

An
Bord
Pleanála

Board Order ABP-318058-23

Planning and Development Acts 2000 to 2022

Planning Authority: Tipperary County Council

Planning Register Reference Number: 22/60698

Appeal by Mark Small of The Sycamores, Marlfield Road, Clonmel, County Tipperary and by Baile Ard Developments Limited care of Moran and Ryan of Baggot Hall, 41 Baggot Street Lower, Dublin against the decision made on the 23rd day of August, 2023 by Tipperary County Council to grant subject to conditions a permission to Baile Ard Developments Limited in accordance with plans and particulars lodged with the said Council.

Proposed Development: Construction of 44 number residential units comprising of four number two-bed houses, 10 number three-bed houses, 12 number four-bed houses, and 18 number five-bed houses, new vehicular and pedestrian entrance, together with all roads, footpaths, underground services, connection to public services, surface water detention basin, car-parking, pedestrian and cycle connection to Mountain View Estate, public open space, public lighting and associated site boundary and site development works, all at Inishlounaght, Marlfield, Clonmel, County Tipperary, as revised by the further public notices received by the planning authority on the 16th day of June, 2023 which included the provision of five additional houses and changes to the Site Layout Plan and a revised Site Boundary.

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 Tipperary County Development Plan 2022-2028, the locational context of the site within the Settlement of Marlfield, proximate to but outside the boundaries of the Clonmel and Environs Local Area Plan 2024-2030, the nature of the proposed development, and the pattern of development in the surrounding area, it is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with relevant policies and objectives of the development plan, would be acceptable in terms of access and permeability, 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.

CONDITIONS

1. The proposed 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 the planning authority on the 14th day of June, 2023 and on the 28th 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 proposed development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. This permission relates to the provision of 49 units and ancillary works as shown on drawing number P02 2214 (Site Plan – Block Plan) received by the planning authority on the 14th day of June, 2023.

Reason: In the interest of clarity.

3. Prior to commencement of development, the developer shall submit details of the following for the written agreement of the planning authority:

- (a) A revised layout providing for the reinstatement of the proposed pedestrian connection to the open space of Mountain View Estate to the west. The amendments to show that this path be provided at the end of the cul-de-sac between units 45 and 46.
- (b) Details of the materials, colours and textures of all the external finishes to the proposed development.
- (c) All bathroom windows shall be obscure glazed.
- (d) Revised elevations and roof plans for house type F1 (units 1 and 2) ensuring consistency between the roof plan and the elevation.

Reason: In the interest of residential amenity.

4. The site, including the areas of open space 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.

5. (a) Final details of all proposed site boundary treatments and retaining walls shall be agreed in writing with the planning authority prior to commencement of development.
- (b) The finish of boundary wall B-08, as illustrated on the Proposed Boundary Treatment Plan received by the planning authority on the 14th day of June, 2023, shall be amended with a stone finish applied to the public facing sides.

Reason: In the interest of visual and residential amenities.

6. The access from the public road, pedestrian crossing 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. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

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

7. The proposed development shall be carried out on a phased basis in accordance with a phasing scheme which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure the timely provision of services, for the benefit of the occupants of the proposed dwellings.

8. The proposed development hereby permitted shall not be occupied until the infrastructure the subject of condition number 24 has been constructed.

Reason: In the interest of residential amenity 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 Éireann prior to commencement of development. A Confirmation of Feasibility for connection to the Uisce Éireann 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 interest 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 planning 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 the development.



16. The construction of the proposed 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 interest 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 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 shall be submitted to the planning authority for written agreement prior to 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 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.
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. (a) Prior to the commencement of any house 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) pursuant to Section 47 of the Planning and Development Act 2000, as amended, that restricts all houses 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 specified house 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 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 residential units, in which case the planning authority shall confirm in writing to the developer 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 in accordance with the 'Regulation of Commercial Institutional Investment in Housing Guidelines for Planning Authorities' May 2021.

22. 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 the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) (ii) 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, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works. 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 area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

23. 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 planning authority of roads, footpaths, watermains, drains, public 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 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.

24. 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.



25. The developer shall pay a financial contribution of €17,000 (seventeen thousand euro) 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 footpath works and zebra crossing on the public road which benefits 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.

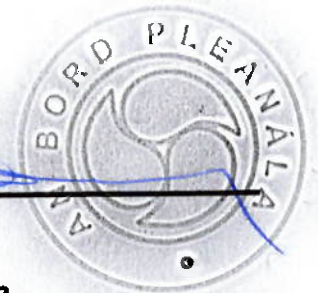
Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority in respect of public services, which are not covered in the Development Contribution Scheme or the Supplementary Development Contribution Scheme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



Martina Hennessy

Member of An Bord Pleanála

**duly authorised to authenticate
the seal of the Board.**



Dated this 23rd day of August 2024.