

Planning and Development Acts 2000 to 2022

Planning Authority: Donegal County Council

Planning Register Reference Number: 2351816

Appeal by John Larkin on behalf of Larkins Commercial Business Units of Pearse Road, Letterkenny, County Donegal and by Others against the decision made on the 21st day of November 2024 by Donegal County Council to grant, subject to conditions, a permission to Gerald McCallion on behalf of Glenturas Construction Limited care of O'Connor Burke Architecture Limited of Glenturas House, Beraghmore Road, Derry in accordance with plans and particulars lodged with the said Council:

Proposed Development: Construction of a residential building consisting of 28 number apartments, together with associated site works and connection to all public services, Paddy Harte Road and Pearse Road, Letterkenny, County Donegal. The proposed development was revised to 30 number apartments by further public notices received by the planning authority on the 10th day of October 2024.

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

The Board considered the proposed development accords with the zoning for the site and with the specific policy for high density development in the Letterkenny Plan and Transport Plan 2023-2029, Section 9.3.1. This plan references existing low-density poor-quality development on Pearse Road, which the plan aims to address by providing for higher density development that accords with good urban design principles. The Local Area Plan includes policies LK-TC-P-07 and LK-TC-P-08, that promote the transition of this area from a low intensity, low density, car-oriented area to a more vibrant, urban form that realises the regeneration planned for this central location. The proposed development accords with this objective.

The Letterkenny Plan includes Action LK-A-1, to prepare a building height study to guide the future development of the town; as this document is not complete the Board had regard to the Urban Development and Building Height, Guidelines for Planning Authorities. The Board, having considered the location of this site in a central urban location identified for regeneration, the site's position on the street, the building design, the relationship of the site relative to adjoining sites, and the uses of adjoining properties, decided that the building height is appropriate at this location.

On the matter of the abrupt transition, the Board considered that, as the area transitions from a low-density car based commercial setting to a more urban form, the scheme as designed will be absorbed into the street scape. The Board welcomed the provision made for the riverside amenity space to the



rear and the public realm works improving the permeability for pedestrians. The Board noted that some of these works are on the public road and that the planning authority were generally positively disposed to these works, therefore the Board considered that a suitably worded condition would address the delivery of this element of the works proposed.

In deciding not to accept the Inspectors recommendation, for the reasons outlined above, the Board considered having regard to the planning context, the transitional nature of the area and the position of the site on the street that the six-storey residential building is appropriate, it provides residential accommodation in the town centre in accordance with the Plan for the area and sets an appropriate context for the future development of the area, therefore, the Board concurred with the recommendation of the planning authority that the proposed development would be in accordance with the proper planning and sustainable development of the area.

While the Inspector raised concerns regarding the size of the two bed units that, in accordance with the Apartment Guidelines, are appropriate for social housing only, the Board noted that documents submitted with this application refer to this being a turnkey social housing development. The Board therefore considered, having regard to the size of the two bed units and the title used on drawings and reports submitted with the application, that it is appropriate that the occupation of the units be limited to use for social housing only, as provided for by Section 39(2) of the Planning and Development Act 2000 (as amended), this can be done by way of condition.

Appropriate Assessment-Stage 1

The Board considered the Natura Impact Statement submitted to the planning authority with further information, and all the other relevant submissions on file, and carried out an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on European Sites. The

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Board agreed with the screening assessment and conclusion carried out in the Inspector's Report that Lough Swilly Special Protection Area (Site Code 004075) and Lough Swilly Special Area of Conservation (Site Code 002287) are the only European Sites in respect of which the proposed development has the potential to have a significant effect in view of the Conservation Objectives for the sites and that Stage 2 Appropriate Assessment is, therefore, required.

Appropriate Assessment-Stage 2

The Board considered the Natura Impact Statement, and all the other relevant submissions on file, and carried out an appropriate assessment of the implications of the proposed development on the Lough Swilly Special Protection Area (Site Code 004075) and Lough Swilly Special Area of Conservation (Site Code 002287) in view of the sites' Conservation Objectives. The Board considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the sites' Conservation Objectives using the best scientific knowledge in the field. In completing the assessment, the Board considered, in particular, the following:

- (i) the site-specific 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,
- (iii) mitigation measures which are included as part of the current proposal, and
- (iv) the report of the Planning Inspector.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's Report in respect of the potential effects of the proposed development on the aforementioned European Sites. In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of the European Sites in view of the sites' Conservation Objectives and that there is no reasonable scientific doubt as to the absence of such effects.

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 10th day of October 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 mitigation measures contained in the submitted Natura Impact Statement (NIS), shall be implemented.

Reason: To protect the integrity of European Sites.

3. The proposed development hereby granted will be for 30 residential units.

Reason: In the interest of clarity.

4. The use of the dwellings permitted is restricted to use by persons of a particular class or description, as provided for by Section 39(2) of the Planning and Development Act 2000(as amended), that being use for social housing, prior to the commencement of development, the applicant or any person with an interest in the land shall enter an agreement under section 47 of the Act giving effect to this requirement.

Reason: To accord with the Apartment Guidelines and the description of the development as Social Housing on the plans and documents submitted with the application.

5. A comprehensive boundary treatment and landscaping scheme shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. This scheme shall include the following:-

- (a) details of all proposed hard surface and/or permeable surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development;
- (b) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings;
- (c) details of proposed street furniture, including bollards, lighting fixtures and seating; and,
- (d) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes.

The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme and prior to the occupation of the development.

Reason: In the interest of visual amenity.

6. (a) Prior to the commencement of development, the applicant shall submit the design details of all footpaths, cycle lanes, raised tables, signage, lighting and road crossings for the written agreement of the planning authority.
- (i) All findings of the recommendations in Section 2 of the Stage 2 Road Safety Audit received by the planning authority on the 10/10/2024 shall be carried out.
- (ii) Prior to the occupation of the building a stage 3 safety Audit shall be undertaken and copies submitted to the planning authority for written agreement.
- (b) The works shown on drawing ref number 2139-03, titled Proposed Site Plan, received by the planning authority on the 10th day of October 2024, that relate to the footpaths, cycle paths within the applicants redline and the works shown on the public road including the traffic island to accommodate the shared surface crossing, shall be completed prior to the occupation of the development.
- (c) These works shall be at the cost of the applicant or developer and shall be carried out either by the applicant, or subject to written agreement by the planning authority at the applicant's expense.
- (d) The carpark layout shall be submitted to the planning authority for written approval prior to commencement of development.
- (e) Prior to the commencement of development, the applicant shall submit to the planning for written agreement a drawing identifying the areas to be taken in charge.

Reason: In the interest of accessibility and road safety.

7. Details of the materials, colours and textures of all the external finishes to the proposed buildings 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 ensure an appropriate high standard of development.

8. Proposals for an 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 street signs, and apartment numbers, shall be provided in accordance with the agreed scheme. No advertisements/marketing signage relating to the name of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.

Reason: In the interest of urban legibility.

9. 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 amenity

10. Prior to the commencement of development the developer shall enter into a Connection Agreement with Uisce Éireann (Irish Water) to provide for a service connection 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 the 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.

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

12. Site development and building works shall be carried out only between the hours of 0700 to 1900 on Mondays to Fridays inclusive, between 0800 to 1400 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 agreement has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

13. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of public open spaces and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to occupation of the development.

Reason: To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

14. Prior to the commencement of development, a final Construction Environmental Management Plan (CEMP) shall be prepared and submitted to the planning authority for written agreement. 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 including working hours, 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 residential amenities, public health and safety

15. 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 apartment unit 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. This plan shall provide for screened communal bin stores, the locations and designs of which shall be included in the details to be submitted.

Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

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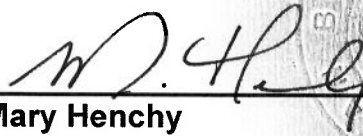
16. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains,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

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.



Mary Henchy

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

Dated this 16th day of April 2025.