



An
Bord
Pleanála

Board Direction
BD-009218-21
ABP-309503-21

The submissions on this file and the Inspector's report were considered at a Board meeting held on 08/10/2021.

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

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

- a) the location of the site contiguous to the established urban settlement area of Ashford an area zoned for residential (under zoning R20 New Residential, under the Wicklow County Development Plan 2016-2022);
- b) the policies and objectives of the Wicklow County Development Plan 2016-2022 and the Ashford Town Plan as part of that development plan;
- c) The Rebuilding Ireland Action Plan for Housing and Homelessness 2016;
- d) The Guidelines for Sustainable Residential Developments in Urban Areas and the accompanying Urban Design Manual – a Best Practice Guide, issued by the Department of the Environment, Heritage and Local Government in May 2009;
- e) Urban Development and Building Heights Guidelines for Planning Authorities, prepared by the Department of Housing, Planning and Local Government in December 2018;
- f) The Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government 2020;

- g) Design Manual for Urban Roads and Streets (DMURS) issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government in March 2013;
- h) The NIS with the application;
- i) The nature, scale and design of the proposed development and the availability in the area of infrastructure;
- j) The pattern of existing and permitted development in the area;
- k) The planning history of the site and the zoning of adjacent lands;
- l) Section 37(b)(2) of the Planning and Development Act 2000, as amended, whereby the Board is not precluded from granting permission for a development which materially contravenes a Development Plan;
- m) The submissions and observations received;
- n) The Chief Executive Report from the Planning Authority recommending that permission be refused; and
- o) The report of the Inspector.

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

Appropriate Assessment: Stage 1

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 area, the Natura Impact Statement Report 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, other than The

Murrough Wetlands SAC (002249) and The Murrough SPA (004186) which are European sites for which there is a likelihood of significant effects.

Appropriate Assessment: Stage 2

The Board considered the Natura Impact Statement and all other relevant submissions on the file and carried out an Appropriate Assessment of the implications of the proposed development on The Murrough Wetlands SAC (002249) and The Murrough SPA (004186), in view of the sites' conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment.

In completing the appropriate assessment, the Board considered, in particular, the following:

- a) the site-specific conservation objectives for the European sites,
- b) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects, and in particular the risk of impacts on surface water and ground water quality,
- c) the mitigation measures which are included as part of the current proposal.

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, having regard to the sites' conservation objectives.

In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of European Sites in view of the sites' conservation objectives. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable scientific doubt as to the absence of adverse effects. This conclusion is based on the measures identified to control the quality of surface water discharges which provide for the interception of silt and other contaminants prior to discharge from the site during construction and operational phases.

Environmental Impact Assessment Screening

The Board completed an environmental impact assessment screening of the proposed development and considered that the Environment Report submitted by the applicant, identifies and describes adequately the direct, indirect, secondary, and cumulative effects of the proposed development on the environment.

Having regard to: -

- a) the nature and scale of the proposed development, which is below the threshold in respect of Class 10(iv) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended.
- b) the location of the site on lands zoned R20 New Residential, with the objective 'To protect, provide and improve residential amenities at a density up to 20 units/ha' under the Wicklow County Development Plan 2016-2022. Houses, apartments and childcare are uses identified to be generally appropriate for residential zoned areas under the Development Plan.
- c) The pattern of development in surrounding area.
- d) The availability of mains water and wastewater services to serve the proposed development, via extension of the network and use of a pumping station to be provided as part of the development.
- e) the location of the development outside of any sensitive location specified in article 299(C)(a)(1)(v) of the Planning and Development Regulations 2001 (as amended).
- f) 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).
- g) The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended); and
- h) The features and measures proposed by the applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Natura Impact Statement, Ecological Impact Assessment, Construction and Environmental Management Plan, The

Construction Waste Management Plan, the Construction Management Plan, the Traffic Impact Assessment Report and the Flood Risk Assessment.

The Board concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment. The Board decided, therefore, that an environmental impact assessment report for the proposed development was not necessary in this case.

Conclusions on Proper Planning and Sustainable Development

Having regard to the zoning objective for the site as set out in the Wicklow County Council Development Plan 2016-2022, the pattern of existing development in the immediate vicinity of the site, the NIS submitted with the application and subsequent Appropriate Assessment in the Inspectors Report, the location on the edge of the existing settlement area within a reasonable walking distance to the centre of Ashford, it is considered that the proposed development would not seriously injure the residential or visual amenities of the area or of property/land in the vicinity, would be consistent with national and local planning policy and would be acceptable in terms of design, scale, height, mix and quantum of development, and in terms of pedestrian and traffic safety. It was also concluded that the development would not subject future occupiers to flood risk or increase the risk of flood elsewhere. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

The Board considered that, while a grant of permission for the proposed Strategic Housing Development would not materially contravene a zoning objective of the statutory plans for the area, a grant of permission could materially contravene Wicklow County Council Development Plan 2016-2022 in relation to density, and the objective for the AA1 lands in relation to development of only 50% of housing prior to delivery of AOS lands for sports use, within the Ashford Town Plan. The Board considers that, having regard to the provisions of section 37(2) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention of the County Development Plan would be justified for the following reasons and consideration.

In relation to section 37(2)(b)(i) the proposed development is considered to be of strategic and national importance having regard to the definition of 'strategic housing development' pursuant to section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended) and its potential to contribute to the achievement of the Government's policy to increase delivery of housing from its current under supply set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016.

In relation to section 37(2)(b)(iii) permission for the development at the proposed density should be granted having regard to the Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities (2009) and Project Ireland 2040 National Planning Policy Framework (NPF) Objective 35 which support the increased residential density on the subject site, in accordance with the principles of compact growth and on this site on the edge of the established settlement area, within a reasonable walking distance to the centre of Ashford. In relation to development of only 50% of housing prior to delivery of AOS land for sports use, permission should be granted having regard to NPF Objective 32 in relation to the delivery of new homes as part of the Rebuilding Ireland Plan Project 2040 and chapter 6 of the Sustainable Residential Development in Urban Areas Planning Guidelines in relation to development being contiguous to the existing settlement and an efficient and effective use of the site.

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, such issues may be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. The mitigation measures contained in the Natura Impact Statement which was submitted with the application shall be implemented in full. In addition, the pumping station shall be completed in accordance with 'Code of Practice for Wastewater Infrastructure' published by Irish Water.

Reason: In the interest of clarity and the proper planning and sustainable development of the area and to ensure the protection of the European sites.

3. The development shall be carried out on a phased basis, in accordance with a phasing scheme submitted with the planning application, (unless otherwise agreed in writing with the planning authority/An Bord Pleanála prior to commencement of any development.)

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

4. The proposed development shall be amended as follows:

- a) The opposing windows in units 40 and 41 and the side (north) elevation in unit 1 shall be obscure glazed.
- b) The childcare facility shall be designed in accordance with the Universal Design Guidelines for Early Learning and Care Settings 2019 and the requirements of the Wicklow County Childcare Committee.
- c) Final details of all boundary treatments of the site to be provided, including sections currently omitted in the submitted plan.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority/An Bord Pleanála prior to commencement of development.

Reason: In the interests of proper and sustainable planning.

5. The developer shall enter into water and wastewater connection agreement(s) with Irish Water, prior to commencement of development. Final details of the pumping station shall be agreed with Irish Water prior to commencement and the pumping station shall be completed in accordance with 'Code of Practice for Wastewater Infrastructure' published by Irish Water prior to occupation of

any dwellings.

Reason: In the interest of public health.

6.

- a) Prior to commencement of development, all trees, groups of trees, hedging and shrubs which are to be retained shall be enclosed within stout fences not less than 1.5 metres in height. This protective fencing shall enclose an area covered by the crown spread of the branches, or at minimum a radius of two metres from the trunk of the tree or the centre of the shrub, and to a distance of two metres on each side of the hedge for its full length, and shall be maintained until the development has been completed.
- b) No construction equipment, machinery or materials shall be brought onto the site for the purpose of the development until all the trees which are to be retained have been protected by this fencing. No work shall be carried out within the area enclosed by the fencing and, in particular, there shall be no parking of vehicles, placing of site huts, storage compounds or topsoil heaps, storage of oil, chemicals or other substances, and no lighting of fires, over the root spread of any tree to be retained.
- c) Excavations in preparation for foundations and drainage, and all works above ground level in the immediate vicinity of retained trees as submitted with the application, shall be carried out under the supervision of a specialist arborist, in a manner that will ensure that all major roots are protected and all branches are retained.
- d) No trench, embankment or pipe run shall be located within three metres of any trees/hedging which are to be retained on the site.

Reason: To protect trees/hedgerow and planting during the construction period in the interest of visual amenity.

7. Bat roosts shall be incorporated into the site and the recommendations of the Ecology Impact Assessment shall be carried out on the site to the written satisfaction of the planning authority and in accordance with the details submitted to An Bord Pleanála with this application unless otherwise agreed in writing with the planning authority

Reason: To ensure the protection of the natural heritage on the site.

8. The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs 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.

9. The site shall be landscaped (and earthworks carried out) in accordance with the detailed comprehensive scheme of landscaping, which accompanied the application submitted, unless otherwise agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of residential and visual amenity

10. Comprehensive details of the proposed public lighting system to serve the development shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. The agreed lighting system shall be fully implemented and operational, before the proposed development is made available for occupation.

Reason: In the interest of public safety and visual amenity.

11. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:

- a) A Pre-Construction Invasive Species Management Plan and an Invasive Species Management Plan if required;
- b) Provision for mitigation measures described in the approved NIS;
- c) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
- d) Location of areas for construction site offices and staff facilities;
- e) Details of site security fencing and hoardings;
- f) Details of on-site car parking facilities for site workers during the course of construction;
- g) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
- h) Measures to obviate queuing of construction traffic on the adjoining road network;
- i) Details of lighting during construction works;
- j) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- k) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- l) Provision of parking for existing properties at during the construction period;
- m) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- n) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- o) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- p) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.
- q) A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

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

12. Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays and between 0800 and 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 approval has been received from the planning authority.

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

13. 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 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 have been no misconnections or damage to storm water drainage infrastructure during construction, shall be submitted to the planning authority for written agreement.

Measures for the ongoing regular inspection and maintenance of SUDs infrastructure should also be agreed with the Planning Authority prior to the occupation of the development.

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

14.

- a) A minimum of 10% of all communal car parking spaces should be provided with functioning EV charging stations/points, and ducting shall be provided for all remaining car parking spaces, including in-curtilage 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 and agreed in writing with the Planning Authority prior to the occupation of the development.

- b) Electric charging facilities shall be provided for cycle parking and proposals shall be submitted to and agreed in writing with the Planning Authority prior to the occupation of the development.

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

15. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall –

- a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
- b) employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works, and
- c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

16. The areas of public open space shown on the lodged plans shall be reserved for such use and shall be soiled, seeded, and landscaped in accordance with the landscape scheme submitted to An Bord Pleanála with this application,

unless otherwise agreed in writing with 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 or management company.

Reason: In order to ensure the satisfactory development of the public open space areas, and their continued use for this purpose.

17.

- a) The communal open spaces, including hard and soft landscaping, car parking areas and access ways, and all areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company.
- b) Details of the management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.

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

18. 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 housing unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all residential 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.

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.

19. 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 housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) 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 in dispute (other than a matter to which section 96(7) applies) may 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 of the area

20. 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.

Board Member



Stephen Bohan

Date: 08/10/2021

