

An
Bord
Pleanála

Board Order
ABP-317669-23

Planning and Development Acts 2000 to 2022

Planning Authority: Carlow County Council

Planning Register Reference Number: 22/216

Appeal by Nimbus Property Company Limited of Genesis Planning Consultants of Dean Swift Building, Armagh Business Park, Hamiltonsbawn Road, Armagh, Northern Ireland against the decision made on the 3rd day of July, 2023 by Carlow County Council to refuse permission for the proposed development.

Proposed Development: (a) Site works to facilitate the proposed development to include general site clearance works. (b) Creation of a new access point to the lands from Shillelagh Road with provision of a new internal access road to facilitate vehicular and pedestrian access. (c) Provision of a residential development comprising completion works to existing buildings as constructed on site pursuant to permissions 03/572 and 08/438 along with the erection of eight number semi-detached dwellings to provide for a total of 70 number residential dwellings in total comprising as follows: 53 number two bed dwellings. 16 number three bed dwellings. One number four bed dwelling. (d) Provision of associated garden areas and in-curtilage works for each dwelling to include parking, boundary fencing, and boundary walls as required. (e) Provision of residential communal open space areas to include a

play area, all hard and soft landscape works within the site which includes associated parking, public lighting, bin and bicycle stores, public seating, planting works, and boundary treatments. (f) Associated site works and attenuation systems as well as all ancillary site development/construction works to facilitate site drainage and foul networks for connection to the existing foul, storm and public water networks along with connection works to the ESB network, all at Glendale Estate, Shillelagh Road, Tullow, County Carlow. The proposed development was revised by further public notices received by the planning authority on the 11th day of May, 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 planning history of the site, the provisions of the Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities, which are Section 28 Guidelines, issued by the Department of Housing, Local Government and Heritage in January 2024, the Carlow County Development Plan 2022-2028, and the Tullow Local Area Plan 2017-2023, the residential land use zoning of the site, the nature 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 not seriously injure the residential or visual amenities of the area or the amenities of property in the vicinity and would constitute an acceptable form of development at this location. The proposed development, would, therefore, be in accordance with the proper planning and sustainable development of the area.

The Board did not concur with the planning authority that the development would materially contravene the provisions of the current Carlow County Development plan as the existing structures on site were the subject of previous permissions on this site.

Appropriate Assessment - Screening

The Board agreed with and adopted the screening assessment and conclusion carried out in the Inspector's report that the River Slaney Valley Special Area of Conservation (Site Code: 000781), is the only European Site in respect of which the proposed development has the potential to have a significant effect and for which Appropriate Assessment is, therefore, required.

Appropriate Assessment – Stage 2

The Board considered the Natura Impact Statement, and all the other relevant submissions on file, and carried out an Appropriate Assessment of the implications of the proposed development on the River Slaney Valley Special Area of Conservation (Site Code: 000781) 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 scientific knowledge in the field. In completing the assessment, the Board considered, in particular, the following:

- (i) the site specific Conservation Objectives for the European Site,
- (ii) the likely direct and indirect impacts arising from the proposed development, both individually or in combination with other plans or projects, and
- (iii) 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 Site.

In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of the European Site in view of the site's Conservation Objectives and that there is no reasonable scientific doubt as to the absence of such effects.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by further plans and particulars submitted to the planning authority on the 11th day of May 2023 and by the further plans and particulars received by An Bord Pleanála on the 27th day of July 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 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. The construction of the eight number semi-detached units shall not be commenced until all associated infrastructure and site works that serve the existing units on site have been completed. The associated infrastructure and site works shall be as shown on Drawing Number P18-502, received by the planning authority on the 11th day of May 2023.

For clarity, the design and use of the housing units shall be as permitted and built under planning register reference numbers 03/572 and 08/438. This permission, as it relates to the constructed units, only relates to works for the non-completed elements of the scheme. Any alterations to the existing residential units on site and/or their use shall be the subject of a separate application.

Prior to commencement of the eight semi-detached units, the developer shall receive written agreement from the planning authority that the necessary works to comply with the above have been completed to the satisfaction of the planning authority.

Reason: In the interest of clarity and orderly development.

3. Prior to commencement of development, the developer shall submit details of the following for the written agreement of the planning authority:
 - (a) Details of the materials, colours and textures of all the external finishes to the proposed eight semi-detached houses.
 - (b) All bathroom windows of the proposed eight semi-detached houses shall be obscure glazed.

- (c) Bulk stores numbers 1 and 2 shown within the open space in the southern area of the site shall be redesigned and amalgamated into one building and be located adjoining the bicycle store and to the rear of parking spaces.

Reason: In the interest of residential amenity.

- 4. (a) Prior to commencement of 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, that restricts all residential 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.
- (b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each of the residential units for use by individual purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.
- (c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified housing units, in which case the planning authority shall confirm in writing to the applicant or any person with

an interest in the land that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.

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.

5. The mitigation and monitoring measures outlined in the plans and particulars including the Natura Impact Statement relating to the proposed development, shall be implemented in full or as may be required in order to comply with the following conditions. Where any mitigation measures set out in the Natura Impact Statement or any conditions of approval required further details to be prepared by or on behalf of the local authority, these details shall be placed on the file and retained as part of the public record.

Reason: In the interest of protecting the environment, the protection of European sites and biodiversity and in the interest of public health.

6. The site including the areas of open space and the detention basin area shown on the approved plans shall be landscaped in accordance with a landscape scheme which shall be agreed in writing with the planning authority prior to commencement of development. The landscape scheme shall be implemented fully in the first planting season following completion of the development, and any trees or shrubs which die or are removed within three years of planting shall be replaced in the first planting season thereafter. This work shall be completed before any of the dwellings are made available for occupation.

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

7. Final details of all proposed site boundary treatments shall be agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of visual and residential amenities.

8. The access from the public road and internal road and vehicular circulation network serving the proposed development, including turning bays, parking areas, footpaths and kerbs, signage and traffic calming measures, 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), issued by the Department of the Environment, Community and Local Government in March 2019, as amended.

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

9. 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.

10. The developer shall enter into water supply and wastewater connection agreements with Uisce Eireann, prior to commencement of development. A Confirmation of Feasibility for connection to the Uisce Eireann network shall be submitted to the planning authority prior to commencement of development.

Reason: In the interest of public health.

11. Public lighting shall be provided in accordance with a final scheme to reflect the indicative details in the submitted Public Lighting Report, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development/installation of lighting.

Such lighting shall be provided prior to the making available for occupation of any residential unit.

Reason: In the interest of amenity and public safety.

12. 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.

13. 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 and to ensure the use of locally appropriate placenames for new residential areas.

14. A management plan for the control of alien invasive species, including a monitoring programme, shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of visual amenity and to prevent the spread of alien plant species.

15. 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.

16. The construction of the development shall be managed in accordance with a Construction Environment 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 the intended construction practice for the proposed development, including measures for the protection of existing residential development, traffic management during the construction phase, noise and dust management measures and off-site disposal of construction/demolition waste.

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

17. 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 for each unit shall be submitted to, and agreed in writing with, the planning authority not later than six months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

18. Prior to the commencement of development, the developer or any agent acting on its behalf, shall prepare a Resource Waste Management Plan (RWMP) as set out in the EPA'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 and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness, these details shall 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 resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

Reason: In the interest of sustainable waste management.

19. Site development and building works shall be carried only out between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 hours 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.

20. Prior to commencement of development, the developer 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.

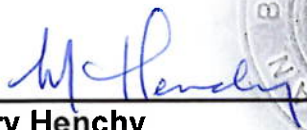
Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

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 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.



Mary Henchy

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

Dated this 31st day of July 2024.