

**An
Bord
Pleanála**

**Board Direction
BD-008801-21
ABP-309967-21**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 27/07/2021.

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 at the edge of the built-up area of Kilkenny City and adjoining an existing partially completed housing estate and on lands zoned 'Phase 1 Residential';
- (b) the policies and objectives of the Kilkenny County Development Plan 2014-2020 and the Kilkenny City and Environs Development Plan 2014-2020;
- (c) the policies and objectives of the Kilkenny Western Environs Local Area Plan 2004, as incorporated into subsequent development plans;
- (d) the Rebuilding Ireland Action Plan for Housing and Homelessness 2016;
- (e) 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;

- (f) the Urban Development and Building Heights Guidelines for Planning Authorities, prepared by the Department of Housing, Planning and Local Government in December 2018;
- (g) the Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government in March 2020;
- (h) the 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;
- (i) the nature, scale and design of the proposed development and the availability in the area of a wide range of social, transport and water services infrastructure;
- (j) the pattern of existing and permitted development in the area;
- (k) the planning history of the site and within the area;
- (l) the submissions and observation received;
- (m) the Chief Executive Report from the Planning Authority; and
- (n) the report of the Inspector,

Appropriate Assessment

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 Appropriate Assessment Screening document 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

The Board completed an environmental impact assessment screening of the proposed development and considered that the Environmental Impact Assessment Screening 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 to 'Phase 1 Residential' in the Kilkenny City and Environs Development Plan 2014-2020 and the results of the Strategic Environmental Assessment of the plan;
- (c) The location and context of the site;
- (d) The existing use on the site and pattern of development in surrounding area;
- (e) The planning history relating to the site
- (f) The availability of mains water and wastewater services to serve the proposed development,
- (g) The location of the development outside of any sensitive location specified in article 299(C)(1)(v) of the Planning and Development Regulations 2001 (as amended)
- (h) 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),
- (i) The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended), and
- (j) The features and measures proposed by applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the proposed Construction and Environmental Management Plan

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:

The Board considered that the proposed development is, apart from the issue of car parking, broadly compliant with the current Kilkenny City and Environs Development Plan 2014-2020 and would therefore be in accordance with the proper planning and sustainable development of the area.

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, it would materially contravene the Plan with respect to car parking standards. The Board considers that, having regard to the provisions of section 37(2)(b)(i), (ii) and (iii) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention of the development plan would be justified for the following reasons and considerations:

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 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, as well as its potential to contribute to the delivery of several National Policy Objectives of the National Planning Framework, specifically NPOs 3a, 3c, 5, 32, 33 and 35 in relation to compact urban development and the provision of additional residential units at existing settlements.

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

There are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, as the Kilkenny City and Environs Development Plan 2014-2020 aims to promote sustainable modes of transport such as cycling and bus transport and to minimise car journeys, in line with national planning and transport policies, however the development plan provides no clear emphasis or guidance on how a minimised need for car journeys might be reflected in its car parking standards, which currently aim to accommodate a high number of car parking spaces for residential units and do not specify area based standards for car parking provision within Kilkenny City.

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

Permission for the development should be granted having regard to guidelines under section 28 of the Act and the National Planning Framework, specifically:

- NPO 13 of the NPF, which states that car parking standards in urban areas will be based on performance criteria and will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve high quality outcomes, provided public safety is not compromised and the environment is suitably protected, given the proximity of the site to Kilkenny city centre and local services and amenities and the availability of pedestrian and cycle infrastructure;
- Section 4.18 of the Design Standards for New Apartments Guidelines for Planning Authorities, which states that the quantum of car parking for apartment developments will vary, having regard to the types of location in cities and towns that may be suitable for apartment development, broadly based on proximity and accessibility criteria.

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.

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, or as otherwise stipulated by conditions hereunder, 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. Building Type 1 (BT1) on Proposed Site Layout Plan Drawing No 1966-P-030 shall be omitted and the space remaining after its omission shall be dedicated as public open space and maintained as such unless permission is subsequently granted for another development at this location in a subsequent permission.

Reason: It is considered that Building Type Block 1 may have adverse impacts on the residential amenities of the adjacent existing apartment block to the east and the proposed apartment block to the west, due to the proximity between the blocks and to the potential for consequent adverse impacts on residential amenities by way of overlooking and / or overshadowing.

3. Mitigation and monitoring measures outlined in the plans and particulars, including the Ecological Impact Assessment and Outline Construction &

Environmental Waste Management Plan shall be carried out in full, except where otherwise required by conditions attached to this permission.

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

4. Prior to commencement of any works on site, the developer shall submit and agree in writing with the planning authority a comprehensive Invasive Species Management Plan, which shall include detailed measures for the elimination of Cherry Laurel and Buddleia, on the site and dispose of any contaminated material by either its destruction or burial in sealed cells on site, or its removal off site under licence from the National Parks and Wildlife Service of the Department of Housing, Local Government and Heritage for its disposal or destruction in an approved facility.

Reason: To ensure the eradication from the development site of invasive plant species and to protect biodiversity.

5. Prior to the commencement of any house or duplex unit in 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 house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all houses and duplex 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.

6. Prior to commencement of development, revised details shall be submitted to and agreed in writing with the planning authority with regard to the following:
- (a) An outdoor gym shall be provided within the main public open space at the centre of the site
 - (b) All rear gardens of houses shall be bounded by concrete block walls, 1.8 metres high, which shall be rendered on both sides and capped. Concrete post and timber panels shall not be used
 - (c) The proposed coloured render finish to the buildings BT1, BT2, BT3 and BT4, with the exception of the internal courtyard to BT3 shall be replaced by a more durable finish, to the satisfaction of the planning authority.

Reason: In the interests of proper planning and sustainable development, to safeguard the amenities of the area and to enhance permeability

7. The developer shall enter into water and wastewater connection agreements with Irish Water, prior to commencement of development.

Reason: In the interests of clarity and public health.

8. Details of works to the public road to facilitate the proposed development, including the detailed design of the proposed pedestrian access to the N76 Callan Road, shall be submitted to, and agreed in writing with, the Planning Authority prior to the commencement of development. All works to the public roads / footpaths shall be completed to the satisfaction of the Planning Authority. A finalised Road Safety Audit shall be submitted to the planning authority for agreement.

Reason: In the interests of traffic, cyclist and pedestrian safety and sustainable travel.

9. 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.

10. 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.

11. The site shall be landscaped (and earthworks carried out) in accordance with the detailed scheme of landscaping, which shall be submitted to and agreed in writing with the Planning Authority prior to commencement of development. The scheme shall include provisions for hard and soft landscaping within the site and details of children's play features and boundary treatments.

Reason: In order to ensure the satisfactory completion of the development.

12. The internal road and vehicular circulation network serving the proposed development, including turning bays, junctions, parking areas, footpaths, kerbs and the lower ground level 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.

13. Prior to the opening/occupation of the development, a Mobility Management Strategy 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/ staff employed in the development and to reduce and regulate the extent of parking. The mobility strategy shall be prepared and implemented by the management company for all units within the development. Details to be agreed with the planning authority shall include the provision of centralised facilities within the commercial element of the development for bicycle parking, shower and changing facilities associated with the policies set out in the strategy.

Reason: In the interest of encouraging the use of sustainable modes of transport.

14. 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.

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

15. Proposals for a development naming and unit identification and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all such names and numbering shall be provided in accordance with the agreed scheme.

Reason: In the interest of urban legibility.

16. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces details of which shall be submitted to, and agreed in writing with the planning authority prior to installation of lighting. Such lighting shall be provided prior to the making available for occupation of any residential unit.

Reason: In the interests of amenity and public safety.

17. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. The cables shall avoid roots of trees and hedgerows to be retained in the site. 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.

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 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 its completion (save for areas that are to be taken in charge) shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of public open spaces, roads 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.

20. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

21. 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) Location of the site and materials compounds including areas identified for the storage of construction refuse; areas for construction site offices and staff facilities; site security fencing and hoardings; and car parking facilities for site workers during the course of construction;
- (b) 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; measures to obviate queuing of construction traffic on the adjoining road network; and measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;

(c) Details of the implementation of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;

(d) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains. The measures detailed in the construction management plan shall have regard to the matters outlined in the submission received from Inland Fisheries Ireland. 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.

22. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Saturdays inclusive, 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.

23. The applicant shall submit proposals for noise mitigation measures to address noise impacts on residential amenities from adjacent roads, having regard to the Kilkenny Noise Action Plan 2019-2023, to the planning authority for agreement in writing prior to the commencement of development, due to the proximity of the N76 Callan Road and the Kilkenny Western Bypass route. The proposed mitigation measures shall be based on a noise risk assessment and an Acoustic Design Statement (ADS). The detail of the ADS should be commensurate with the level of risk identified in the noise risk assessment.

Reason: In the interests of residential amenities.

24. 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.

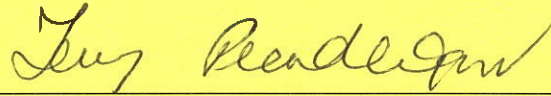
25. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains,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

26. 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



Date: 27/07/2021

Terry Prendergast