

Planning and Development Acts 2000 to 2022

Planning Authority: Kerry County Council

Planning Register Reference Number: 24/60120

Appeal by Anne and Bobby Sheehy of Islandganniv, Greenville, Listowel, County Kerry and by Others against the decision made on the 25th day of April, 2024 by Kerry County Council to grant subject to conditions a permission to Matthew O'Connell care of John Phelan of 26 Castlecountess, Tralee, County Kerry in accordance with plans and particulars lodged with the said Council:

Proposed Development: A 10 year planning permission for a large scale residential development (LRD) to: (a) make alterations to existing entrance and estate works, and (b) construct 102 residential units, comprising 27 three bedroom townhouses, two four bedroom townhouses, 24 three bedroom semi-detached houses, eight four bedroom semi-detached houses and one four bedroom detached house, an apartment building 'A' containing 10 number one bedroom apartments and six number two bedroom apartments, six duplex apartment corner buildings, each containing two number one bedroom apartments and two number two bedroom apartments, including all associated works, roads, pavements and services on the Greenville site at Greenville Road, Islandganniv, Listowel, 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

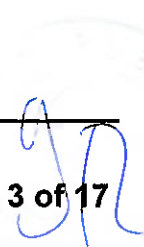
In coming to its decision, the Board had regard to the following:

- (a) the location of the site within the development boundary of Listowel Town,
- (b) the zoning objectives for the site R1 New/proposed residential and R2 Existing Residential,
- (c) the policies and objectives of the Kerry County Development Plan 2022-2028,
- (d) the nature, scale and design of the proposed development and the availability in the area of infrastructure,
- (e) the pattern of existing and permitted development in the area,
- (f) the provisions of Housing for All – A New Housing Plan for Ireland, 2021,
- (g) the provisions of Project Ireland 2040 - National Planning Framework, which identifies the importance of compact growth,
- (h) the provisions of Sustainable Residential Development and Compact Settlements - Guidelines for Planning Authorities, 2024,
- (i) The Sustainable Urban Design Standards for New Apartments, Guidelines for Planning Authorities, 2023,
- (j) the submissions and observations received, and
- (k) the report of the Planning Inspector.

The Board considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density at this location, would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would be acceptable in terms of urban design, place making, height, and quantum of development, as well as in terms of traffic and pedestrian safety and convenience, and would provide an acceptable form of residential amenity for future occupants. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board concurred with the planning authority's assessment. The Board considered the design and layout of the proposed scheme created distinct neighbourhoods with usable open spaces that benefit from passive surveillance. The variety of house types provide for a range of accommodation needs, the architectural treatments provide variety and a sense of identity. There is good connectivity within the scheme for pedestrians and the scheme provides for future connections to adjoining lands. The design and layout create a sense of place for future residents and enhances its setting with the landscape buffer and the linear wild garden park. The scheme accords with both the Kerry County Development 2022-2028 and the Compact Settlement Guidelines for Planning Authorities (2024).

While it would be preferable if the scheme included the three land parcels that are not in the applicant's ownership, the design and layout accommodate the future development of these sites.



Appropriate Assessment

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on European Sites, taking into account the nature and scale of the proposed development on serviced lands, the nature of the receiving environment, which is situated on the edge of an urban area, the distances to the nearest European sites and the hydrological pathway considerations, submissions and observations on file, the information submitted as part of the subject application and appeal documentation, and the Planning Inspector's report. In completing the screening exercise, the Board agreed with and adopted the report of the Planning Inspector and that, by itself or in combination with other development, plans and projects in the vicinity, the proposed development would not be likely to have a significant effect on any European Site in view of the Conservation Objectives of such sites, and that a Stage 2 Appropriate Assessment is not, therefore, required.

Environmental Impact Assessment Screening

The Board completed an Environmental Impact Assessment screening of the proposed development and considered that the Environment Impact Assessment Screening Report submitted by the applicant, which contains information set out in Schedule 7A to the Planning and Development Regulations 2001, as amended, identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

Having regard to

- the nature and scale of the proposed development, which is below the threshold in respect of classes 10(b)(i), 10(b)(iv) and 14 of Part 2 to Schedule 5 of the Planning and Development Regulations 2001, as amended,
- the location of the proposed residential units on lands zoned within the Kerry County Development Plan 2022-2028 as R1- New/Proposed Residential and R2- Existing Residential, and the results of the Strategic Environmental Assessment of the development plan,
- the nature of the existing site and the pattern of development in the surrounding area,
- the availability of mains water and wastewater services to serve the proposed development,
- the location of the development outside of any sensitive location specified in Article 299(C)(1)(a)(v) of the Planning and Development Regulations 2001, as amended,
- the guidance set out in the 'Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development', issued by the Department of the Environment, Heritage and Local Government (2003),
- the criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as amended, and

- the features and measures proposed by the applicant that are envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified to be provided as part of the project Construction & Environmental Management Plan, the Outline Resource and Waste Management Plan, the Archaeological Assessment, and the Engineering Services Report.

it is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an Environmental Impact Assessment Report would not, therefore, be required.

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 17th day of April, 2024, 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 period during which the development hereby permitted may be carried out shall be five years from the date of this Order.

Reason: Having regard to the nature of the development, the Board considered it appropriate not to specify a period more than five years.

3. 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.

4. (a) The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths, and kerbs shall comply with the detailed construction standards of the planning authority for such works and design standards outlined in Design Manual for Urban Roads and Streets (DMURS).
- (b) Footpaths shall be dished at road junctions in accordance with the requirements of the planning authority. Details of all locations and materials to be used shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

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

5. All roads and footpaths shown to adjoining lands shall be constructed up to the boundaries to provide access to adjoining lands with no obstruction including the erection of any structure which would otherwise constitute exempted development under the Planning and Development Regulations 2001, as amended. These areas shall be shown in a drawing which shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of permeability and proper planning and sustainable development, and to ensure the three plots identified as sites 'under separate ownership' on the site layout map (2312 PA-03) can be developed, subject to a future permission.

6. Details of the following shall be submitted to the planning authority for written agreement prior to commencement of development:
- (a) two metre high gates limiting access to residents, to be erected at both ends of footpaths to the rear of Blocks B, C, D1 and D2.
 - (b) Parking spaces adjoining the grass corner area at Block D1 and C shall be omitted.
 - (c) Details of the finishes of the pathway within the native woodland area.

Reason: In the interest of residential amenity.

7. Prior to commencement of development, noise acoustic measures along the northern boundary of the site shall be submitted for the written agreement of the planning authority.

Reason: In the interest of residential amenity.

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 commencement of development. The scheme shall include lighting along pedestrian routes through open spaces.

Reason: In the interest of amenity and public safety.

9. All service cables associated with the proposed development shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. Details of the ducting shall be submitted to and agreed in writing by the planning authority prior to the commencement of development.

Reason: In the interests of visual and residential amenity.

10. (a) The developer shall apply to Uisce Eireann for a Statement of Design Acceptance prior to the submission of their connection application.
- (b) Prior to commencement of development, the developer shall enter into Connection Agreements with Uisce Éireann to provide for service connections to the public water supply and/or wastewater collection network.

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

11. The disposal of surface water shall comply with the requirements of the planning authority for such works and services. Prior to commencement of development, the developer shall submit details for the disposal of surface water from the site for the written agreement of the planning authority. This shall include:
- (a) An Operation and Management Plan for the written agreement of the planning authority to include a maintenance plan and schedule for the storm water drainage system and Sustainable Urban Drainage System.
 - (b) The immediate and long-term requirements of operating and maintaining the proposed drainage systems.

Reason: To prevent flooding and in the interest of sustainable drainage.

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) Existing trees, hedgerows [shrubs] [rock outcroppings] [stone walls], specifying which are proposed for retention as features of the site landscaping.

- (ii) The measures to be put in place for the protection of these landscape features during the construction period.
 - (iii) The species, variety, number, size and locations of all proposed trees and shrubs which shall comprise predominantly native species such as mountain ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech or alder.
 - (iv) Details of roadside/street planting.
 - (v) 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 [including details of phasing].

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, 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 residential and visual amenity.

13. All environmental mitigation measures as set out in the plans and particulars submitted as part of the planning application to which this Order relates, including those set out in the Ecological Impact Assessment, shall be fully implemented, except as may be otherwise required or specified by conditions attached to this Order.

All construction work shall be monitored by a suitably qualified project Ecologist (Ecologist Clerk of Works/ Ecologist). Details of the project Ecologist shall be submitted in writing to the planning authority prior to commencement of any works, for file purposes.

Details of the number, the design and location of bird nest boxes, bat bricks, recessed swift nesting blocks, and the biodiversity information panel shall be submitted to the planning authority for written agreement prior to commencement of development.

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

14. Proposals for an estate/street name, house/apartment 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/apartment numbers, shall be provided in accordance with the agreed scheme. 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. 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 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.

16. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Friday 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. Prior to the commencement of any works associated with the development hereby permitted, the developer shall submit a detailed Construction Environmental Management Plan (CEMP) for the written agreement of the planning authority. The CEMP shall incorporate details for the following: collection and disposal of construction waste, surface water run-off from the site, on-site road construction, and environmental management measures during construction, noise control, dust and vibration control and monitoring of such measures. A record of daily checks that the construction works are being undertaken in accordance with the CEMP shall be kept at the construction site office for inspection by the planning authority. The agreed CEMP shall be implemented in full in the carrying out of the development.

Reason: In the interest of environmental protection, residential amenities, public health and safety and environmental protection

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. 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 and apartment block 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.

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 house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all house 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.
- (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.

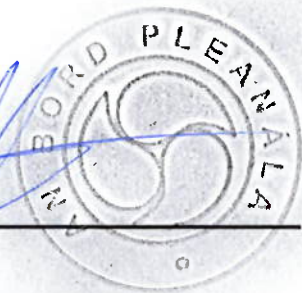
Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

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 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 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 of the development.

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.



Tom Rabbette

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

Dated this 6th day of August 2024.