

An  
Bord  
Pleanála

**Board Direction**  
**BD-010187-22**  
**ABP-311933-21**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 08/03/2022.

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.

## 1.0 Reasons and Considerations

Having regard to

- (i) the site's location on lands with a zoning objective for Residential development and the policy and objective provisions in the Kilkenny City and County Development Plan 2021 - 2027 in respect of residential development,
- (ii) the nature, scale and design of the proposed development which is consistent with the provisions of the Kilkenny City and County Development Plan 2021 - 2027 and appendices contained therein,
- (iii) to the Rebuilding Ireland Action Plan for Housing and Homelessness 2016, and Housing for All – A New Housing Plan for Ireland 2021,
- (iv) the Guidelines for Planning Authorities on Sustainable Residential Development 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,

- (v) the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, issued by the Department of the Housing and Planning and Local Government, December 2020,
- (vi) the availability in the area of a wide range of social and transport infrastructure,
- (vii) to the pattern of existing and permitted development in the area, and
- (viii) Chief Executive's Report and supporting technical reports of Kilkenny City and County Council,
- (ix) the comments made at the Kilkenny City Municipal Area meeting,
- (x) to the submissions and observations received,
- (xi) the Report of the Inspector,

it is 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, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of traffic and pedestrian safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 2.0 Order

- **Application: for permission under section 4 of the Planning and Development (Housing) and Residential Tenancies Act 2016, in accordance with plans and particulars, lodged with An Bord Pleanála on the 12<sup>th</sup> of November 2021 by John Spain Associates on behalf of Cairn Homes Properties Ltd,**
- **Proposed Development:**
  - The provision of 183 residential units comprising of 32 apartments in 87 duplex units and 64 houses in the form of three and four-bedroom units.

- A total of 320 car parking spaces in the form of basement and surface level parking is proposed. 272 bicycle parking spaces are provided throughout the site.
- Vehicular access to the site is from the N76/ Callan Road to the south and Robertson Way to the east.
- Communal and public open space is provided throughout the site and children's play area.
- The application contains a statement setting out how the proposal will be consistent with the objectives of the Kilkenny City and County Development Plan 2021 - 2027. It is submitted that the proposed apartments have been designed to fully accord with the Sustainable Urban Housing: Design Standards for New Apartments 2020. A full Housing Quality Assessment is submitted which provides details on compliance with all relevant standards including private open space, room sizes and storage areas.
- The proposed development is accompanied with a Material Contravention Statement which sets out justification for the proposed development. Five issues were raised:
  - Non-provision of a Childcare Facility
  - Car parking provision
  - Open Space
  - Set-Back Distances
  - Separation Distance

- **Decision:**

Grant permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

- **Matters Considered:**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

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

(i) the site's location on lands with a zoning objective for Residential development and the policy and objective provisions in the Kilkenny City and County Development Plan 2021 - 2027 in respect of residential development,

(ii) the nature, scale and design of the proposed development which is consistent with the provisions of the Kilkenny City and County Development Plan 2021 - 2027 and appendices contained therein,

(iii) to the Rebuilding Ireland Action Plan for Housing and Homelessness 2016, and Housing for All – A New Housing Plan for Ireland 2021,

(iv) the Guidelines for Planning Authorities on Sustainable Residential Development 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,

(v) the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, issued by the Department of the Housing and Planning and Local Government, December 2020,

(vi) the availability in the area of a wide range of social and transport infrastructure,

(vii) to the pattern of existing and permitted development in the area, and

(viii) Chief Executive's Report and supporting technical reports of Kilkenny City and County Council,

(ix) the comments made at the Kilkenny City Municipal Area meeting,

(x) to the submissions and observations received,

(xi) the Inspectors report

- **Appropriate Assessment (AA):**

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 suitably zoned and adequately serviced urban site, the Appropriate Assessment Screening 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.

- **Environmental Impact Assessment (EIA):**

2.1.1. 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, which contains the information set out Schedule 7A to the Planning and Development Regulations 2001 (as amended), identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

Having regard to:

- The nature and scale of the proposed development, which is below the threshold in respect of Class 10(b)(iv) and Class 13 of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,
- Class 14 of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,
- The location of the site on lands governed by the zoning objective 'Existing Residential' with the objective 'To protect, provide and improve residential amenities' in the Kilkenny City and County Development Plan 2021 - 2027, and the results of the strategic environmental assessment of the Kilkenny City and County Council Development Plan undertaken in accordance with the SEA Directive (2001/42/EC),
- The site clearance/ greenfield nature of the site and pattern of development in the surrounding area,
- The planning history relating to the site,
- The availability of mains water and wastewater services to serve the proposed development,
- 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),

- 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),
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended), and
- The features and measures proposed by applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment.

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

### **Conclusions on Proper Planning and Sustainable Development:**

The Board considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density at this location, would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would be acceptable in terms of urban design, height and quantum of development, as well as in terms of traffic and pedestrian safety and convenience. The proposal would, subject to conditions, provide an acceptable form of residential amenity for future occupants.

The Board considered that the proposed development is, broadly compliant with the current Kilkenny City and County Development Plan 2021 - 2027 and would therefore be in accordance with the proper planning and sustainable development of the area.

## **3.0 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. The proposed development shall be amended as follows:
  - (a) Unit no. 105 shall be revised to be a single-storey only unit. No part of the revised house shall be within 15.49 m of the existing units no. 29/ 30 College Avenue to the north.
  - (b) The four-storey apartment block shall be revised to have a front/ eastern elevation consisting of a mix of brick and/ or stone. There should be a mix of these specified materials to emphasise the dual block form of this building. All elevations of this building may be finished with such materials.

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

**Reason:** In the interests of residential amenity.

3. Subject to the requirements of Condition no. 3, full details of the materials, colours, and textures of all the external finishes to the proposed building 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.

4. No additional development shall take place above roof parapet level of the apartment units, 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.

5. Proposals for a development name 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.

6. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through the communal open spaces, 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 residential unit.

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

7. 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.

8. 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 pedestrian and traffic safety.

9 (a) The car parking facilities hereby permitted shall be reserved solely to serve the proposed development. All car parking spaces shall be assigned permanently for the residential development and shall be reserved solely for that purpose. These residential spaces shall not be utilised for any other purpose, including for use in association with any other uses of the development hereby permitted, unless the subject of a separate grant of planning permission.

(b) Prior to the occupation of the development, a Parking Management Plan shall be prepared for the development and shall be submitted to and agreed in writing with the Planning Authority.

**Reason:** To ensure that adequate parking facilities are permanently available to serve the proposed residential units and the remaining development.

10 A minimum of 10% of all car parking spaces shall 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. Such proposals shall be submitted to and agreed in writing with the Planning Authority prior to the occupation of the development. The car parking space for sole use of the car sharing club shall

also be provided with functioning EV charging stations/ points.

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

11

(a) A total of 272 no. bicycle parking spaces shall be provided within the site. Details of the layout, marking demarcation and security provisions for these spaces shall be as submitted to An Bord Pleanála with this application, unless otherwise agreed in writing with, the planning authority prior to commencement of development. All bicycle parking areas shall be covered and full details shall be submitted to and agreed in writing with the Planning Authority.

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

**Reason:** To ensure that adequate bicycle parking provision is available to serve the proposed development, in the interest of sustainable transportation and to provide for and future proof the development as would facilitate the use of electric cycles.

12 Prior to the opening/ occupation of the development, an updated 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. Full regard to be had to any changes in public transport provision in the area including the implementation of Bus Connects in the area. 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 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

- 14 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.

- 15 The site shall be landscaped in accordance with the detailed comprehensive scheme of landscaping, which accompanied the application submitted, unless otherwise agreed in writing with, the Planning Authority prior to commencement of development.

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

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

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

- 17 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.

- 18 (a) A plan containing details for the management of waste (and, in particular, recyclable materials) 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 for each apartment unit shall be submitted to, and agreed in writing with, the Planning Authority not later than 6 months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.

(b) This plan shall provide for screened communal bin stores, the locations and designs of which shall be included in the details to be submitted.

(c) This plan shall provide for screened bin stores, which shall accommodate not less than three standard sized wheeled bins within the curtilage of each house plot.

**Reason:** In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

19 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.

20 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 compound(s) including area(s) identified for the storage of construction refuse;
- b) Location of areas for construction site offices and staff facilities;
- c) Details of site security fencing and hoardings;
- d) Details of on-site car parking facilities for site workers during the course of construction;
- e) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
- f) Measures to obviate queuing of construction traffic on the adjoining road network;
- g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- h) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- i) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- j) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- k) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- l) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.
- m) 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.

21 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.

22 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.

23 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.

24 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.

**Plus:**

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



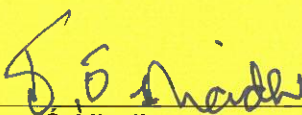
the planning authority (such agreement must specify the number and location of each house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, as amended, that restricts all houses and duplex units permitted, to first occupation by individual purchasers i.e. those not being 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.

**And**

Standard ABP Taking in Charge condition

**Board Member**

  
Terry O Niadh

**Date:** 08/03/2022

