



Planning and Development Acts 2000 to 2021

Planning Authority: Donegal County Council

Planning Register Reference Number: 21/51445

Appeal by Peter and Aoife Tooher of Drumrooske, Donegal Town, County Donegal against the decision made on the 2nd day of September, 2021 by Donegal County Council to grant subject to conditions a permission to Shaun Doherty care of O'Connor Burke Architecture Limited of 1 College Terrace, Rock Road, Derry/Londonderry, Northern Ireland in accordance with plans and particulars lodged with the said Council.

Proposed Development: Construction of a housing development consisting of 35 number residential units and comprising of the following: (1) two number bungalows, (2) four number semi-detached bungalows, (3) 17 number two-storey houses, (4) 12 number apartments in three number two-storey blocks, (5) all associated site works including a storm water attenuation system and connection to all public services at Bluestack Drive, Drumrooske West, Donegal Town, Co. Donegal. Revised public notices were received by An Bord Pleanála on the 29th day of July, 2022 which included a Revised Natura Impact Statement.

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 location of the site within the “Primarily Residential” zoned land of Donegal Town, the provisions of the Donegal County Development Plan 2018-2024, the planning history of the site, the existing pattern of development in the area, and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual and residential amenities of the area, would be acceptable in terms of pedestrian and traffic safety, would provide a satisfactory standard of residential amenity for future occupants, and 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 Inspector's only recommended reason for refusal had been satisfactorily addressed by the revised Natura Impact Statement that was submitted by the applicant on the 10th day of June 2022 in response to the Section 132 notice issued by the Board, which comprehensively addressed the potential for surface water impacts on European Sites at construction and operation stage.

Stage 1 Appropriate Assessment Screening

The Board considered the Natura Impact Statement (and the revised Natura Impact Statement) and all the other relevant submissions and carried out both an appropriate assessment screening exercise and an appropriate assessment in relation to the potential effects of the proposed development on designated European sites.

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the Lough Eske and Ardnamona Wood Special Area of Conservation (Site Code 000163), the Donegal Bay (Murvagh) Special Area of Conservation (Site Code 000133) and the Donegal Bay Special Protection Area (Site Code 004151) are the European sites for which there is a possibility of significant effects and must therefore be subject to Appropriate Assessment.

Stage 2 Appropriate Assessment

The Board considered the Natura Impact Statement (and the revised Natura Impact Statement submitted on the 10th day of June, 2022 in response to the Section 132 notice issued by the Board) and all other relevant submissions and carried out an appropriate assessment of the implications of the proposed development for the European Sites in view of the sites' conservation objectives - the Lough Eske and Ardnamona Wood Special Area of Conservation (Site Code 000163), the Donegal Bay (Murvagh) Special Area of Conservation (Site Code 000133) and the Donegal Bay Special Protection Area (Site Code 004151). The Board considered that the information before it, including the information in the revised Natura Impact Statement, was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the sites' conservation objectives using the best available scientific knowledge in the field.

In completing the Appropriate Assessment, the Board considered, in particular, the conservation objectives for these European Sites, the likely direct and indirect impacts arising from the proposed development particularly in relation to surface water discharges, both individually or in combination with other plans or projects, the view of the Department of Arts, Heritage and the Gaeltacht, 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 report in respect of the potential effects of the proposed development on the aforementioned European Sites. The Board noted the Inspector's concerns in relation to the potential for surface water discharge impacts on the Lough Eske and Ardnamona Wood Special Area of Conservation (Site Code 000163) but considered that these concerns were satisfactorily addressed and overcome by the revised Natura Impact Statement which incorporated appropriate detailed mitigation measures for construction and operation.

In 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 and there is no reasonable scientific doubt as to the absence of such effects.

This conclusion is based on the following:

- (i) a full and detailed assessment of all aspects of the proposed project including proposed mitigation measures for surface water discharge at construction and operation stages in relation to the conservation objectives of the aforementioned designated sites,
- (ii) detailed assessment of in combination effects with other plans and projects including historical projects, current proposals, and future plans, and

- (iii) no reasonable scientific doubt as to the absence of adverse effects on the integrity of the Lough Eske and Ardnamona Wood Special Area of Conservation (Site Code 000163), the Donegal Bay (Murvagh) Special Area of Conservation (Site Code 000133) and the Donegal Bay Special Protection Area (Site Code 004151).

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 received by An Bord Pleanála on the 10th day of June, 2022 (including the revised apartment layouts), 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. All of the mitigation measures set out in the revised Natura Impact Statement submitted to An Bord Pleanála on the 10th day of June, 2022 shall be implemented in full.

Reason: In the interest of the natural heritage of the area and protecting the environment.

3. 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. Prior to the commencement of development, proposals for increased on-site attenuation in accordance with the Greater Dublin Regional Code of Practice for Drainage Works, shall be submitted to, and agreed in writing with, the planning authority.

Reason: In the interest of public health.

4. The developer shall enter into water and/or wastewater connection agreement(s) with Irish Water prior to the commencement of this development.

Reason: In the interest of public health.

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

Reason: In the interests of visual and residential amenities.

6.
 - (a) The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths, and kerbs and car parking bay sizes shall comply with the requirements of the Design Manual for Urban Roads and Streets, in particular carriageway widths and corner radii within the development shall be in accordance with the guidance provided in the National Cycle Manual.
 - (b) 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.

Revised 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 interests of pedestrian, cyclist, and traffic safety.

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

Reason: In the interests of visual and residential amenity.

8. Proposals for a naming and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all signs, and numbers shall be provided in accordance with the agreed scheme.

Reason: In the interests of amenity and of the proper planning and sustainable development of the area.

9. 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.

- 10 The landscape shown on the Landscaping Site Plan drawing number 1810.19, as submitted to the planning authority on the 20th day of July 2021, shall be carried out within the first planting season following substantial completion of external construction works. 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, 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 interests of residential and visual amenity.

11. All of the houses with on-curtilage parking 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, including details of design of, and signage for, the electrical charging points shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of sustainable transportation.

12. Site development and building works shall be carried out only between the hours of 0700 and 1900 from Mondays to Fridays inclusive, between 0800 and 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.

13. 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, including noise management measures and off-site disposal of construction/demolition waste.

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

14. 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 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.

15. Prior to commencement of development, the developer shall submit to, and agree in writing with the planning authority, full details of the proposed public lighting, including the lighting levels within open areas of the development.

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

16. 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 development plan for the area.

17. Prior to the commencement of any house or duplex unit in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, as amended, that restricts all houses and duplex units 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.

18. 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 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 of the development.

19. The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2) (c) of the Planning and Development Act 2000 in respect of footpath infrastructure which will facilitate the development. The amount of the contribution 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 for determination. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be 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.

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.

20. 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 21st day of Sept. 2022.

