



An  
Bord  
Pleanála

**Board Order**  
**ABP-313570-22**

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**Planning and Development Acts 2000 to 2022**

**Planning Authority: Clare County Council**

**Planning Register Reference Number: P21/663**

**Appeal** by Mary Burke and Patrick Conboy of Beechpark, Ennis, County Clare and by Stephen Loftus and Others care of Connellan and Associates of Sonas, Caheralla Wood, Caheralla, Ennis, County Clare against the decision made on the 29<sup>th</sup> day of April, 2022 by Clare County Council to grant subject to conditions a permission to EKO Integrated Services Limited of Aras Smith O'Brien of Bank Place, Ennis, County Clare in accordance with plans and particulars lodged with the said Council:

**Proposed Development:** Demolition of existing structures at numbers 1 to 4 inclusive Buttermarket Street, and partial removal of the existing wall to the eastern boundary. Construction of 46 residential units in total comprising of a new four-storey apartment building to Drumbiggie Road with 30 number two bedroom apartments and three number one bedroom apartments over semi-basement level with 20 car-parking spaces, secure bicycle store, bin store and plantroom; digital hub at ground floor level; new single store café and digital hub at ground floor to Simm's Lane; four-storey apartment building to Buttermarket Street Lane with seven number two bedroom apartments; six number three-storey terraced townhouses to Buttermarket Street, new substation, five new set-down car parking spaces, external hard and soft

landscaping, lighting, solar panels, underground services including drainage with attenuation tank and ancillary site works The site is in an Architectural Conservation Area, all at Drumbiggle Road, numbers 1 to 4 Buttermarket Street and Simm's Lane, Drumbiggle, Ennis, County Clare. The proposed development was revised by further public notices received by the planning authority on the 7th day of March, 2022 and further notices received by An Bord Pleanála on the 12th day of July, 2022.

## **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 policies and objectives of the Clare County Development plan 2023-2029 in respect of both town centre regeneration for Ennis and housing provision and the site specific objectives in Volume 3a, as supported by national policy as set out in the national planning framework (2018), and Ministerial Guidance, Sustainable Residential Development and Compact Settlements (2024) both issued by The Department of Housing, Planning and Local Government, according to which new residential development should be increased in density and directed into locations with existing built-up serviced areas, it is considered that the nature and scale of the mixed-used development is acceptable in principle. Furthermore having regard to the building pattern in the area and the scale and design of the proposal which includes a variety of heights and building forms appropriate to its context in an Architectural Conservation Area and to the environmental mitigation measures provided for, it is considered that, subject to compliance with the conditions set out below, the proposed development at this location would contribute positively to the vitality and regeneration of the area, would not seriously injure

the visual or residential amenities of the area, would not result in a significant disturbance to bat species in the area and that the proposed development would be acceptable in terms of density of development, car parking provision and traffic safety, water quality and ecology. The proposed development would, therefore, be in accordance with the provisions of the county development plan and the proper planning and sustainable development of the area.

## 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 information received by the planning authority on the 23<sup>rd</sup> day of February, 2022 and as amended by details received by An Bord Pleanála on the 13<sup>th</sup> day of June 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 or as stipulated and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. Prior to the commencement of any house or apartment 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.

3. The proposed development shall be completed in accordance with a detailed phasing agreement which shall be submitted to the planning authority for agreement prior to commencement of development. In this regard the following shall be included in the phasing agreement:
  - (a) The central open space area, associated hard and soft landscaping and play area shall be as received by the planning authority on the 23<sup>rd</sup> day of February 2022 and shall be carried out within the first planting season following substantial completion of external construction works prior to the occupation of any of the apartments or café/hub.
  - (b) The resurfacing of Buttermarket Lane shall be completed to the satisfaction of the planning authority prior to the occupation of any of the apartments or café/hub.
  - (c) The semi-basement car park shall be completed in its entirety to the satisfaction of the planning authority prior to the occupation of any of the apartments or café/hub.
  - (d) Details in relation to the provision of a future cycle lane along the Drumbiggie Road frontage.

- (e) All other landscaping, boundary treatments, footpath and, lighting details (subject to bat conservation requirements), which shall be completed to the satisfaction of the planning authority prior to the occupation of any of the apartments or café/hub.

Following the completion of the terrace units, work on any subsequent phases shall not commence until such time as the written agreement of the planning authority has been obtained.

**Reason:** To ensure the provision of services for the benefit of the occupants of the proposed dwellings, in the interests of residential amenity and orderly development.

4. Prior to commencement of development, the developer shall enter into water and/or wastewater connection agreement(s) with Uisce Eireann.

**Reason:** In the interest of public health.

5. The management and maintenance of the proposed development following completion shall be this responsibility of a legally constituted management company which shall be established by the developer. A management scheme providing adequate measures for the future maintenance of the development, including the external fabric of the buildings, internal common areas, hard and soft landscaping, access and pathways, parking areas, lighting, waste storage facilities and sanitary services shall be submitted to and agreed in writing with the planning authority before any of the residential or commercial units are made available for occupation. In this regard, the developer shall submit to the planning authority details of:

- (a) the management company contract and drawings/particulars describing the parts of the development for which the company would have responsibility,
- (b) the allocation and management of semi-basement level car parking spaces, and
- (c) the provision of the proposed shared car scheme to serve the occupants of the proposed development including the operation and management thereof.

**Reason:** To provide for the future maintenance of this private development in the interest of visual amenity.

6. The café/hub unit shall comply with the following requirements:

- (a) The hours of operation of the unit shall be between the hours of 0800 hours and 2100 hours Monday to Sunday. Deviation from these times shall only be allowed where prior written agreement has been received from the planning authority.
- (b) The café shall not be used as a fast food outlet.
- (c) Details of signage and plant equipment shall be submitted for written agreement with the planning authority prior to commencement of development.
- (d) The Buttermarket Lane entrance shall be for use of customers/patrons and not maintained solely as a fire escape/service entrance.

**Reason:** In the interest of the amenities of the properties and streetscape in the vicinity and to protect the amenity of the apartment roof terrace.

7. The proposed café/hub and overhead apartments shall be provided with noise insulation to an appropriate standard having regard to the coexistence of the units in the same building.

**Reason:** In the interest of residential amenity and to provide for a mix of uses in the site in accordance with mixed use designation in the Clare Development Plan 2023-2029.

8. No deliveries shall be taken at or dispatched from the premises outside the hours of 0700 to 2200 Monday to Saturdays nor at anytime on Sundays or public holidays. Deviation from these times shall only be allowed with prior written agreement from the planning authority.

**Reason:** To protect the residential amenities of the area.

9. 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. antennae 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.

10. The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme and timescale. A comprehensive boundary treatment and landscape scheme shall be submitted to and agreed in writing with the planning authority prior to commencement of development. The scheme shall include the following:
- (a) Details of all proposed hard surface finishes, including samples of proposed paving slabs, materials for footpaths curbing and access surfaces within the development.
  - (b) Proposed locations of trees and other landscaping planting in the development including details of proposed species and settings.
  - (c) Details of proposed outside furniture including bollards, lighting fixtures, and seating.
  - (d) Details of proposed boundary treatments of the perimeter of the site including materials and finishes.
  - (e) Details of incorporation into the finishes in the development the original limestone in the boundary wall to be demolished/dismantled on site.

**Reason:** In the interest of visual amenity

11. (a) All mitigation measures outlined in the submitted Natura Impact Statement as amended, the Bat Assessment Report and associated Outdoor Lighting Plan as amended and Preliminary Construction Environmental Management Plan shall be carried out as specified.

- (b) In accordance with the mitigation measures as outlined and prior to commencement of development, the developer shall submit the following to the planning authority for agreement: a waste management plan, a noise and vibration management plan, a dust management plan, a surface water management plan, an operational management plan and an invasive species survey and management plan
- (c) An Ecological Clerk of Works with suitable experience shall be appointed to ensure all mitigation is carried out. The Ecological Clerk of Works shall submit a quarterly report to the planning authority demonstrating compliance with mitigation measures and ecological considerations until such time that the post construction survey phase is complete.

**Reason:** In the interest of clarity and to mitigate potential environmental effects

12. The construction of the development shall be managed in accordance with the construction 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 provide details of intended construction practice for the development including:

- (a) A construction traffic management plan
- (b) Location of the site and materials compound including areas identified for the storage of construction refuse location of areas for construction office and staff facilities details of security fencing and hoardings details of on-site carparking facilities for site workers during the course of construction.

- (c) Measures to obviate queuing of construction traffic on Drumbiggle Road and at the junction of Carmody Street and Drumbiggle Road.
- (d) Measures to prevent the spillage or deposit of clay rubble or other debris on the public road network.
- (e) 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.
- (f) Measures for containment of all construction related fuel and oil. In this regard bunds shall be roofed to exclude rainwater.
- (g) Arrangements for off-site disposal of construction and demolition waste and details of how it is proposed to manage excavated soil. All construction materials and substances shall be stored in a secure compound away from any water courses when not in use. This compound shall be fenced off and all chemicals shall be stored in suitable secured containers to avoid the potential for contamination.
- (h) Any excavated topsoil that is to be reused shall be stored on the site outside of a minimum five metre buffer zone from any water course/ drains on the site and where this is stored during the construction phase it shall be covered to avoid excess sediment runoff or wind blow.
- (i) mobile plant such as fuel bowser should be bunded to 100% capacity. Tanks for browsers and generators shall be double skinned and when not in use all valves and fuel trigger guns from fuel storage containers shall be locked.

- (j) Arrangements for all on site plant refuelling. A spill kit and drip tray shall be on site at all times. Plant refuelling procedures shall be detailed in the construction management plan.
- (k) Procedures for plant inspection, maintenance and repairs. Machinery shall be checked for leaks before arrival on site.
- (l) Noise management measures.
- (m) A record of daily checks that the works are being undertaken in accordance with the construction management plan shall be kept for inspection by the planning authority.

**Reason:** In the interests of amenities, public health and protection of the environment.

13. Prior to the commencement of development, the developer or any agent acting on its behalf shall prepare a resource waste management plan and set as set out in the Environmental Protection Agency's best practice guidelines for the preparation of resource and waste management plans for construction and demolition projects 2021 including demonstration of proposals to adhere to best practice the protocols. the RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness. These details should be placed on the file and retained as part of the public record. The RWMP must be submitted to the planning authority for written agreement prior to the commencement of development. All records including for waste and all resources pursuant to the agreed or RWMP will be made available for inspection at the site offices at all times.

**Reason:** In the interest of sustainable waste management.

14. 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. In this regard

- (a) The developer shall submit to the planning authority for written agreement, a detailed surface treatment plan for the entire site including the resurfacing of Buttermarket Lane to the east of the site and addressing details of the existing drainage channel to the rear of Carmody Street.
- (b) Prior to occupation of any unit, the developer shall submit to the planning authority for written agreement and approval, certification of the installation and commissioning of the storm sewers, hydrocarbon interceptors, attenuation area and hydro brake units which shall be inspected and certified by a suitably qualified person as being in compliance with the documentation submitted to the planning authority and in accordance with the manufacturer's instructions.
- (c) No surface water from roofs paved areas or otherwise shall discharged onto the public road and to the site access shall be provided with adequately sized pipes and ducts to ensure that no interference will be caused to existing roadside drainage.
- (d) No surface water shall flow down the ramped access to the semi-basement level off the car park.
- (e) SuDs shall be Incorporated in the hard landscaping areas.
- (f) The developer shall demonstrate protection of attenuation tanks from root spread.

- (g) The developer shall be responsible for the replacement of the existing footpath and kerbs around the full perimeter of the site where necessary and details in relation to the proposed footpath finish shall be submitted to the planning authority for agreement. Kerbs shall be of limestone with appropriate drops for crossing points and entrances.

**Reason:** To prevent flooding and in the interest of public health and ground water protection.

- 15. Detailed measures in relation to the protection of bats shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. These measures shall incorporate the mitigation measures outlined in the submitted documentation and shall be implemented as part of the development. In this regard the following shall apply:

- (a) Three Integrated Bat tubes (3 Schwegler FR) with interconnecting holes shall be built into the north-eastern structure closest to the boundary and amended plans shall be submitted for agreement with regard to this detail.
- (b) Construction works shall be carried out outside the active bat season and otherwise in accordance with best practice to minimise disturbance.
- (c) Any envisaged destruction of structures or felling of trees that support bat populations shall be carried out only under licence from the National Parks and Wildlife Service and details of any such licence shall be submitted to the planning authority.

- (d) The removal of the mature trees, demolition of buildings and structures shall be undertaken in line with industry best practice: Guidelines for the treatment of Bats during the construction of National Road Schemes (TII) and Bat Mitigation Guidelines (NPWS, Irish Wildlife Manual 134, 2022).
- (e) The lighting plan shall be modified in accordance with the prevailing best practice at the time of lodgement of final details with the planning authority for written agreement. The public lighting shall be provided in accordance with a final scheme to reflect the details in Bat surveys. Such lighting shall be provided prior to the making available for occupation of any dwellings. An assessment of the lighting regime after installation shall be undertaken by a suitably qualified lighting expert and ecologist to ensure that the specification has been achieved and amended accordingly in the event of any unforeseen straying from the regime and in line with the recommendations included in the Bats and Lighting report by Bat Conservation Ireland.

**Reason:** In the interest of protection of bat species.

- 16. 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 operations (including hydrological and geotechnical investigations) relating to the proposed development, and

- (b) employ a suitably qualified archaeologist prior to commencement of development. The archaeologist should assess the site and monitor all site development works. The assessment shall address the nature and location of archaeological material on the site and 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 of the developer shall agree in writing with the planning authority details regarding any further archaeological requirements including, if necessary, excavation prior to commencement of construction works. All resulting and associated archaeological costs shall be borne by the development.

**Reason:** To ensure the continued preservation (either in situ or be record) of places, cave, sites, features or other objects of archaeological interest.

17. A basic survey of footprint, form and layout of buildings/structures proposed for demolition shall be carried out, and this survey shall be submitted to the planning authority prior to commencement of development. Archive standard photographic survey of main features such as street elevation shall be prepared in accordance with the requirements of the planning authority.

**Reason:** In order to facilitate recording of the architectural heritage of the site in an Architectural Conservation Area.

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

**Reason:** In the interest of visual amenity.

19. The site entrances and junctions, raised tables, parking areas, footpaths and kerbs shall comply with the detailed standards of the planning authority for such works.

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

20. 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 interest of visual amenity and orderly development.

21. (a) The car parking spaces serving the development shall be provided with electric connections to allow for the provision of future electric vehicle charging points.
- (b) The car parking spaces along Buttermarket Lane shall be within the site boundary and shall not interfere with the free flow of vehicular traffic as presently exist along this lane.

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 and traffic safety.

22. 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 shall be submitted to an 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 recycled materials in the interest of protecting the environment.

23. Site clearance/development and building works shall be carried out in accordance with the agreed CEMP and 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 residential amenities of property in the vicinity.

24. Proposals for an estate/street name, house/apartment 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/apartment 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

25. 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 of the area.

26. 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 landscaping commitments 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.

27. 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.

28. The developer shall pay to the planning authority a financial contribution of €14,000 (fourteen thousand euro) in respect of the shortfall in car parking spaces as required in the Clare County Development Plan 2023-2029 and 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.



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Stephen Brophy

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

Dated this 17<sup>th</sup> day of June 2024.