

**An  
Bord  
Pleanála**

**Board Direction  
BD-009671-21  
ABP-311290-21**

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The submissions on this file and the Inspector's report were considered at a Board meeting held on 14/12/2021.

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 on zoned and serviced lands contiguous with the edge of the built up area of Clonmel.
- (b) The policies and objectives in the South Tipperary County Development Plan 2009 (as varied).
- (c) The provisions of the National Planning Framework.
- (d) The provisions of the Regional Spatial and Economic Strategy for the Southern Region
- (e) The provisions of Rebuilding Ireland Action Plan for Housing and Homelessness 2016 and Housing for all 2021.
- (f) The provisions 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 (2019).
- (g) 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.

- (h) The Urban Development and Building Heights Guidelines for Planning Authorities, prepared by the Department of Housing, Planning and Local Government in December 2018.
- (i) The 'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities' prepared by the Department of Housing, Planning and Local Government 2020.
- (j) The Guidelines for Planning Authorities on The Planning System and Flood Risk Management (including technical appendices) issued by the Department of the Environment, Heritage and Local Government in November 2009.
- (k) The nature, scale and design of the proposed development and the availability in the area of a wide range of educational, social, community, transport, and water services infrastructure.
- (l) The pattern of existing and permitted development in the area, and the planning history relating to the site and the wider area.
- (m) The Report of the Chief Executive of Tipperary County Council.
- (n) The submissions and observations received.
- (o) The report and recommendation of the Inspector including the examination, analysis and evaluation undertaken in relation to environmental impact assessment and screening for appropriate assessment.

### **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 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 Lower River Suir SAC (site code 002137), which is a European site 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 Lower River Suir SAC (site code 002137), in view of the site's 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 site,
- 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 Site, having regard to the site's 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 site's conservation objectives. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable doubt as to the absence of adverse effects.

### **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 on lands zoned for residential development in the Clonmel and Environs Development Plan 2013-2019. The South Tipperary County Development Plan 2009-2017 (as extended) and Clonmel and Environs Development Plan 2013-2019 were subject to a strategic environmental assessment in accordance with the SEA Directive (2001/42/EEC).
- (c) The location of the site contiguous to the existing built up urban area of Clonmel, which is served by public infrastructure, and the existing pattern of development in the vicinity.
- (d) The availability of mains water and wastewater services to serve the proposed development,
- (e) The Board noted the location of the site immediately adjoining and partially within the River Suir SAC (site code 002137).
- (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 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. The Board noted the location of the development site partially within the Lower River Suir SAC (site code 002137). The Board was satisfied, having regard to the mitigation measures outlined in section 5 of the submitted Natura Impact Statement,

alongside consideration of the site specific conservation objectives and potential impacts upon these, and subject to the incorporation of the described mitigation, including the recommendations of the Department of Housing, Local Government and Heritage, the project would not adversely affect the integrity of the Lower River Suir SAC (002137).

### **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 Clonmel and Environs Development Plan 2012-2019 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) 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)(iii):

In relation to car parking, regard is had to the provisions of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in December 2020, which promote a performance based approach to car parking in urban areas. In addition, NPO 13 of the National Planning Framework stipulates that 'in urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high-quality outcomes in order to achieve targeted growth'.

### **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. Mitigation and monitoring measures outlined in the plans and particulars, including the Natura Impact Statement, the Ecological Impact Assessment, the Bat Assessment, the Bird and Mammal Assessment, the Tree Survey Report, the Archaeological Assessment, the Hydrology Technical Note 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, to provide mitigation against adverse effects on the SAC and in the interest of public health.

3. The proposed surface water outfall pipe to the River Suir shall be replaced by a nature based SUDS to receive surface waters from the development, combined with a habitat management plan, which will enhance the biodiversity of the area and support the conservation objectives of the Lower River Suir SAC (site code 002137). This revised surface water outfall shall be informed by a revised Site Specific Flood Risk Assessment and revised surface water drainage proposals for the residential development, all of which are to be submitted to the planning authority for agreement in writing prior to the commencement of development.

**Reason:** In the interests of maintaining the riparian zone and supporting the conservation objectives of the Lower River Suir SAC.

4. The proposed development shall be amended as follows: -

The bin store at the southern end of the development shall be relocated such that it is not immediately adjoining the adjacent residential properties on Coleville Road.

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

**Reason:** In the interest of residential and visual amenity

5. The following matters shall be agreed in writing with the planning authority prior to the commencement of development:

(a) Full details of all boundaries shared with adjoining residential properties

- (b) Full details of the treatment of the boundary shared with Dudley's Mills
- (c) Full details of the treatment of the frontage to Coleville Road
- (d) Landscaping proposals for the area of public open space to the north of adjoining residential properties on Coleville Road, such that the proposed planting shall not result in overshadowing of residential properties and shall prevent overlooking from the public realm.
- (e) Proposals to relocate or underground the existing ESB lines at the site.

**Reason:** In the interests of visual and residential amenities.

- 6. 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.

- 7. Prior to commencement of development, final details of the phasing of the development including details of areas of open space and infrastructure to be provided at each phase, shall be submitted to and agreed in writing with the planning authority. Boundary walls to adjoining properties shall be constructed prior to the commencement of development.

**Reason:** In the interest of clarity

- 8. The boundary planting and public open spaces shall be landscaped in accordance with the landscape scheme submitted to An Bord Pleanála with this



application, unless otherwise agreed in writing with the planning authority. The landscape scheme shall be implemented fully in the first planting season following completion of the development, and any trees or shrubs which die or are removed within three years of planting shall be replaced in the first planting season thereafter. This work shall be completed before any of the dwellings are made available for occupation. Access to green roof areas shall be strictly prohibited unless for maintenance purposes.

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

9. Prior to the commencement of development, details of the proposed amenity pond area shall be submitted to and agreed in writing with the planning authority. Details shall include any health and safety measures proposed to ensure the risk to the public is minimised, as far as is practicable.

**Reason:** In the interest of health and safety.

10. Details of works to the public road to facilitate the proposed development, including the detailed design of the proposed pedestrian access to the R680 Coleville 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.

11. The internal road network serving the proposed development, 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.

12. Prior to the occupation of the residential units, 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. The mobility strategy shall be prepared and implemented by the management company for all units within the development.

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

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

14. 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.

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

**Reason:** In the interest of public health.

16. Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be as submitted with the application unless otherwise agreed in writing with the planning authority prior to commencement of development. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

**Reason:** In the interest of visual amenity.

17. Details of signage relating to the crèche unit shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

18. 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.

19. Public lighting shall be provided in accordance with a final scheme to reflect the indicative details in the submitted Public Lighting Report, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development/installation of lighting. Such lighting shall be provided prior to the making available for occupation of any house.

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

20. Proposals for a naming 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 signs, and apartment numbers, shall be provided in accordance with the agreed scheme. The proposed names

shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

**Reason:** In the interest of urban legibility and to ensure the use of locally appropriate place names for new residential areas.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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. 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.

26. 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.

27. 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.

28. Prior to commencement of development, the developer 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.

29. 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.

30. 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:** 14/12/2021