

An
Bord
Pleanála

Board Order
ABP-320897-24

Planning and Development Acts 2000 to 2022

Planning Authority: Tipperary County Council

Planning Register Reference Number: 2360980

Appeal by Donogh O'Brien of 15 Lakeview, Cullenagh, Ballina, County Tipperary and by Others against the decision made on the 5th day of September, 2024 by Tipperary County Council to grant, subject to conditions, a permission consequent on a grant of outline permission to Lough Derg Marina Limited care of HRA Planning, Chartered Town Planning Consultants of 3 Hartstong Street, Limerick in accordance with plans and particulars lodged with the said Council.

Proposed Development: Permission consequent on the grant of outline permission (planning register reference number 22/156) for development comprising; (i) the provision of 13 number detached dwelling units designed with optional basements which may / may not be constructed; (ii) a substantial area of public parkland; and (iii) all associated site works at Lakeview, Cullenagh, Ballina, County Tipperary. The proposed development was revised by further public notices received by the planning authority on the 18th day of June 2024 and by further public notices received by the planning authority on the 10th day of August 2024.

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Decision

GRANT permission consequent on a grant of outline 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 location of the site, to the design and layout of the proposed development, to the pattern of development in the area, to the grant of outline permission under planning reference 22156 which relates to this site and to the totality of the documentation submitted with this application for permission consequent to the grant of outline permission under planning reference 22156, and to the relevant provisions of the Tipperary County Development Plan 2022-2028, it is considered that the proposed development would not have a significant impact on residential amenity or character of the area would not negatively impact the visual amenity of the area and would otherwise 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.

Appropriate Assessment Screening:

The Board noted that the proposed development is not directly connected with or necessary to the management of a European Site. In completing the screening for Appropriate Assessment, the Board accepted and adopted the screening assessment and conclusion in the Screening Assessment report submitted with the application, the conclusion of the planning authority and the commentary of the Inspector, in respect of the identification of the European sites which could potentially be affected, and the identification and assessment of potential significant effects of the proposed development,



either individually or in combination with other plans or projects, on these European sites in view of the site's Conservation Objectives.

The Board was satisfied that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on European Sites Lough Derg (Shannon) Special Protection Area (Site Code 004058), Lower River Shannon Special Area of Conservation (Site Code 002165) or any other European site, in view of the sites' Conservation Objectives.

This screening determination is based on the following

- (i) the conservation objectives for the European Sites.
- (ii) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects.

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 14th day of June 2024 and as further amended by the further plans and particulars received by the planning authority on the 31st day of July 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. Prior to development commencing on the site a Japanese Knotweed Management Plan for the proposed development shall be submitted for the written agreement of the planning authority. As part of the Japanese Knotweed Management Plan a detailed survey of the area should be conducted and a location map indicating the species distribution on the site, including the appropriate buffer zones for potential growth should be indicated. The plan should identify the most appropriate management option to eradicate the invasive species from the site and the timescales involved should be presented together with an appropriate monitoring period to address regrowth. A detailed method statement outlining the treatment proposed should be included. In addition, all relevant staff will be required to be briefed and made aware of Japanese knotweed issues, the management plan and their responsibilities. Construction of the development authorised by this grant of permission shall not commence until the planning authority is satisfied that Japanese Knotweed has been fully eradicated.

Reason: To clarify the terms of the permission and in the interest of proper planning and sustainable development.

3. The mitigation measures contained in the submitted Ecological Impact Statement, shall be implemented.

Reason: To protect the environment.

4. Details of the materials, colours and textures of all the external finishes to the proposed dwellings shall be in accordance with the details submitted to the planning authority as further information on the 14th day of June 2024. The rear plinth walls to all dwellings from patio to garden level shall be finished in a dark colouring/material which matches, and/or is compatible with, the non-rendered elements of the rear elevations of the dwelling as set out in the details submitted to the planning authority as further information by date 14th day of June 2024. Details shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

5. No development of the proposed dwelling houses shall commence until the upgrading works at the Ballina Wastewater Treatment Plan to facilitate the development are completed, and the developer has obtained a Connection Agreement from Irish Water to connect into the upgraded Wastewater Treatment Plant.

Reason: To ensure there are no adverse effects on the integrity of the Lower River Shannon Special Area of Conservation.

6. (a) Prior to the commencement of any house or duplex 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.



- (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 unit or duplex 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.

7. 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 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.

8. A Construction and Environmental Management Plan (CEMP) shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. The CEMP shall include but not be limited to construction phase controls for dust, noise and vibration, waste management, protection of soils, groundwaters, and surface waters, site housekeeping, emergency response planning, site environmental policy, and project roles and responsibilities.

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

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9. Site development and building works shall be carried out between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written agreement has been received from the planning authority.

Reason: To safeguard the amenity of property in the vicinity.

10. 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.



11. The areas of public open space shown on the lodged plans shall be reserved for such use and shall be levelled 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.

12. No advertisement or advertisement structure (other than those shown on the drawings submitted with the application) shall be erected or displayed on the building (or within the curtilage of the site) in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

13. (a) The landscaping scheme shown on drawing number P594-101 Rev B, as submitted to the planning authority on the 31st day of July 2024 shall be carried out within the first planting season following substantial completion of external construction works.
- (b) 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.

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- (c) Prior to commencement, the area of Riparian Woodland to the west should be fenced off from the site and no work should take place within this area.

Reason: In the interest of residential and visual amenity and environmental protection.

13. Prior to the 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.

14. 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.

15. 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 within the drawing. 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.

16. 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.

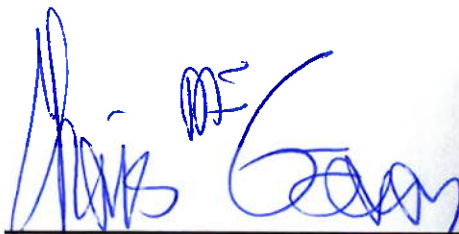
Reason: In the interest of visual and residential amenity.

17. 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.

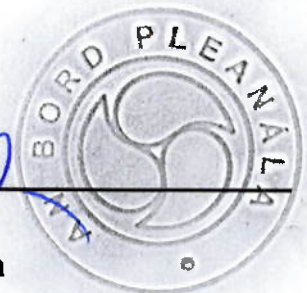
18. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, 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.



Chris McGarry

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



Dated this  day of  2025.