

An
Bord
Pleanála

Board Order ABP-318171-23

Planning and Development Acts 2000 to 2022

Planning Authority: Clare County Council

Planning Register Reference Number: P22/777

Appeal by Suzanne O'Donnell and Others care of Hughes Planning and Development Consultants of 85 Merrion Square South, Dublin against the decision made on the 7th day of September, 2023 by Clare County Council in relation to an application by Patrick, Ellis, Pdraig, Dara and Diarmuid Blake care of Alex Russell Associates of Liscannor, County Clare for permission for development comprising 43 number dwelling units comprising a mix of dormer storey and two storey houses, and dormer two and a half storey apartment/duplexes, associated ancillary site works and services and connection to public services, all at Holland Street/Holland Drive, Liscannor, Liscannor Townland, County Clare (the proposed development was revised by further public notices received by the planning authority on the 11th day of August, 2023) in accordance with the plans and particulars lodged with the said Council (which decision was to grant subject to conditions for 22 houses and to refuse permission for 17 houses).

Decision

GRANT permission for 22 houses (numbers 1 to 13 and 27 to 35) in accordance with the said plans and particulars based on the reasons and considerations marked (1) under and subject to the conditions set out below.

REFUSE permission for 17 houses (17 to 26 and 36 to 39) based on the reasons and considerations marked (2) under.

Reasons and Considerations (1)

Having regard to the residential land use zoning of the western portion of the site, the site specific R2 zoning - to consolidate the village centre and reinforce the vitality and viability of the village centre, the exception provided for non-residential development within the 'Strategic Residential Reserve' zoning, and the policies of Clare County Development Plan 2023-2029 it is considered that, subject to compliance with the conditions set out below, the proposed development would not result in flood risk, traffic hazard, or seriously injure the residential and visual amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with 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 plans and particulars received by the planning authority 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 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 proposed 22 number dwelling units within the 'Residential' (R2) zoned lands only (numbers 1 to 13, and 27 to 35 inclusive) as outlined on the site layout drawing received by the planning authority on the 28th day of July 2023 and Open Space Area 1 and pedestrian access lane 2 within the 'Strategic Residential Reserve' zoned lands. For the avoidance of doubt, the 17 number dwellings within the Strategic Residential Reserve shall not be permitted herein (numbers 14 to 26 and 36 to 39) as outlined on the site layout drawing received by the planning authority on the 28th day of July 2023.

Reason: To define the permission.

3. The proposed development shall be amended as follows:
- (a) The provision of Open Space Area 1 and Open Space Area 2 comprising a total minimum of 1,510 square metres including the Childrens Play area.
 - (b) The provision of a 'Type 2' turning bay in the vicinity of dwelling unit number 28 in accordance with the requirements of the planning authority.
 - (c) The omission of a total of eight number parking spaces, to include the removal of five number spaces positioned on the edge of Open Space Area 2 and the remaining three number spaces in the vicinity of dwelling number 28 to make provision for the requirements of (b) above.
 - (d) The provision of an accessible visitor parking space to the western edge of Open Space Area 1.
 - (e) Removal of the incidental space between the rear boundaries of dwelling number 10 and dwelling number 32 and the incidental space between the rear boundary of dwelling number 13 and the front boundary dwelling number 35 and incorporate into the adjacent garden.

- (f) Reposition the garden store/shed in dwelling numbers 10, 13, 32 and 34 to the opposite boundary, away from the public facing boundary.

Revised drawings 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 interest of traffic safety, residential and visual amenity.

4. 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 transfer of 10% of the land in accordance with the requirements of section 94(4) and section 96(2) and 96(3)(a), (Part V) of the Planning and Development Act 2000, as amended, and/or the provision of housing on the land in accordance with the requirements of section 94(4) and section 96(2) and 96(3) (b), (Part V) of the Planning and Development Act 2000, as amended], unless an exemption certificate has been granted under section 97 of the Act, as amended. Where such an agreement cannot be reached between the parties, the matter in dispute (other than a matter to which section 96(7) applies) shall 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 for the area.

5. The dwellings shall be used as a permanent place of residence (principal private residences) only and shall not be used for short-term lettings or overnight commercial accommodation.

Reason: To regulate the use of the development and to comply with site specific objective R2 'Liscannor' of Clare County Development Plan 2023-2029.

6. The following shall apply to the boundary treatments:

- (a) The existing stone walls along the northern and western boundary shall be retained.
- (b) Where new boundary walls face onto the public areas these shall be finished in natural local stone or capped and plastered.

Reason: In the interest of visual amenity.

7. (a) The attenuation and disposal of surface water shall comply with the requirements of the planning authority for such works and services.
- (b) Prior to commencement of development, revised plans for the proposed attenuation tank to take account of the requirements of condition 3 (b) and 3 (c) above and a Surface Water Management Plan, shall be submitted to and agreed in writing with the planning authority.

Reason: In the interest of public health.

8. Public lighting shall be provided in accordance with a scheme which shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. The scheme shall include lighting along pedestrian routes through open spaces and shall take account of trees. 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.

9. The developer shall engage a suitably qualified archaeologist to carry out an Archaeological Impact Assessment (AIA) in advance of any site preparation works and groundworks, including site investigation works/topsoil stripping/site clearance/dredging and/or construction works. The AIA shall involve an examination of all development layout/design drawings, completion of documentary/cartographic/photographic research and fieldwork. The archaeologist shall prepare a comprehensive report, including an archaeological impact statement and mitigation strategy, to be submitted for the written agreement of the planning authority in advance of any site preparation works, groundworks and/or construction works.

Where archaeological remains are shown to be present, preservation in-situ, establishment of 'buffer zones', preservation by record (archaeological excavation) or archaeological monitoring may be required and mitigatory measures to ensure the preservation and/or recording of archaeological remains shall be included in the AIA. Any further archaeological mitigation requirements specified by the planning authority, following consultation with the National Monuments Service, shall be complied with by the developer. The planning authority and the National Monuments Service shall be furnished with a final archaeological report describing the results of any subsequent archaeological investigative works and/or monitoring following the completion of all archaeological work on site and the completion of any necessary post-excavation work. All resulting and associated archaeological costs shall be borne by the developer.

Reason: To ensure the continued preservation either in situ or by record of places, caves, sites, features or other objects of archaeological interest.

10. 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 incorporate any significant findings that emerge from the Archaeological Impact Assessment (AIA) process (as required by condition number 9 above). 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 all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

Reason: In the interest of proper planning and sustainable development.

11. (a) The areas of the development for Taking in Charge shall be agreed in writing with the planning authority, prior to commencement of development.
- (b) The development hereby permitted shall be carried out and completed at least to the construction standards set out in the planning authority's Taking in Charge Policy. Following completion, the development shall be maintained by the developer, in compliance with these standards, until taken in charge by the planning authority.
- (c) After completion of the development, the developer shall lodge full plans, drawings and details of the entire development as constructed and these shall be certified by a suitable professionally qualified individual. Said drawings and plans shall be digital format and be compatible with AutoCAD release 12 or later.

Reason: To ensure that the development is carried out and completed to an acceptable standard of construction and to provide for the satisfactory future maintenance of the development in the interest of residential amenity.

12. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:
- (a) A plan to scale of not less than 1:500 showing –
 - (i) The species, variety, number, size and locations of all proposed trees and shrubs which shall comprise predominantly native species suitable for the coastal location. Open Space Area 1 and Open Space Area 2 shall have at least one native oak tree, or other naturalised tree species of similar structure and lifespan.
 - (ii) Details of inter-site boundary planting and screen planting
 - (iii) Details of roadside/street planting
 - (iv) Hard landscaping works, specifying surfacing materials, furniture, play equipment and finished levels.
 - (b) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment.
 - (c) A timescale for implementation.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development or until the development is taken in

charge by the local authority, whichever is the sooner, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of biodiversity, residential and visual amenity and in accordance with objective CDP15.19 of Clare County Development Plan 2023-2029.

13. The areas of public open space shown on the lodged plans shall be reserved for such use and shall be contoured, 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.

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

14. 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.

15. (a) Either a 'Yield Right of Way' sign or a 'Stop' sign together with appropriate road markings shall be provided by the developer at their expense at the junction between the public road (Holland Street) and the main access road to the proposed development. Details of the sign and road markings shall be to Department of Transport Local Government Traffic Signs Manual standard.
- (b) The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths and kerbs shall comply with the detailed standards of the planning authority for such road works.

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

16. Site development and building works shall be carried out only between the hours of 0800 to 1800 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.

17. No development exempted or otherwise shall be erected over the public sewer, drain or watermain.

Reason: In the interest of public health.

18. Prior to commencement of development, the developer shall enter into a Connection Agreement (s) with Uisce Éireann to provide for a service connection(s) to the public water supply and/or wastewater collection network.

Reason: In the interest of public health and to ensure adequate water/wastewater facilities.

19. All the communal parking areas serving the residential units shall be provided with functional electric vehicle charging points, and all of the in-curtilage car parking spaces serving residential units shall be provided with electric connections to the exterior of the houses to allow for the provision of future electric vehicle charging points. 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.

20. (a) Prior to the 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 housing 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 housing unit, it is demonstrated to the satisfaction of the planning authority that it has 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 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.

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.

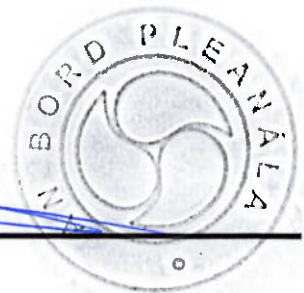
Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

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.

Reasons and Considerations (2)

Having regard to the Strategic Residential Reserve (SRR) zoning objective on the eastern portion of the subject site which precludes the consideration of residential development of such lands until the beginning of year four of the development plan (April 2027), the proposed development of 17 number residential dwellings would materially contravene the SRR zoning objective indicated in the Clare County Development Plan 2023-2029. The proposed development would, therefore, be contrary to the proper planning and sustainable development.



Liam Bergin

Member of An Bord Pleanála

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

Dated this 09th day of October 2024