

An
Bord
Pleanála

Board Direction
BD-011951-23
ABP-309626-21

The submissions on this file and the Inspector's report were considered at a Board meeting held on 23/03/2023.

The Board decided to make a split decision, generally in accordance with the inspector's recommendation, for the reasons and considerations (1) and subject to the conditions set out in respect of a decision to grant permission for a part of the proposed development and for the reasons and considerations (2) in respect of a decision to refuse permission for the remainder of the proposed development.

GRANT permission for demolition of existing agricultural/industrial buildings and structures, excluding the Mill Building which is a protected structure, and the single storey annex building abutting Castlecomer post office (also a protected structure) and construction of the following: one number single storey anchor convenience store, to include off-licence use, with gross floor area of 1,798 square metres and associated signage including erection of three number free standing double-sided internally illuminated sign; nine number retail units including convenience, comparison and retail service outlets, all at ground floor; conservation of existing Mill Building, a protected structure, and change of use to provide a café/restaurant at ground floor and first floor with mezzanine gallery exhibition space at second floor and conversion of kiln to kitchen servery at ground floor; with alteration and extension to the north, in a separate block to include main stairs and lift core, kitchen to the rear of kiln servery, small retail outlet at ground floor and office at first floor; salvage and reinstatement on-site of equipment/materials of heritage value from the Mill Building; re-instatement of three number windows to annex single-storey building, abutting post office, and use of same by management company for

storage; eight number office units at ground, first and second floors; four number two-bed apartments at first floor; vehicular access road from junction of High Street and Chatsworth Street; new access road and bridge from Ballinakill Road; pedestrian access route from Chatsworth Street and pedestrian and cyclist priority connections with town centre; an electricity sub-station; 54 number of bicycle stands; 228 number car parking spaces; all associated site development works and all associated landscaping works (Phases 1a, 1b and 2 and all associated works and access) in accordance with the said plans and particulars based on the reasons and considerations marked (1) under and subject to the conditions set out below.

REFUSE permission for nine number two-storey dwelling houses (Phase 3 as shown on the 'Indicative Phasing Drawing No. 19001 -120' submitted to the planning authority as part of the further information on the 7th day of December, 2020) based on the reasons and considerations marked (2) under

Reasons and Considerations (1)

Having regard to the nature and scale of the proposed mixed-use development within Castlecomer town centre, it is considered that it is in accordance with the provisions of the Kilkenny City and County Development Plan 2021 to 2027, and the Castlecomer Local Area Plan 2018-2024, including the mixed-use land use zoning and the vision and objectives for Key Development Area 1 – Old Creamery Site (Town Centre) as stated in Section 10.3.1 of the Local Area Plan. It is considered that, subject to compliance with the conditions set out below, the proposed development would assist in the rejuvenation of the town centre, would deliver on the focus of the retail strategy to deliver retail in the town centre and would not be detrimental to the character and amenities of the area or to public health and would not result in a traffic hazard. The proposed development of these permitted phases would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development comprising Phases 1a, 1b and 2, 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 submitted to the planning authority on the 7th day of December 2020, 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 commencement of development, the developer shall submit to and agree in writing with the planning authority revised plans indicating the following:
 - (a) The proposed car parking spaces 14 to 23 (inclusive) and 97 to 105 (inclusive) and the section of the internal access road between the car spaces at this location and the associated yellow boxed marking shall be omitted from the scheme. This area shall be redesigned to form a high quality active urban space that connects with the pedestrian link to Chatsworth Street to the east.
 - (b) Car parking spaces 66 to 69 (inclusive) shall be omitted and the small triangular area to the rear of proposed Unit C shall be extended and landscaped.
 - (c) Car parking spaces 63 to 65 (inclusive) shall be omitted and replaced with an extended sheltered area for bicycle parking.

Reason: In the interest of improved urban design.

3. 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, inter alia, details and location of proposed construction compounds, details of intended construction practice for the development, including, noise and dust management measures, details of arrangements for routes for construction traffic, parking during the construction phase, and off-site disposal of construction and demolition waste.

Reason: In the interests of public safety and residential amenity.

4. Site development and building works shall be carried out only 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 will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

5. (a) The proposed anchor convenience store shall not be open to the public outside the hours of 0800 to 2200 Mondays to Saturdays inclusive, not outside the hours of 0900 to 2100 on Saturdays or public holidays. Deliveries shall not take place before the hour of 0700, from Mondays to Saturdays inclusive, nor before the hour of 0800 on Sundays and public holidays nor after 2200 hours on any day.

(b) The hours of operation of the units including any proposed restaurant/café/takeaway uses shall be agreed in writing with the planning authority prior to the first occupation of each of the units.

Reason: In the interest of the amenities of property in the vicinity.

6. (a) No additional signage, advertising structures/advertisements, or other projecting elements, including flagpoles, shall be erected within the site, on adjoining lands under the control of the developer, or on the approach thoroughfares unless authorised by a further grant of planning permission.
- (b) The free-standing double-sided Aldi sign shall not be internally illuminated.

Reason: To protect the visual amenities of the area.

7. 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 and surface water management.

8. (a) Prior to commencement of development, the developer shall enter into water (when capacity becomes available) and wastewater connection agreements with Irish Water.
- (b) Pending the upgrade of the public water infrastructure by Irish Water, the developer shall provide and arrange an adequate supply of potable water to serve the proposed development. The water supply shall have sufficient yield to serve the proposed development, and the water quality shall be suitable for human consumption. Details, demonstrating compliance with this requirement, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of public health and to ensure a proper standard of development.

9. The internal road and vehicular circulation 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. Drawings and particulars 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 interest of amenity and of traffic and pedestrian safety.

10. (a) The trees and buildings shall be inspected by a suitably qualified expert for bats prior to felling/demolition. In the event that a roost is found the developer shall require a derogation licence from the National Parks and Wildlife Service.
- (b) Bat and bird boxes shall be installed in the proposed development, prior to the occupation of the units. The number, type and location of the boxes shall be submitted to and agreed in writing with the planning authority.
- (c) Any clearance of vegetation from the site should only be carried out in the period between the 1st of September and the end of February, that is, outside the main bird breeding season.

Reason: To avoid the destruction of the nests, nestlings and eggs of breeding birds and to avoid the proposed development causing detrimental effects on flora, fauna and natural habitats.

11. All works to the Mill Building protected structure, shall be carried out under the supervision of an accredited conservation professional Conservation Architect RIAI Grade 1 or 2, or Architect with minimum Grade 3 conservation

accreditation, or conservation engineer with specialised conservation expertise.

Reason: To secure the authentic preservation of this protected structure and to ensure that the proposed works are carried out in accordance with best conservation practice.

12. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which 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 prior to the commencement of development. The archaeologist shall assess the site and monitor all site development 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 area and to secure the protection of any archaeological remains that may exist within the site.

13. Lighting shall be provided in the car park areas and along the access roads in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. Such lighting shall be provided prior to the making available for occupation of any units within the development and shall be designed to avoid light pollution on neighbouring properties and on the riparian area of the Cloghogue River along the northern site boundary.

Reason: In the interests of amenity and public safety.

14. 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 interests of visual and residential amenity.

15. No additional development shall take place above roof parapet level on any building, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, other than that shown on the drawings submitted with the planning application unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

16. Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority, a landscape plan for the site, taking into account the conditions that are attached to this Order. All landscaping works shall be completed, within the first planting season following commencement of development. Any trees and hedging which die, are removed or become seriously damaged or diseased, during the lifetime of the development, 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 amenity of the area.

17. Prior to the commencement of development, the developer or any agent acting on its behalf, shall prepare a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) including demonstration of proposals to adhere to best practice and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness; these details shall be placed on the file and retained as part of the public record. The RWMP must be submitted to the planning authority for written agreement prior to the commencement of development. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

Reason: In the interest of sustainable waste management.

18. A plan, containing details for the management of waste 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 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.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

19. The management and maintenance of the proposed development, following completion, shall be the responsibility of a legally constituted management company, which shall be established by the developer. A management

scheme, providing adequate measures for the future maintenance of the development; including the external fabric of the buildings, internal common areas (residential and commercial), open spaces, landscaping, roads, paths, parking areas, public lighting, waste storage facilities and sanitary services, shall be submitted to and agreed in writing with the planning authority, before any of the residential or commercial units are made available for occupation.

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

20. 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 apartment signs and numbers shall be provided in accordance with the agreed scheme. The proposed name 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 of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed names.

Reason: In the interest of urban legibility.

21. A minimum of 10% of all car parking spaces shall be provided with functioning electric vehicle (EV) charging stations/points and ducting shall be provided for all remaining car parking spaces to facilitate the installation of electric vehicle charging points/stations at a later date. Where proposals relating to the installation of EV ducting and charging stations/points have not been submitted with the application, in accordance with the above 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 operational phase of the development.

Reason: In the interest of sustainable transportation.

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 of roads, footpaths, watermains, drains, 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 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 of the development.

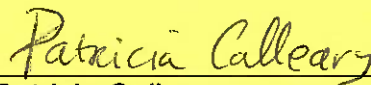
23. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the 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.

Reasons and Considerations (2)

The proposed development for nine detached houses (Phase 3 as shown on the 'Indicative Phasing Drawing No. 19001 -120' submitted as part of the further information on the 7th day of December 2020), by reason of its design, form and layout and its predominance of four bedroom detached houses, would result in a low density development that lacks variety in terms of a mix of units, within mixed-use zoned land, proximate to the town centre and within the development boundaries of Castlecomer, and would be contrary to the section 28 Ministerial Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns and Villages) and the accompanying Urban Design Manual issued by the Department of the Environment, Heritage and Local Government in May, 2009. It is considered that this element of the overall development, as proposed, results in a poor design concept that results in a lack of integration and connectivity and a lack of permeability for pedestrians and cyclists. The proposed development would be contrary to the provisions of 'Project Ireland 2040 - National Planning Framework' issued by the Department of Housing, Planning and Local Government (2018) and the 'Design Manual for Urban Roads and Streets' (2019). The proposed development would represent an inefficient and unsustainable use of serviced zoned land and would, therefore, be contrary to the proper planning and sustainable development of the area.

Board Member:



Patricia Calleary

Date: 24/03/2023