented in full and shall be supervised by a suitably qualified ecologist.

Reason: In the interest of environmental protection, public health and orderly development.

4. All other mitigation measures identified in the _
 - (a) Ecological Assessments dated March 2007 and August 2007,
 - (b) the Bat Survey (and Review of the Previous Ecological Assessment) dated the 24th day of September 2020, and
 - (c) the Flood Risk Assessment dated the 10th day of December 2020,

submitted with the application on the 5th day of March 2020 and submitted with the further information on the 15th day of December

2020 shall be implemented in full and shall be supervised by a suitably qualified ecologist.

Reason: In the interest of environmental protection, public health and orderly development.

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

Reason: In the interest of visual amenity.

6. (a) The areas of open space shown on the lodged plans including the open space to the east of the application site as outlined in blue on drawing number PL1.2 and submitted on the 15th day of December 2020 shall be reserved for such use and finished and landscaped in accordance with the requirements of the planning authority.
- (b) A comprehensive scheme of landscaping shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The scheme shall show:
- (i) existing trees, hedgerows and features, specifying which are proposed for retention as features of the site landscaping,
 - (ii) the measures to be put in place for the protection of these landscape features during the construction period,
 - (iii) the species, variety, number, size and locations of all proposed trees and shrubs,

- (iv) details of screen planting,
 - (v) details of roadside/street planting, and
 - (vi) hard landscaping works, specifying surfacing materials and finished levels.
- (c) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment.
- (d) A timescale for implementation. The work shall be completed before any of the dwellings are made available for occupation

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development or until the development is taken in charge by the local authority, whichever is the sooner, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

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

7. 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.

8. The internal road and vehicular circulation network serving the proposed development, including turning bays, junctions, parking areas, footpaths, and kerbs shall be in accordance with the detailed construction standards of the planning authority for such works and design standards outlined in the Design Manual for Urban Roads and Streets (DMURS). Drawings and particulars showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of amenity and of traffic and pedestrian safety.

9. All of the communal parking areas serving the residential units shall be provided with functional electric vehicle charging points, and all of the in-curtilage car parking spaces serving residential units shall be provided with electric connections to the exterior of the houses to allow for the provision of future electric vehicle charging points. Details of how it is proposed to comply with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: in the interest of sustainable transportation.

10. Proposals for naming and numbering of the proposed development 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.

11. Water supply and drainage arrangements, including the attenuation and disposal of surface water and the provision of appropriate Sustainable Urban Drainage Systems (SuDS) to each house, shall comply with the requirements of the planning authority for such works and services.

Reason: To ensure adequate servicing of the development, and in the interest of public health.

12. Prior to commencement of development the developer shall enter into water and/or wastewater connection agreement(s) with Irish Water.

Reason: In the interest of public health.

13. No construction related traffic is permitted through Gort Leamhán. The construction of the development shall be managed in accordance with a Construction and Environmental Management Plan and Method Statement (as per the mitigation measures of the submitted Natura Impact Statement), 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, including:

- (a) location of the site and materials compound(s) including area(s) identified for the storage of construction refuse,
- (b) location of areas for construction site offices and staff facilities,
- (c) details of site security fencing and hoardings,
- (d) details of on-site car parking facilities for site workers during the course of construction,
- (e) details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site,
- (f) measures to obviate queuing of construction traffic on the adjoining road network,
- (g) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network,
- (h) alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works,
- (i) details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels,
- (j) containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater,

- (k) off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil, and
- (l) means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be available for inspection by the planning authority. The developer shall provide contact details for the public to make complaints during construction and provide a record of any such complaints and its response to them, which may also be inspected by the planning authority.

Reason: In the interest of amenities, public health and safety.

14. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

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15. 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 within each house plot shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

16. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, 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 amenities of property in the vicinity.

17. 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.

Reason: In the interests of visual and residential amenity.

18. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The agreed lighting system shall be fully implemented and operational before any of the residential or commercial units are made available for occupation.

Reason: In the interest of amenity and public safety.

19. (a) The communal open spaces, including hard and soft landscaping, car parking areas and access ways and all areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company.
- (b) Details of the management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.

Reason: To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

20. 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.

21. Prior to the commencement of any house in the development as permitted, the applicant or any person with an in interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house unit), pursuant to Section 47 of the Planning and Development Act, 2000, as amended, that restricts all houses permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.

Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice

and supply of housing, including affordable housing, in the common good.

22. 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.

23. 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.

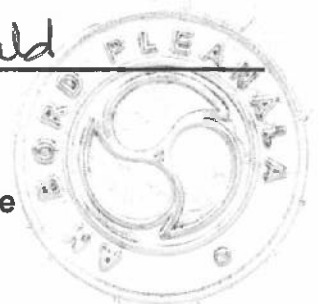
Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Dr. Maria FitzGerald

Maria FitzGerald

Member of An Bord Pleanála

**duly authorised to authenticate
the seal of the Board.**



Dated this 23rd day of Sept. 2022.