



An
Bord
Pleanála

Board Order
ABP-317090-23

Planning and Development Acts 2000 to 2022

Planning Authority: Clare County Council

Planning Register Reference Number: 22/263

Appeal by Willy O'Doherty of 10 Woodstock View, Shanaway Road, Ennis, County Clare against the decision made on the 21st day of April, 2023 by Clare County Council to grant subject to conditions a permission to Darwin Trading Company Limited care of Brian Foudy and Associates Limited of Osprey House, Carmody Street, Ennis, County Clare in accordance with plans and particulars lodged with the said Council.

Proposed Development: (a) 16 number dwelling houses in total consisting of two number detached two-storey dwelling houses and 14 number semi-detached two-storey dwelling houses, and (b) all ancillary site development works and connections to public services, all at Ballylannidy, Ennis, County Clare, as revised by the further public notices received by the planning authority on the 27th day of February, 2023.

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 Clare County Development Plan 2023 - 2029, including the residential zoning objective of the site, and having regard to the pattern of existing development in the area and the design, scale and layout 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 residential or visual amenities of the area, would be acceptable in terms of pedestrian and traffic safety and would constitute an acceptable form of residential development at this zoned and serviced location. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment - Stage 1

The Board considered the Screening Report for Appropriate Assessment and carried out an appropriate assessment screening exercise in relation to the potential effects of the proposed development on designated European sites. The Board noted that the proposed development is not directly connected with, or necessary for, the management of a European site and considered the nature, scale, and location of the proposed development, as well as the report of the Inspector. The Board agreed with and adopted the screening assessment and conclusion carried out in the Inspector's report that significant effects cannot be ruled out on the Lower River Shannon Special Area of Conservation (Site Code: 002165), the River Shannon and River Fergus Estuaries Special Protection Area (Site Code: 004077), Pouladatig Cave Special Area of Conservation (Site Code: 000037) and Newhall and Edenvale Complex Special Area of Conservation (Site Code: 002091) and that a Stage 2 Appropriate Assessment is required.

The Board concluded that the following European sites were determined to be located outside the zone of influence in terms of a number of factors including the separation distance provided, the absence of a downstream hydrological connection with the designated sites and that the sites were located outside the Core Sustainance Zone for the Lesser Horseshoe bat; Ballyallia Lough Special Protection Area, Ballyallia Lake Special Area of Conservation, Toonagh Estate Special Area of Conservation, Knockanira House Special Area of Conservation, Dromroe Woods and Loughs Special Area of Conservation, Ballycullinan Old Domestic Building Special Area of Conservation, Old Farm Ballymacrogan Special Area of Conservation, East Burren Complex Special Area of Conservation, Old Domestic Building (Keevagh) Special Area of Conservation, Corofin Wetlands Special Protection Area, Slieve Aughty Mountains Special Protection Area, Poulmagordon Cave (Quin) Special Area of Conservation, Moyree River System Special Area of Conservation, Lough Gash Turlogh Special Area of Conservation, Ballyogan

Lough Special Area of Conservation, Old Domestic Buildings Rylane Special Area of Conservation and Newgrove House Special Area of Conservation.

Appropriate Assessment - Stage 2

The Board considered the Natura Impact Statement and carried out an appropriate assessment of the implications of the proposal for the Lower River Shannon Special Area of Conservation (Site Code: 002165), the River Shannon and River Fergus Estuaries Special Protection Area (Site Code: 004077), Pouladatig Cave Special Area of Conservation (Site Code: 000037) and Newhall and Edenvale Complex Special Area Conservation (Site Code: 002091), in view of the Sites' Conservation Objectives. The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment as well as the report of the Inspector.

In completing the assessment, the Board considered the likely direct and indirect impacts arising from the proposed development both individually and in combination with other plans and projects, the mitigation measures which are included as part of the current proposal and the 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 conservation objectives. In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of Lower River Shannon Special Area of Conservation (Site Code: 002165), the River Shannon and River Fergus Estuaries Special Protection Area (Site Code: 004077), Pouladatig Cave Special Area of Conservation (Site Code: 000037) and Newhall and Edenvale Complex Special Area Conservation (Site Code: 002091) or any other European site in view of the sites' conservation objectives.

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 16th day of February, 2023, 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 the 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 the mitigation measures indicated in the Natura Impact Statement shall be implemented in full.

Reason: To ensure the protection of the integrity of European sites.

3. The entire open area within the red line boundary to the north-west of house numbers 9 - 12 of the development shall be public open space.

Reason: In the interests of clarity and residential amenity.

4. 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.

Reason: In the interest of public health.

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

Reason: In the interest of public health.

6. Details 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.

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 (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 interests of amenity and of traffic and pedestrian safety.

8. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. All existing ground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

9. 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.

10. The construction of the development shall be managed in accordance with a site-specific detailed Construction Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall incorporate all mitigation measures indicated in the Natura Impact Statement and 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.

11. 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 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.

12. 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 operations (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.

13. The development, including all roads, footpaths, verges, public lighting, open space, foul, water and surface water drains, attenuation infrastructure and all other services, as permitted under this development, shall be carried out and completed in accordance with the “taking-in-charge” standards of the planning authority.

Reason: In the interest of proper development and in order to comply with national policy in relation to the maintenance and management of residential estates.

14. 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 unit.

Reason: In the interests of amenity and public safety.

15. 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.

16. The mitigation measures, as detailed in the Bat Survey Report prepared by Ecofact Environmental Consultants submitted to the planning authority on the 16th day of February 2023, shall be implemented as part of the development.

Reason: In the interest of wildlife protection.

17. A comprehensive landscaping scheme, as set out in Drawing Number 2032 FI 06 shall be submitted to, and agreed in writing with, the planning authority, prior to commencement of development. This scheme shall include the following:-

- (a) details for the landscaping of the entire open area within the red line boundary to the north-west of house numbers 9 - 12 of the development;
- (b) details of all proposed hard surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development;
- (c) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings; and
- (d) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes.

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

Reason: In the interest of visual amenity.

18. 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.

19. 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.

20. Prior to the 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 of streets, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the planning authority to apply such security or part therefore to the satisfactory completion of any part of the development. The form and amount of security shall be as agreed between the planning authority and the developer, or in default of an agreement shall be determined by An Bord Pleanála.

Reason: To ensure the satisfactory completion of the development.

21. 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.

22. 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.

Eamonn James Kelly

Eamonn James Kelly

Member of An Bord Pleanála

duly authorised to authenticate

the seal of the Board.

Dated this *28th* day of *May*, 2024.