



An
Bord
Pleanála

Board Direction
BD-009365-21
ABP-310892-21

The submissions on this file and the Inspector's report were considered at a Board meeting held on 04/11/2021.

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 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) and the Clane Local Area Plan 2017-2023
- (c) the Rebuilding Ireland Action Plan for Housing and Homelessness, 2016
- (d) Urban Development and Building Heights, Guidelines for Planning Authorities, 2018
- (e) the Design Manual for Urban Roads and Streets (DMURS), 2013, as amended
- (f) the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, 2009
- (g) the Guidelines for Planning Authorities on Sustainable Urban Housing: Design Standards for New Apartments, 2020

- (h) the Planning System and Flood Risk Management (including the associated Technical Appendices), 2009
- (i) the Housing Supply Target Methodology for Development Planning, 2020
- (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, including the examination, analysis and evaluation undertaken in relation to appropriate assessment and environmental impact assessment.

It is considered that, subject to compliance with the conditions set out below that the proposed development would constitute an acceptable quantum and density of development in this accessible urban location, would not seriously injure the residential or visual amenities of the area, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of pedestrian and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment Screening

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on European Sites, taking into account the nature and scale of the proposed development on serviced lands, the nature of the receiving environment which comprises a built-up urban area, the distances to the nearest European sites and the hydrological pathway considerations, submissions on file, the information submitted as part of the applicant's Appropriate Assessment documentation and the Inspector's report. In completing the screening exercise, the Board agreed with and adopted the report of

the Inspector and that, by itself or in combination with other development, plans and projects 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. In particular, the Board agreed with and adopted the Inspector's assessment and conclusion that a Stage 2 Appropriate Assessment was not required notwithstanding the submission of an NIS by the applicant for permission which proceeded on the basis that a Stage 2 Appropriate Assessment was required.

Environmental Impact Assessment

The Board completed an environmental impact assessment screening of the proposed development and considered that the Environmental Impact Assessment Screening Information Report submitted by the developer which contains the information as set out in Schedule 7A of the Planning and Development Regulations 2001, as amended and the Article 299B Statement submitted by the applicant.

Having regard to:

- (a) The nature and scale of the proposed development which is below the threshold in respect of Class 10(b)(iv) and Class 10 of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,
- (b) the site's location close to Clane town centre, within an established built up area on lands with a zoning Objective C, New Residential - 'provide for new residential development', Objective E 'Open Space and Amenity', to 'protect and provide for open space, amenity and recreation', and Objective B 'Existing Residential/Infill, to 'protect and enhance the amenity of established residential communities and promote sustainable intensification' in the Clane Local Area Plan 2017-2023,
- (c) the existing use on the site and pattern of development in the surrounding area,
- (d) the planning history relating to the site and the surrounding area,
- (e) the availability of mains water and wastewater services to serve the proposed development,

(f) 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,

(g) the provisions of the guidance as 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),

(h) the criteria as set out in Schedule 7 of the Planning and Development Regulations 2001, as amended, and

(i) the features and measures proposed by the developer envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Construction and Environmental Management Plan.

It is considered that the proposed development would not be likely to have significant effects on the environment and that the effects on the environment and that the preparation and submission of an environmental impact assessment report would not, therefore, be required.

Conclusion on Proper Planning and Sustainable Development

The Board considered that, subject to compliance with the conditions set out below that the proposed development would constitute an acceptable quantum and density of development in this accessible urban location, would not seriously injure the residential or visual amenities of the area, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of pedestrian safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area. In coming to this conclusion, specific regard was had to the Chief Executive Report from the planning authority.

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 the

Kildare County Development Plan 2017-2023 in relation to the core strategy allocation of 145 dwelling units for Clane up to 2023 and the estimated residential capacity of 158 units for KDA 5 Millicent of the Clane Local Area Plan 2017-2023. 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 in material contravention of the County Development Plan and Local Area Plan would be justified for the following reasons and consideration:

- a) In relation to section 37(2)(b)(i) of the Planning and Development Act 2000 (as amended): the proposed development is in accordance with the definition of Strategic Housing Development, as set out in section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016 and in the context of Clane comprises a significant amount of housing units (192) located in Key Development Area 5 of the Local Area Plan, in order to deliver on the Government's policy to increase delivery of housing from its current under-supply as set out in Rebuilding Ireland Action Plan for Housing and Homelessness issued in July 2016.
- b) In relation to section 37(2)(b)(ii) of the Planning and Development Act 2000 (as amended): the matter of conflicting objectives in the development plan, table 4.1 of the Clane Local Area Plan 2017-2023 estimates density per hectare of 30 units, but detailed guidance under section 12.2.5 KDA 5 – Millicent states the KDA is likely to accommodate medium density residential development in the order of 30 – 35 units per hectare. The statutory plan contains conflicting objectives for the area, the Board invokes section 37(2)(b)(iii) of the Act in this instance.
- c) In relation to section 37(2)(b)(iii) of the Planning and Development Act 2000 (as amended): The proposed development in terms of scale, design and density is in accordance with national policy as set out in the National Planning Framework, specifically NPC 3a, 4 and 13. In terms of regional guidelines, the proposal accords with the Eastern & Midland Regional Assembly – Regional Spatial & Economic Strategy 2019-2031 that seeks to promote compact urban growth - targets of at least 50% of all new homes to be built, to be within or contiguous to the existing built up area of Dublin city and suburbs and a target of at least 30% for other urban areas... In terms of the provision of conventional houses and apartment units, the proposed development meets the requirements set out in section 2.4 of the Sustainable Urban Housing: Design Standards for New Apartments December 2020.

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 applicant 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) Obscure glazing shall be used for upper floor level windows on the western gable elevation of Block C and the eastern gable elevation of Block D, ground floor windows shall remain as specified with clear or transparent glazing.
 - (b) The use of render on the exterior of the duplex blocks shall be omitted in full and any render shown on the plans and particulars submitted with the application shall be replaced with suitable brick type finish.
 - (c) In-curtilage car parking spaces serving units numbers 132 to 135 shall be omitted and replaced with a footpath and front garden to each respective unit and a car parking bay situated within open space number three, immediately north of unit 135, shall provide a minimum of four and maximum of six number car parking spaces.

Revised plans 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 interests of residential and visual amenity and traffic safety.

3. (a) The development shall be carried out on a phased basis, in accordance with a phasing scheme which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any development.
- (b) The proposed link street from the R403 Prosperous Road to the L-2004 Millicent Road to include the priority controlled junction onto the R403 Prosperous Road, the signalised junction on the L-2004 Millicent Road and the priority controlled junction from the Gaelic Athletic Association grounds onto the link street, to include boundary wall or railings to the Gaelic Athletic Association grounds and shall be completed and operational prior to the occupation of the 51st residential unit.
- (c) The priority controlled junction onto the R403 Prosperous Road and the proposed priority controlled junction into the Gaelic Athletic Association grounds shall come into operation simultaneously. The existing vehicular access or egress to the Gaelic Athletic Association grounds shall be decommissioned with immediate effect upon operation of the junction onto the R403 Prosperous Road.

Reason: To ensure the timely provision of services and infrastructure for the benefit of the occupants of the proposed dwellings and in the interest of traffic safety.

4. All mitigation and monitoring measures outlined in the plans and particulars, including the Site Specific Flood Risk Assessment, Construction and Environmental Management Plan, Ecological Impact Assessment and Cultural Heritage Assessment Report, 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.

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, as amended, 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, the developer shall enter into water and or wastewater connection agreement(s) with Irish Water.

Reason: In the interest of public health.

7. Details of the materials, colours and textures of all the external finishes to the proposed dwellings or buildings and boundaries shall be as submitted with the application, unless otherwise agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

8. 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 the following details to the planning authority for written agreement:

- (i) Full design details of the proposed surface water attenuation system, to include details of outflow rates, design calculations to allow for a 20% climate change factor, Sustainable Urban Drainage Systems measures, storm attenuation storage chambers, flood pipe network design, and outfall to watercourse or culvert.
- (ii) A maintenance strategy for the proposed surface water drainage system. The agreed strategy shall be implemented until such time as the drainage infrastructure has been taken in charge by the planning authority.
- (iii) A condition and capacity report for culverts within the site to include details of any measures to be undertaken to protect and or upgrade culverts where this is required to facilitate the proposed development.
- (iv) Prior to commencement of development a Stage 2- Detailed Design Stage Storm Water Audit shall be submitted to the planning authority for written agreement.
- (v) 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.

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

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

9. The following requirements in terms of traffic, transportation and mobility shall be incorporated into the development and where required, revised plans and particulars demonstrating compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development:

- (a) Detailed design drawings for the proposed link street between the R403 Prosperous Road and the L-2004 Millicent Road, including all junctions, shall be submitted to the planning authority for approval prior to the commencement of development.
- (b) The roads and traffic arrangements serving the site including signage shall be in accordance with the detailed requirements of the planning authority for such works and shall be carried out at the developer's expense.
- (c) The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths, cycle paths and kerbs, pedestrian crossings and car parking bays shall comply with the requirements of 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 2019, as amended, and with any requirements of the planning authority for such road works.
- (d) Cycle tracks within the development shall be in accordance with the guidance provided in the National Cycle Manual.
- (e) The materials used on roads and footpaths shall comply with the detailed standards of the planning authority for such road works.
- (f) The developer shall carry out a Stage 3 - Road Safety Audit of the constructed development on completion of the works and submit to the planning authority for approval and shall carry out and cover all costs of all agreed recommendations contained in the audit.

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

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

10. 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, boundary treatments and includes measures for the protection of trees within and adjoining the site.

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

11. A total of 160 number secure bicycle parking spaces shall be provided within the development. Design details for the cycle spaces and cycle storage compounds shall be submitted to, and 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.

12. Prior to the opening or 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 and 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.

13. A minimum of 10% of all communal car parking spaces should be provided with functioning electric vehicle charging stations or points, and ducting shall be provided for all remaining car parking spaces, including in-curtilage spaces, facilitating the installation of electric vehicle charging points or stations at a later date. Where proposals relating to the installation of electric vehicle ducting and charging stations or 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 vehicle.

14. 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 employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works.

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.

15. Prior to the commencement of development, the developer shall agree in writing with the planning authority details for the protection of the Wayside Cross Base Record of Protected Structures Reference B14-067, located within the site during construction.

Reason: In order to conserve the architectural heritage of the site.

16. Proposals for an estate or 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 or 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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 interests of amenities, public health and safety.

23. 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.

24. Prior to commencement of development, the applicant 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.

25. 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.

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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


Michelle Fagan

Date: 04/11/2021

DECISION QUASHED