

An
Bord
Pleanála

Board Direction
BD-007865-21
ABP-308943-20

The submissions on this file and the Inspector's report were considered at a Board meeting held on 08/04/2021.

The Board decided to grant permission generally in accordance with the Inspector's recommendation, for the following reasons and considerations, and subject to the following conditions.

Reasons and Considerations

Having regard to the following:

- (a) the policies and objectives set out in the NPF and EMRA/RSES
- (b) the policies and objectives set out in the Kildare County Development Plan 2017-2023, as amended by Variation No.1 (June 2020)
- (c) the policies and objectives set out in the Clane Local Area Plan 2017-2023
- (d) the Rebuilding Ireland Action Plan for Housing and Homelessness, 2016
- (e) Urban Development and Building Heights, Guidelines for Planning Authorities, 2018
- (f) the Design Manual for Urban Roads and Streets (DMURS), 2013, as amended
- (g) the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, 2009
- (h) the Guidelines for Planning Authorities on Sustainable Urban Housing: Design Standards for New Apartments, 2020
- (i) the Planning System and Flood Risk Management (including the associated Technical Appendices), 2009
- (j) the nature, scale and design of the proposed development,

- (k) the availability in the area of a range of social, community and transport infrastructure,
- (l) the pattern of existing and permitted development in the area,
- (m) the planning history of the site and within the area,
- (n) the submissions and observations received,
- (o) the report of the Chief Executive of Kildare County Council, and
- (p) the report of the Inspector

Appropriate Assessment Screening

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on designated European sites, taking into account the nature, scale and location of the proposed development within a zoned and serviced urban site, the Information for Screening for Appropriate Assessment submitted with the application, the Inspector's report, and submissions on file. In completing the screening exercise, the Board adopted the report of the Inspector and concluded that, by itself or in combination with other development 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

Having regard to the examination of environmental information in the EIAR, other information in the plans and particulars and the submissions from the planning authority, prescribed bodies and observers in the course of the application, it is considered that the main significant direct and indirect effects of the proposed development on the environment are as follows:

- **Population and Human Health:** Positive impacts due to the increase in the housing stock and subsequent population within Clane.
- **Biodiversity impacts:** Potential impacts mitigated by landscaping, hedgerow enhancement, tree protection measures; survey of trees that are potential bat roosts; Construction Management Plan; surface water management

measures during construction and for the completed development and additional bat mitigation measures as outlined in the bat assessment on file.

- **Land and soil impacts:** Potential Impacts on water quality will be mitigated by the implementation of a CEMP.
- **Water impacts:** Potential impacts on water quality in the area will be mitigated by construction management measures and implementation of SUDS measures.
- **Traffic and transportation impacts:** The development will give rise to short-term construction traffic impacts. Longer-term operational traffic impacts will be mitigated by the integration of a Mobility Management Plan, proposed new road infrastructure in the area and creation of new pedestrian/cycle linkages for the benefit of the wider area.
- **Landscape and visual impacts,** which will be mitigated by the retention and enhancement of existing trees and hedgerows, new landscaping, and the overall design of the proposal.

The likely environmental effects arising because of the proposed development have been satisfactorily identified, described, and assessed. The environmental impacts identified are not significant and would not require or justify refusing permission for the proposed development or require substantial amendments.

Conclusions on Proper Planning and Sustainable Development

The Board considered that, subject to compliance with the conditions set out below that the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, and would not endanger public safety by reason of traffic hazard. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

The Board noted the submission from the Chief Executive of Kildare County Council and other third party submissions which refers to the material contravention of the Kildare County Development Plan 2017-2023 and the Clane Local Area Plan 2017-2023 relating to the Core Strategy, density, and the provision of a vehicular access route through F2, Strategic Open Space zone lands.

The Board considers that, while a grant of permission for the proposed Strategic Housing Development would not materially contravene a zoning objective of the Development Plan or the Car Parking Standards, it would materially contravene the Core Strategy of the Development Plan and the Housing Allocation, Density and Heights for KDA1 as stated in the Local Area Plan.

The Board considers that, having regard to the provisions of section 37(2)(b)(i), (ii), (iii) and (iv) of the Planning and Development Act 2000, as amended, the grant of permission is a material contravention of:

- Table 3.3 of the Kildare County Development Plan 2017-2023, Settlement Hierarchy-Population and Housing Unit Allocation 2020-2023 and Table 4.1 of the Clane Local Area Plan 2017-2023, in relation to Core Strategy and dwelling unit allocation,
- Table 4.1 of the Clane Local Area Plan 2017-2023, Indicative Density Levels in relation to proposed density, and,
- Section 12.2.1 of the Clane Local Area Plan 2017-2023, in relation to heights in KDA1,

and would be justified for the following reasons and consideration:

In relation to section 37(2)(b)(i) of the Planning and Development Act 2000 (as amended):

The proposed development is considered to be of strategic or national importance by reason of its potential to contribute to the achievement of the Government's policy to increase delivery of housing set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016, and to facilitate the achievement of greater density and height in residential development in an urban centre close to public transport and centres of employment.

In relation to section 37(2)(b)(ii) of the Planning and Development Act 2000 (as amended):

- It is considered that, in relation to the Core Strategy, the requirement in Policy CS4 of the Kildare County Development Plan 2017-2023, to promote a compact urban form, conflicts with the dwelling allocation for Clane in Table 3.3 of the Kildare County Development Plan 2017-2023 and the dwelling allocation for KDA1 as per Table 4.1 of the Clane Local Area Plan 2017-2023.
- It is considered that, in relation to the density requirements for the site there are conflicting objectives in the Kildare County Development Plan 2017-2023 and the Clane Local Area Plan 2017-2023. The proposed density of 41 units per ha complies with the range 35-50 specified in Table 4.2 of the Kildare County Development Plan 2017-2023 although contravenes the restriction of 26 units per ha in Table 4.1 of the Clane Local Area Plan 2017-2023. The Board considers the density requirements of the Development Plan comply with Section 5.11 of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas and a density of 41 units per hectare on the site is justified.
- It is considered that, in relation to height, Policy SS5 of the Kildare County Development Plan 2017-2023, promotes the use of Urban Development and Building Height Guidelines for Planning Authorities, in particular SPPR1 which prevents the use of blanket height restrictions. The Board considers that the restriction on height in Section 12.2.1 of the Clane Local Area Plan 2017-2023 conflicts with the development plan policies.

In relation to section 37 (2) (b)(iii) of the Planning and Development Act 2000 (as amended):

It is considered that permission for the proposed development should be granted having regard to Government policies as set out in the National Planning Framework (in particular objectives 3 (a), 11 and 33), the Regional Spatial and Economic Strategy for the Eastern and Midland Regional Assembly (in particular Table 6.1), the Urban Development and Building Height Guidelines for Planning Authorities, (in particular SPPR1 and SPPR3), the Sustainable Residential Development in Urban Areas (in particular Chapter 5 and 6 and the accompanying Urban Design Manual) and the Sustainable urban housing: Design Standards for New Apartments (in

particular Section 2.4). These guidelines and policies contain objectives which support the delivery of residential development in appropriate locations through the promotion of appropriate heights and densities. The proposed development is located on a serviced site identified as Key Development Area 1 in the Clane Local Area Plan 2017-2023, contiguous to the town which promotes compact urban form through the use of an appropriate quantum of development, density range and height, consistent with these objectives.

In relation to section 37(2)(b)(iv) of the Planning and Development Act 2000 (as amended):

It is considered that, in relation to dwelling allocation and density in excess of the those specified in Table 4.1 of the Clane Local Area Plan 2017-2023, ABP-304632-19 was granted permission for 366 no. units.

In accordance with section 9(6) of the 2016 Act, the Board considered that the criteria in section 37(2)(b)(i), (ii), (iii) and (iv) of the 2000 Act were satisfied for the reasons and considerations set out in the decision.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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. In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity

2. The proposed development shall be amended as follows:

- (a) The design of Block C (duplex/apartments) shall be amended to integrate public access to the communal open space, provided for on the podium. Accessibility shall be designed to allow access for all types of mobilities.
- (b) Privacy screens shall be provided along the ground floor for all units in Block C

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 interests of residential amenity

- 3. All mitigation and monitoring measures outlined in the plans and particulars, including the EIAR, bat survey and subsequent reports submitted with this application shall be carried out in full, except where otherwise required by conditions attached to this permission. The applicant shall employ a qualified Ecological Clerk of Works (ECoW) to oversee and implement the mitigation measures and other ecological works listed throughout the submitted documentation.

Reason: In the interest of protecting the environment and in the interest of public health.

- 4. The use of render on the exterior of the apartment blocks shall be replaced with a brick type similar to that used on the dwellings. Details of the materials, colours and textures of all the external finishes to the proposed dwellings/buildings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of visual amenity.

- 5. Prior to commencement of development, the applicant shall submit to the Planning Authority a detailed design for a signalised 4 arm junction of the R403 Regional Road/ Brooklands/ Capdoo Link Road, including Vulnerable

Road Users (VRU) crossing facilities, in line with current standards. The cost of design, supervision and delivery of these works shall be borne by the applicant. These works shall be completed prior to residential units being occupied in Phase A. The applicant shall liaise with the Traffic Management Section of Kildare County Council in regard to this.

The upgrade works and junction improvements shall be in accordance with the planning authority specifications including:

- a) The upgrade of the existing traffic signals.
- b) The upgrade of the existing controller to ELV and LED signals.
- c) The installation of CCTV camera and pole at the junction to assist monitoring of traffic flows.
- d) The installations of MOCA technology.
- e) The upgrade of the existing public lighting.
- f) The upgrade of the road layout and markings.

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

6. The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs, access road to the service area and the underground car park shall be in accordance with the detailed construction standards of the planning authority for such works and design standards outlined in DMURS. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

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

7. Details of the layout, marking demarcation and security provisions for the cycle spaces and cycle infrastructure shall be as submitted to An Bord Pleanála with this application, unless otherwise agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure that adequate bicycle parking provision is available to serve the proposed development, in the interest of sustainable transportation.

8. A minimum of 10% of all car parking spaces should be provided with EV charging stations/points, and ducting shall be provided for all remaining car parking spaces facilitating the installation of EV charging points/stations at a later date. Where proposals relating to the installation of EV ducting and charging stations/points has not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development, and the agreed provisions shall be carried out and completed prior to the making available by the developer for occupation of any of the residential units in the proposed development.

Reason: To provide for and/or future proof the development such as would facilitate the use of Electric Vehicles

9. Prior to the opening or occupation of the development, a Mobility Management Strategy including an interim or temporary strategy reflecting any requirements or adjustments relating to Covid-19 movement and travel patterns shall be submitted to and agreed in writing with the planning authority. This shall provide for incentives to encourage the use of public transport, cycling, walking and carpooling by residents, occupants and staff employed in the development and to reduce and regulate the extent of parking. Details may include the provision of centralised facilities within the development for bicycle parking, shower and changing facilities associated with the policies set out in the strategy. The interim or temporary strategy, where applicable, should reflect the requirements of Design Manual for Urban Roads and Streets Interim Advice Note – Covid Pandemic Response (May 2020). The mobility strategy shall be prepared and implemented by the management company for all units within the development.

Reason: In the interest of encouraging the use of sustainable modes of transport and reflecting the needs of pedestrians and cyclists during Covid-19 pandemic.

10. Drainage arrangements including the attenuation and 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 plans, cross sections and maintenance details for the treatment of all drainage ditches on the site, including any proposal to culvert along the south of the site.

Prior to commencement of development the developer shall submit to the Planning Authority for written agreement a Stage 2 - Detailed Design Stage Storm Water Audit.

Upon Completion of the development, a Stage 3 Completion Stormwater Audit to demonstrate Sustainable Urban Drainage System measures have been installed, and are working as designed and that there has been no misconnections or damage to storm water drainage infrastructure during construction, shall be submitted to the planning authority for written agreement.

Reason: In the interest of public health and surface water management

11. The developer shall enter into water and wastewater connection agreement(s) with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

12. The development shall be carried out on a revised phased basis. The first phase shall consist of not more than 101 dwelling units, together with their associated site development works, and shall include the delivery of the Strategic Open Space along the River Liffey with pedestrian access from Alexandra Walk. Prior to commencement of any development on the overall site, details of all phasing shall be submitted to, and agreed in writing with, the Planning Authority.

Work on any subsequent phases shall not commence until completion of Phase A or such time as the written agreement of the planning authority is given to commence the next phase. Details of further phases shall be as agreed in writing with the planning authority.

Reason: To ensure the timely provision of services, for the benefit of the occupants of the proposed dwellings.

13.

- (a) All screen walls shall be 2 metres in height above ground level, constructed and finished to match external finish of dwellings/building,
- (b) All rear garden walls shall be 1.8 metres in height above ground level, and shall be concrete block or concrete post and panel, unless otherwise agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

14. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

15. The landscaping works scheme shown on the Landscape Masterplan Drawing, as submitted to An Bord Pleanála as part of this application shall be carried out within the first planting season following substantial completion of external construction works. In addition to the proposals in the submitted scheme, the following shall be carried out:

- a) The site shall be landscaped, using only indigenous deciduous trees and hedging species and there should be no encroachment during construction on those hedgerows (1-15).
- b) Details of an appropriate design for the access south of Hedge 9.
- c) Play facilities shall be provided within the communal areas of the apartment development in line with the requirements of Section 4.13 of the Sustainable Urban Housing: Design Standards for New Apartments. Guidelines for Planning Authorities (2018).
- d) All details of the play facilities and passive recreation facilities shall be submitted to, and agreed in writing with, planning authority prior to

commencement of development. The details shall include a multi-games area provided as part of the Strategic Open Space Zoned lands and delivered through the required phased development.

- e) Compliance with the requirements and standards of the Planning Authority in relation to the lighting and tree planting within the public open space.
- f) Amendment to the finished topsoil levels in line with the requirements of the Planning Authority.
- g) The public open space to the south of units no 319- 322 and no. 323 and 324 shall be integrated into the private open space for these units and the design shall integrate the retention and protection of the hedgerow along the south of the site.
- h) A dedicated play space shall be provided for the creche.
- i) The open space between Apartments Block C and those dwellings to the west shall be designed to improve active recreational activities and shall integrate a pedestrian and cycle through route.

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 residential and visual amenity.

16. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site. In this regard, ducting shall be provided to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interest of orderly development and the visual amenities of the area

17. Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority a properly constituted Owners' Management Company. This shall include a layout map of the permitted development showing the areas to be taken in charge and those areas to be maintained by the Owner's Management Company. Membership of this company shall be compulsory for all purchasers of property in the apartment blocks. Confirmation that this company has been set up shall be submitted to the planning authority prior to the occupation of the first residential unit. The Management Company shall include and manage the Community Building for the benefit of the residents of the apartments or the wider community as determined by the Planning Authority.

Reason: To provide for the satisfactory completion and maintenance of the development in the interest of residential amenity.

18. The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs, and the underground car park shall be in accordance with the detailed construction standards of the planning authority for such works and design standards outlined in DMURS. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination. The findings of the Stage 1/2 Road Safety Audit, shall be closed out, signed off and incorporated into the development at the developer's expense. Stage 3 Audits shall be conducted. Exact details of any improvement measures shall be submitted to the planning authority for written agreement prior to the commencement of development.

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

19. 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 place names for new residential areas.

20. 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 provision of social and affordable housing in accordance with the requirements of section 96 of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter (other than a matter to which section 97(7) applies) may be referred by the planning authority or any other prospective party to the agreement to the Board 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 of the area.

21. Public lighting shall be provided in accordance with a scheme and comply with the requirements of the submitted bat assessment "An evaluation of Lands at Capdoo & Abbeyland, Clane, Kildare for Potential as Bat Roost Sites and For Feeding and Commuting", details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Street lighting in private areas shall be independent to the public lighting power supply. Public lighting shall be provided prior to the making available for occupation of any house.

Reason: In the interests of residential amenity and nature conservation.

22. 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, watermain,

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.

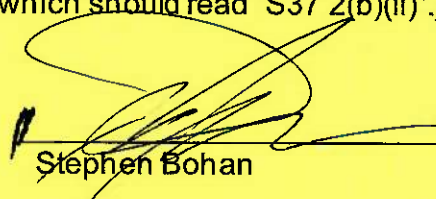
Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

23. 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.

[**Note:** The Board noted the incorrect reference to "S32 2(b) (ii)" on page 69 of the Inspector's report, which should read "S37 2(b)(ii)".]

Board Member


Stephen Bohan

Date: 12/04/2021

DECISION QUASHED