

An  
Bord  
Pleanála

**Board Direction**  
**BD-011327-22**  
**ABP-312613-22**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 28/09/2022.

The Board decided to make a split decision, to

- (1) grant permission, for the following reasons and considerations and subject to the following conditions for the demolition of 2 no. existing agricultural structures (382sqm) and the construction of 196 no. residential units (117 no. houses and 79 no. apartment / duplex units) and a creche (405sqm / 42 no. child care spaces). Access to the proposed development is via a new entrance from the R617 to the east of the site. An additional pedestrian entrance is proposed from the existing cul-de-sac at the sites northern boundary. The works include upgrades to the R617, including the installation of footpath / cycle infrastructure, signalised pedestrian crossing and the relocation of the existing public bus stop to the west of the R617. Ancillary site development works include flood defence works, public realm upgrades, amenity walks, public open spaces and the undergrounding of existing overhead lines

and

- (2) refuse permission for single storey retail food store with a net sales area of 1,315 square metres, which includes the sale of alcohol for consumption off premises, totem sign and ancillary building signage, servicing areas, surface car park and bicycle parking facilities. Two storey café building with café on ground floor and 2 number apartments at first floor level.

generally in accordance with the Inspector's recommendation, for the following reasons and considerations.

### **Reasons and Considerations (1)**

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.

### **Reasons and Considerations**

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

- a. The site's location on lands with a zoning objective for residential development;
- b. The policies and objectives in the Cork City Development Plan 2022 – 2028;
- c. Nature, scale and design of the proposed development;
- d. Pattern of existing development in the area;
- e. The Rebuilding Ireland Action Plan for Housing and Homelessness 2016;
- f. Housing for All – A New Housing Plan for Ireland, 2021
- g. The National Planning Framework issued by the Department of Housing, Planning and Local Government in February 2018;
- h. Regional Spatial and Economic Strategy for the Southern Region;
- i. 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;
- j. 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;

- k. Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government in December 2020;
- l. The Urban Development and Building Heights Guidelines for Planning Authorities 2018;
- m. The Planning System and Flood Risk Management' (including the associated 'Technical Appendices') 2009;
- n. Chief Executive's Report;
- o. Inspector's Report; and
- p. Submissions and observations received.

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.

**Appropriate Assessment:**

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 Screening 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, notwithstanding the submission of a Natura Impact Statement by the applicant for permission.

## **Environmental Impact Assessment**

The Board completed, in compliance with s.172 of the Planning and Development Act 2000, an Environmental Impact Assessment of the proposed development, taking into account: (a) The nature, scale and extent of the proposed development; (b) The Environmental Impact Assessment Report and associated documentation submitted in support of the application, (c) The submissions from the applicant, planning authority, third parties and the prescribed bodies in the course of the application; and (d) The Planning Inspector's report.

The Board considered that the environmental impact assessment report, supported by the documentation submitted by the applicant, adequately identifies and describes the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

The Board agreed with the examination, set out in the Inspector's report, of the information contained in the environmental impact assessment report and associated documentation submitted by the applicant and submissions made in the course of the planning application.

### **Reasoned Conclusions on the Significant Effects.**

- Population and human health impacts mitigated by appropriate construction and operational management plans. Direct positive effects with regard to population and material assets due to the increase in population to help sustain and generate improvements to physical infrastructure in the area.
- Biodiversity impacts mitigated by additional planting/landscaping and appropriate work practices.
- Soils and geology impacts mitigated by construction management measures including removal of contaminated soil, minimal removal of topsoil and subsoil; management and maintenance of plant and machinery; dust suppression measures.

- Hydrology and Water Services impacts to be mitigated by management of surface water run-off during construction to prevent run off discharging directly into watercourses.
- Landscape and Visual impacts would be significant with a direct effect on land by the change in the use and appearance of a relatively large area of greenfield site to residential. Given the location of the site within the urban area and the public need for housing in the region, this effect would not have a significant negative impact on the environment.
- Cultural Heritage - Architectural Heritage would be mitigated by landscaping. Given the location of the site within the urban area no significant adverse direct, indirect or cumulative effects on Cultural Heritage-Archaeology are likely to arise.
- Climate and Air Quality impacts mitigated by dust minimisation plan.
- Traffic and Transportation impacts mitigated by the management of construction traffic by way of Construction and Environmental Management Plans
- Noise and Vibration impacts mitigated by adherence to requirements of relevant code of practice.

The Board completed an environmental impact assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures set out in the environmental impact assessment report, and subject to compliance with the conditions set out below, the effects on the environment of the proposed development, by itself and in combination with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the Inspector.

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

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/land in the vicinity, would be consistent with national and local planning policy and would be acceptable in terms of design, scale, height, mix and quantum of development, and in terms of pedestrian and traffic safety.

It was also concluded that the development would not subject future occupiers to flood risk or increase the risk of flood elsewhere. 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. Mitigation and monitoring measures outlined in the plans and particulars, including the Environmental Impact Assessment Report submitted with this application as set out in Chapter 15 – Summary of Mitigation Measures, 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.

3. The number of dwellings granted under this permission is 196 (117 houses and 79 duplexes/apartments).

**Reason:** In the interest of clarity.

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

- a. The landing window on the first floor of the southern elevation of unit 145 in Block 3 shall be permanently fitted with obscure glazing and the bedroom window on the second floor of the southern elevation of unit 145 in Block 3 shall be redesigned as a high level window.
- b. The proposed walkway between Blocks 2, 3, 4 and the terrace houses (no. 1 - 8) shall be gated and accessible only to residential units which adjoin the walkway / courtyard area.
- c. A direct access to the bin and bike storage area to the south of Block 6 shall be provided for residents at the ground floor level of Block 6.
- d. Proposals for boundary planting and fencing/wall shall be provided across the site to the south of Block 6 and to the north of the area proposed for the retail unit and associated parking and public realm areas (for which permission has been refused), to ensure a clear demarcation of the southern extent of the permitted residential scheme area.

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 privacy and residential amenity

5. Prior to commencement of development details of communal open space with a minimum total area of 145sqm to serve the apartment units in Block 6 shall be provided to the west of the building. This may result in the loss of a limited number of car parking spaces. Revised drawings showing compliance with this requirement shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason** in the interest of residential amenity and privacy.

6. 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.

**Reason:** In the interest of clarity

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

**Reason:** In the interest of visual amenity and to ensure an appropriate high standard of development.

8. 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.

9. Details of signage relating to the creche 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.

10. The boundary planting and public open space shall be landscaped in accordance with the landscape scheme as submitted 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.

11. 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

12. 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.

13. 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.

14. 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.

15. Proposals for an apartment naming / 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.

16. 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.

17. Prior to commencement of development details of the new junctions with the R617 / works to the public road, shall be submitted to, and agreed in writing with the planning authority.

**Reason:** In the interest of road safety

18. 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

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

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

20. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

21. 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 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.

22. 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.

**Reason:** In the interest of sustainable waste management.

23. 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 hours of working, noise management measures and off-site disposal of construction/demolition waste.

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

24. (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.

25. 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.

26. 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

27. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development

Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

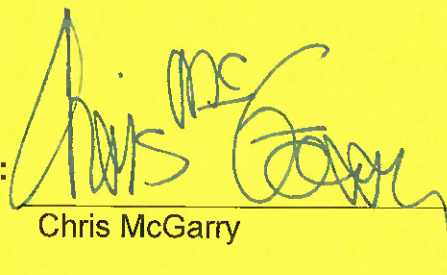
## **Reasons and Considerations (2)**

1. The settlement of Tower is not identified within the Retail Hierarchy as set out in Section 7.86 of the Cork City Development Plan 2022-2028. The Retail Hierarchy identifies Ballincollig as a Large Urban Town Centre (Level 2) and Blarney as a Small Urban Town Centre (Level 3). Having regard to the proximity of the subject site to both Ballincollig and Blarney and their status within the Retail Hierarchy, to Objective 7.30 to direct additional retail development to Blarney and to the scale of the proposed retail element, it is considered that the proposed development would be contrary to Strategic Retail Objective 7.27 (a) to implement the Retail Hierarchy and would also be contrary to Section 10.293 of the current development plan which states that Tower does not require additional retail floorspace during the plan period. Furthermore, the order of priority is to

locate retail in the city centre and the designated District Centres / Ballincollig Town Centre and to allow retail development in edge-of-centre or out-of-centre locations only where all other options have been exhausted. The Retail Impact Assessment as submitted with the application fails to fully consider the availability of alternative sites within established centres in the catchment including Ballincollig and Blarney. In this regard it is considered that the proposed retail development would be contrary to the provisions of the Cork City Development Plan 2022 – 2028, and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the omission of the proposed retail development and associated servicing areas, car parking and access as confirmed under this refusal of permission, it is considered that the proposed two storey café building with café on ground floor and 2 number apartments at first floor level, whilst considered acceptable as a use in principle at this location, would constitute a discordant and isolated design element at this part of the overall site in the absence of a confirmed spatial layout for the immediately surrounding area. The proposed café building would therefore constitute a poor design element at this location which would lead to a poor standard of amenity for users and occupants of the building and would, therefore, be contrary to the proper planning and sustainable development of the area.

Board Member:



Chris McGarry

Date: 28/09/2022

