

**An  
Bord  
Pleanála**

**Board Direction  
BD-011181-22  
ABP-312704-22**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 23/08/2022.

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.

### **Reasons and Considerations**

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 Kildare County Development Plan 2017 – 2023 and the Newbridge Local Area Plan 2013 – 2019, which was Extended to 2021,
- (ii) the nature, scale and design of the proposed development which is consistent with the provisions of the Kildare County Development Plan 2017 – 2023 and the Newbridge Local Area Plan 2013 – 2019, which was Extended to 2021, and appendices contained therein,
- (iii) to the Rebuilding Ireland Action Plan for Housing and Homelessness 2016,
- (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 Kildare County Council,

(ix) the comments made at the Kildare/ Newbridge Municipal District meeting,

(x) the reports from the Department of Housing, Local Government and Heritage and from Irish Water,

(xi) the Inspectors report

It is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density in this edge of town/ greenfield site, would respect the existing character of the area and the archaeological heritage of the site, 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 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 reports 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 Pollardstown Fen SAC (Site Code 000396), Mouds Bog SAC (Site Code 002331)

and River Barrow & River Nore SAC (Site Code 002162) which there are a likelihood of significant effects. There was therefore a requirement to carry out a Stage 2 Appropriate Assessment.

### **Appropriate Assessment Stage 2**

The Board considered the Natura Impact Statement and all other relevant submissions including expert submissions received and carried out an appropriate assessment of the implications of the proposed development on Pollardstown Fen SAC (Site Code 000396), Mouds Bog SAC (Site Code 002331) and River Barrow & River Nore SAC (Site Code 002162) in view of the above sites' Conservation Objectives. The Board considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the site's Conservation Objectives using the best available scientific knowledge in the field.

In completing the assessment, the Board considered, in particular, the following:

- (a) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- (b) the mitigation measures which are included as part of the current proposal, and
- (c) the conservation objectives for the European sites.

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 Sites, 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 sites' conservation objectives. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable scientific doubt as to the absence of adverse effects.

## **Environmental Impact Assessment:**

The Board completed 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 planning application;
  - (c) The submissions from the Planning Authority, and the prescribed bodies in the course of the application;
- and
- (d) The 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.

The Board considered and agreed with the Inspector's reasoned conclusions that the main significant direct and indirect effects of the proposed development on the environment are, and would be mitigated, as follows:

- **Population and Human Health:** Impacts are likely to be positive with the provision of additional housing and an increased local population that will avail of services/ facilities in the area.
- **Biodiversity:** Impacts to be mitigated by the proposed landscaping strategy; ensure no additional invasive species are introduced; the significant provision of active and passive open space; protection of trees to be retained, and measures to avoid disturbance to bats and nesting birds.

- **Land & Soils:** The impacts to be mitigated by construction management measures including minimal removal of soil, reuse of excess material within the site; proposals for identification and removal of any possible contamination; management and maintenance of plant and machinery.
- **Hydrology and Hydrogeology:** The impacts to be mitigated by management of surface water run-off during construction; adherence to Construction Management Plan; to avoid uncontrolled contamination of water sources.
- **Air Quality & Climate:** The impacts will be mitigated by suitable measures taken on site during the construction phase of development. These will be detailed in the adopted Construction Management Plan (CMP).
- **Noise & Vibration:** Impacts will be mitigated by adherence to requirements of relevant code of practice; location of noisy plant away from noise sensitive locations and through the use of suitable noise control techniques on site. Excessive levels of vibration are not expected on site.
- **Landscape & Visual Impact:** The development will present as a new development in the landscape. There will also be changed views for some viewers in nearby residences and nearby locations. The existing landscape is not of a high quality and the subject site was previously in use as a sand/ gravel pit. The potential impact will be mitigated by the establishment of suitable boundary treatment and landscaping that will reduce the impact at a local level and to provide for extensive landscaping of the site to reduce the visual impact at a more distant level. The proposed development will not have an adverse impact on the character or visual amenity of the area.
- **Cultural Heritage:** The proposed development would not impact on cultural heritage. A site with archaeological potential has undergone test trenching and this area will be preserved 'in-situ'.
- **Material Assets - Services, Infrastructure & Utilities:** Impacts will be mitigated by consultation with relevant service providers; adherence to relevant codes of practice and guidelines; service disruptions kept to a minimum.

- **Material Assets – Traffic & Transport:** Impacts to be mitigated by implementation of a Construction Environmental Management Plan and the promotion of sustainable travel patterns by residents during the operation phase.
- **Waste Management:** The impacts to be mitigated by management of materials/ waste during construction and adherence to Construction Management Plan.

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 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, apart from the restriction on density that applies to the C2 zoning, broadly compliant with the current Newbridge Local Area Plan and would therefore be in accordance with the proper planning and sustainable development of the area.

The subject site is zoned for new residential development and therefore falls within this classification. Objective LDO1 of the Kildare County Development Plan states that the density of residential development should be in accordance with the Sustainable Residential Development Guidelines and as part of this, table 4.2 'Indicative Density Levels' of the Kildare County Development Plan also identifies a

General Density Parameter of 30 to 50 dwellings per hectare for New Residential Development in Outer Suburban/ Greenfield locations.

The Sustainable Residential Development in Urban Areas Planning Guidelines state that for outer suburban/ greenfield sites on the periphery of larger towns, which would include the subject site, densities in a range of 35 - 50 dwellings per hectare would be appropriate. The exceedance of the density level proposed when compared to the objective for C2 lands under the LAP is acceptable.

A material contravention of the Newbridge Local Area Plan (extended to December 2021) in relation to density is justified as follows:

- a) In relation to section 37(2)(b)(i) of the Planning and Development Act 2000 as amended: The proposed development can be considered of strategic importance at a county level, formed of 336 units on suitably zoned lands for much needed residential development, in accordance with the broader policies and objectives of the NPF and RSES, specifically objectives 33 and 35 of the NPF which seek to prioritise the provision of new homes at locations that can support sustainable development and which seeks to increase densities in established settlements.
- b) In relation to section 37(2)(b)(ii) of the Planning and Development Act 2000 as amended: There are conflicting objectives in the Kildare County Development Plan and the Newbridge Local Area Plan. The development plan and local area plan include indicative densities for new residential zoned lands, (which would include the subject site) of between 30 - 50 dwellings per hectare. Objective LDO 1 of the development plan also asks densities to reflect the Sustainable Residential Development Guidelines, which for the subject site would be between 35 and 50 units per hectare. However, the Newbridge Local Area Plan includes a specific objective for C2 lands, which includes the subject site, of 15 units per hectare.
- c) In relation to section 37(2)(b)(iii) of the Planning and Development Act 2000 as amended: Permission for the development should be granted having regard to national planning policy guidelines that promote increased housing delivery and efficient development on appropriate serviced sites. Such guidance includes Rebuilding Ireland, An Action Plan for Housing and Homelessness and Project

Ireland 2040 – National Planning Framework; and the Sustainable Residential Development in Urban Areas Planning Guidelines 2009. Specifically in light of the location of the site on the periphery of the existing settlement, on a suburban/ greenfield area, where densities of between 30 - 50 dwellings per hectare are expected. The site is a short walking distance to the town centre for Newbridge, a town highlighted in the RSES as having good levels of local employment, services, and amenities. The site also has access to public transport with bus stops situated a reasonable walking distance from the site. In addition, the proposed development is also in accordance with SPPR3 and development management criteria (under section 3.2) in the Building Height Guidelines, as well as SPPR's and associated guidance in the Apartment Guidelines.

- d) In relation to section 37(2)(b)(iv) of the Planning and Development Act 2000 as amended: The pattern of development in the area, specifically being the previous planning approval on the site (PA Ref.16/658, ABP Ref.249038) with an approved density of 21.71 dwellings per hectare and in excess of the specific objective for 15 dwellings per hectare on C2 lands described under the Newbridge Local Area Plan. In addition, a SHD permission (ref.302141) was granted on lands at Athgarvan Road, Kilbelin, Newbridge in 2018 for a development density of circa 37- 39 uph, with heights up to 3 storeys. This therefore indicates that a material contravention would similarly be justified for the proposed development.

In accordance with section 9(6) of the Planning and Development (Housing) and Residential Tenancies Act 2016, the Bord considered that the criteria in section 37(2)(b)(i) and (iii) of the Planning and Development Act 2000, as amended was satisfied for the reasons and considerations set out in the decision.



## 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. 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. The proposed external treatment shall ensure a clearly defined distinction between character areas. 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.

3. a) The listed mitigation measures outlined in the Natura Impact Statement (NIS) shall be fully implemented at demolition, construction, and operational phases of the development.  
b) The developer shall ensure that the current and future groundwater recharge regimes to Pollardstown Fen's groundwater catchment are maintained. Full details of how this will be monitored shall be agreed in writing with the Planning

Authority following consultation with the National Parks and Wildlife Service (NPWS).

**Reason:** To ensure that the development has no adverse impact on the qualifying interests of Pollardstown Fen, Maud's Bog and the River Barrow & River Nore.

4. The mitigation measures and monitoring commitments identified in the Environmental Impact Assessment Report, and other plans and particulars submitted with the application shall be carried out in full except as may otherwise be required in order to comply with other conditions.

**Reason:** In the interest of clarity and protection of the environment during the construction and operational phases of the proposed development.

5. The developer shall undertake the following, subject to agreement in writing with the Planning Authority, prior to the commencement of development:
  - a) The development of a site-specific Badger Conservation Plan.
  - b) The submitted tree survey report indicates that many of the mature trees have had soil mounded at the base of the boundary, damaging the trees and this soil shall be removed; these works to be undertaken in accordance with the requirements of a qualified arborist.

**Reason:** In the interest of wildlife and tree protection.

6. No additional development shall take place above roof parapet level of the apartment block, 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.

7. A minimum of 2.4 metres shall be provided between the floor and the base of the canopy serving the Type DU-1.

**Reason:** To ensure the provision of adequate residential amenity.

8. 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.

9. 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 apartment unit.

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

10. 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.

11. The internal road 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.

**Reason:** In the interests of traffic, cyclist, and pedestrian safety and to protect residential amenity

12. 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.

13. A minimum of 10% of all car parking spaces serving the apartments and duplex units should be provided with functioning EV charging stations/ points, and ducting shall be provided for all remaining car parking spaces, including in-curtilage spaces, facilitating the installation of EV charging points/stations at a later date. Where proposals relating to the installation of EV ducting and charging stations/points has not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted and agreed in writing with the Planning Authority prior to the occupation of the development.

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

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 and surface water management

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

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

16. 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.

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) 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.

19. (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.

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

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

21. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development. This plan shall provide inter alia: details of intended construction practice for the development, including, noise management measures, details for arrangements for routes for construction traffic, parking during the construction phase, and off-site disposal of construction/demolition waste and or by-products.

**Reason:** In the interest of amenities, public health and safety.

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

23. 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.

24. 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.



25. Prior to commencement of development, the developer shall lodge with the Planning Authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the Planning Authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

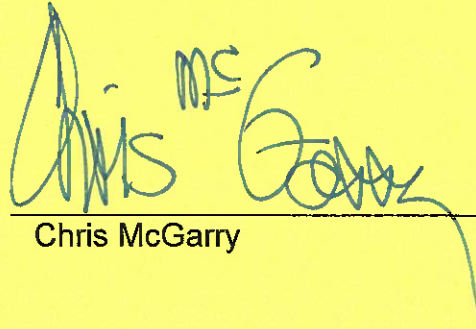
**Reason:** To ensure the satisfactory completion and maintenance of the development until taken in charge.

26. The developer shall pay to the Planning Authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the

Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Board Member



Chris McGarry

Date: 26/08/2022