



An
Bord
Pleanála

Board Order ABP-314951-22

Planning and Development Acts 2000 to 2022

Planning Authority: Kerry County Council

Planning Register Reference Number: 22660

Appeal by Denis Duggan of Clashnagarrane, Kilcummin, Killarney, County Kerry and by Barth O'Neill care of Eversheds Sutherland LLP of 1 Earlsfort Centre, Earlsfort Terrace, Dublin against the decision made on the 3rd day of October, 2022 by Kerry County Council to grant subject to conditions a permission to the said Barth O'Neill in accordance with plans and particulars lodged with the said Council.

Proposed Development: (1) A new foul sewer to facilitate Irish Water in the completion of the Kilcummin Sewage Scheme and the connection of Páirc Chumin to same, (2) the provision of a turning bay to serve the permitted pumping station (granted under planning reference number 17/97), and (3) construction of 34 number houses by way of modification to the previously permitted permission by An Bord Pleanála under appeal reference PL 08.248967 (Planning Register Reference 16/247). The development will consist of four number Type E two-storey terraced, three-bed dwellinghouses, six number two-storey three bed semi-detached dwellinghouses, and 24 number semi-detached houses that will be interchangeable as to their type, being either a Type B two-storey three bed semi-detached or a type C two and a half storey, four bed semi-detached with home office space and bedroom/TV room in a

converted attic, all associated parking and site development works and services at Páirc Chumin, Clashnagarrane, Kilcummin, Killarney, County Kerry.

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 the Kerry County Development Plan 2022-2028, the Killarney Municipal District Local Area Plan 2018-2024 including the zoning objective Existing Residential for the site, the specific objectives KN-GO-04 of the Local Area Plan to provide adequate pedestrian facilities to improve connectivity between existing developments and the village, and KN-GO-05 to support the provision of adequate wastewater infrastructure, the nature and scale of the proposed development and the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would accord with the development plan policies and objectives for the area, and would not constitute a traffic hazard or give rise to serious injury of the amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Furthermore, it is considered reasonable that the developer should contribute towards the specific exceptional costs of the provision of a footpath (upgrading where necessary) and cycleway to current standards along the public road serving the development site from the entrance to Pairc Chuimin to the village centre over a distance in the order of 400 metres.

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 6th day of September 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.

2. Prior to commencement of development, the developer shall submit a final site layout map and house plans for the written agreement of the planning authority and these shall:
 - (a) specifically identify the sites where house types B and C are proposed to be constructed,
 - (b) replace house type F on site number 119 with type house D,
 - (c) modify the houses on site numbers 105, 110 and 93 so as to provide habitable room windows overlooking the green areas to the side,
 - (d) provide for the stepping forward of houses on plots 86-93 and 110-119 in order to increase distances from the site perimeter boundary ditch, and
 - (e) provide for revised parking with adequate clearance for house site number 86, 109 and 119.

Reason: In the interest of clarity, to protect the existing hedgerow and trees in the interest of ecology and to ensure a good standard of development.

3. Occupation of the dwellings shall not commence until such time as the proposed Kilcummin Sewerage Scheme is completed and commissioned.

Reason: In the interest of orderly development.

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

Reason: In the interest of public health.

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

Reason: In the interest of public health.

6. The external materials, colours and finishes shall harmonise with the existing development in the area.

Reason: In the interest of visual amenity.

7. 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. 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 amenity and of traffic and pedestrian safety.

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

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

9. A comprehensive site boundary treatment and landscaping scheme shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. This scheme shall provide for the maximum retention of existing trees and hedgerow and include the following:-

- (a) proposed locations of trees to be retained and measures for the protection of those trees shall be submitted to, and agreed in writing with, the planning authority before any trees are felled,

- (b) proposed locations of trees to be planted and other landscape planting in the development, including details of proposed species and settings, and
- (c) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes.

The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.

Reason: In the interest of visual amenity and ecology.

- 10. Trees to be removed on site shall be felled in late summer or autumn. Any disturbance to bats or badger setts on site shall be in a manner to be agreed in writing with the planning authority on the advice of a qualified ecologist.

Reason: In the interest of nature conservation.

- 11. 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. Such lighting shall be provided prior to the making available for occupation of any house.

Reason: In the interests of amenity and public safety.

12. Each proposed house shall be used and occupied as a single dwelling unit for residential purposes and shall not be sub-divided or used for any commercial purposes (including short-term letting) without a separate planning permission.

Reason: In the interest of clarity and to ensure the maintenance of a residential community.

13. 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.

14. Site development and building works shall be carried out between the hours of 0800 and 1900 Mondays to Fridays inclusive, between 0800 and 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall 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.



15. The construction of the development shall be managed in accordance with a site-specific detailed 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, bunding of temporary oil facilities, containment of contaminants and protection of water quality, dust suppression, wheel washing, decommissioning and removal of existing sand filter for the waste treatment plant, noise management measures and off-site disposal of site preparation and construction/demolition waste.

Reason: In the interests of public health and pollution prevention.

16. The areas of public open space shown on the lodged plans shall be reserved for such use and shall be levelled, soiled, seeded, and landscaped in accordance with the detailed requirements of 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. The area required by Kilcummin Sewerage Scheme pumping station permitted under planning register reference number 17/97 and An Bord Pleanála appeal number PL 08.248355 shall remain free from development.

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

17. 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 commencement of development.

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

18. Prior to the commencement of any house 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.

19. All the recommendations of the stage 1/2 Road Safety Audit for the proposed development shall be implemented. Prior to commencement of development, all documentation generated from this implementation shall be submitted to the written agreement of the planning authority. A stage 3 Road Safety Audit shall be carried out at the completion of the proposed development with the recommendations acted upon.

Reason: In the interest of traffic and pedestrian safety.



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 development plan of the area.

21. 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.

22. The developer shall pay a financial contribution of €69,737.96 (sixty nine thousand, seven hundred and thirty seven euro and ninety six cent) to the planning authority as a special contribution under Section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of public infrastructure in the form of a proposed cycleway/walkway, over a distance of 400m, linking Pairc Chuimin Estate to Kilcummin Village centre and its facilities therein, which will benefit the proposed development. The contribution shall be paid prior to commencement of development or in such phased payments as may be agreed prior to the commencement of the development and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the terms of payment of this financial contribution shall be agreed in writing between the planning authority and the developer.

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

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



Martina Hennessy

Member of An Bord Pleanála

duly authorised to authenticate

the seal of the Board.

Dated this 17th day of July 2024