



Planning and Development Acts 2000 to 2022

Planning Authority: Clare County Council

Planning Register Reference Number: 2325

APPEAL by Leadlane (Drumbiggle) Limited care of MKO of Tuam Road, Galway, County Galway against the decision made on the 23rd day of February, 2024 by Clare County Council to refuse permission.

Proposed Development: (1) Construction of 56 number residential units including 34 number houses and 22 number apartment/duplex units, comprising: (a) four number four-bed houses; (b) 20 number three-bed houses; (c) 10 number three-bed houses (duplex units); (d) six number two bed apartments (duplex units); (e) 16 number one-bed apartments (duplex units), (2) provision of a creche facility (230 square metres), (3) provision of shared communal and semi-private open space, car and bicycle parking, bin stores, site landscaping/boundary treatment works and public lighting, (4) alterations and upgrades to the existing access road to provide footpath realignments and upgrades, new cycle paths and raised traffic tables, (5) provision of all associated surface water and foul drainage services, and (6) provision of all ancillary and associated site development works, at this site on lands to the north of Pairc na Coille Retirement Village, in the townland of Drumbiggle, Ennis, County Clare. The proposed development was revised by further public notices received by the planning authority on the 22nd day of December, 2023.

Decision

REFUSE permission for the above proposed development in accordance with the reasons and considerations set out below.

Reasons and Considerations

Having regard to the Clare County Development Plan 2023-2029 and to the zoning of the site as Strategic Residential Reserve (SR8) to facilitate growth needs across the county and sequential expansion in the long term, it is considered the development of the subject site at this time is premature and would, therefore, not comply with the policies and objectives of the development plan.

In deciding not to accept the Inspector's second recommended reason for refusal in relation to Appropriate Assessment of the proposed development, the Board noted the totality of submissions on the file including (i) the location of the site, together with adjoining land, within 2.2 kilometres of a hibernation roost (Roost ID 53) in Newhall and Edenvale Complex Special Area of Conservation (Site Code: 002091), (ii) the site-specific conservation objective, attribute and target of the Special Area of Conservation that there should be no significant decline in the extent of potential foraging habitat within 2.5 kilometres of a qualifying roost, (iii) the observation of the Board's Ecologist regarding the low numbers of Lesser Horseshoe Bat recorded across all seasons at the proposed development site, (iv) the history of scrub clearance activity at the proposed development site, (v) the site-specific zoning measures (SR8) and the mitigation measures set out in the development plan's Natura Impact Statement. The Board considered the development plan, in zoning the site for residential development rather than amenity, anticipates a level of site development alongside prescribed site-specific mitigations to protect the movement of Lesser Horseshoe Bats, subject to

satisfactory applicable assessments. The Board noted the applicant's submission that the site-specific conservation objectives for Newhall and Edenvale Complex Special Area of Conservation did not map this particular site as part of the potential foraging grounds for that European Site (Map 2, NPWS (2018) Conservation Objectives: Newhall and Edenvale Complex Special Area of Conservation (Site Code: 002091), Version 1). In any case, the Board also considered that a conservation target of no significant decline in the extent of potential foraging habitat does not equate to no loss. The Board concurred with the Board Ecologist that the details provided in the Natura Impact Statement in this application with respect to phase 1 did not enable the Board to complete an Appropriate Assessment and while the Board could have sought further information from the applicant in this regard, given the substantive reason for refusal the Board decided not to pursue the matter further at this time.

In deciding not to accept the Inspector's third recommended reason for refusal in relation to no net loss of feeding habitat, the Board noted that Policy Objective 15.12(d) of the Clare County Development Plan 2023-2029 seeks to ensure there is "no net loss of potential Lesser Horseshoe Bat feeding habitats, treelines and hedgerows within 2.5 kilometres of known roosts". The Board noted that a radius of 2.5 kilometres equates to an area of 19.6 kilometres squared encompassing the vast majority of Ennis Town including its rural periphery to the west and south. In terms of enabling the practical application of such an objective across all landholdings, gardens and related activities in this area, the Board also had regard to the use of the phrase "net loss" in the policy objective which implies loss in some areas may be counterbalanced by gains in other areas. Taken together with the local authority's decision to designate this site for residential development (SR8) rather than an amenity zoning, the Board considered the local authority had anticipated some level of scrub removal at this site alongside appropriate site-specific measures and mitigations referenced above. On that basis, the Board considered Policy Objective 15.12 of the development plan did not constitute a sufficient reason for refusal.

In deciding not to accept the Inspector's fourth recommended reason for refusal in relation to a stated requirement for derogation licensing in advance of a decision for this planning application, the Board noted the recommendation of the Development Applications Unit at the Department of Housing, Local Government and Heritage and the subsequent Board's Inspectorate in this regard. The Board considered the Judgement of the Court of Justice of the European Union in relation to Case C-166/22, and noted in particular paragraph 36 which states "... in the specific case where, first, the execution of a project that is subject to the dual requirement for assessment and development consent laid down in Article 2(1) of Directive 2011/92 involves the developer applying for and obtaining a derogation from the plant and animal species protection measures prescribed in the provisions of national law transposing Articles 12 and 13 of Directive 92/43 and where, second, a Member State confers power to grant such a derogation on an authority other than the one on which it confers power to give development consent for the project, that potential derogation must necessarily be adopted before development consent is given". In considering that this proposed development is not a 'project' for the purposes of Directive 2011/92 as concluded in Section 5.4 of the Inspector's Report, the proposed development does not appear to fall within the scope of this Judgement and the Board was not satisfied this constituted a reason for refusal.

In deciding not to accept the Inspector's fifth recommended reason for refusal in relation to hydrological and hydrogeological conditions pertaining to the site, the Board, in having regard to the totality of submissions received, was nevertheless satisfied with and accepted the technical submissions provided by the applicant regarding the surface water management strategy including as it relates to flood risk. In the context of surface water for the proposed development predominantly being routed to the Cahercalla Stream culvert thereby reducing the volume of surface water going to ground within the site, the Board did not consider the concerns relating to unforeseen flooding and groundwater impacts as set out by the Inspector to be sufficiently significant as to warrant a refusal.

Eamonn James Kelly

Eamonn James Kelly

Member of An Bord Pleanála

duly authorised to authenticate
the seal of the Board.



Dated this 23rd day of January, 2025.