

**An
Bord
Pleanála**

**Board Direction
BD-011122-22
ABP-312861-22**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 17/08/2022.

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

- (a) The policy and objectives set out in the National Planning Framework and the Regional Spatial and Economic Strategy for the Eastern and Midlands Regional Assembly,
- (b) The policies and objectives set out in the Kildare County Development Plan 2017-2023 as amended by Variation No. 1 (June, 2020),
- (c) The policies and objectives set out in the Kilcullen Local Area Plan 2014-2020,
- (d) Urban Development and Building Heights, Guidelines for Planning Authorities, prepared by the Department of Housing, Planning and Local Government in December 2018,
- (e) 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 2013, as amended, the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, 2009

- (f) The Guidelines for 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,
- (g) The Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities issued by the Department of the Environment, Community and Local Government in December 2020,
- (h) Architectural Heritage Protection – Guidelines for Planning Authorities, issued by the Department of Arts, Heritage and the Gaeltacht in October 2011,
- (i) The Planning System and Flood Risk Management for Planning Authorities (including the associated Technical Appendices), issued by the Department of the Environment, Heritage and Local Government in 2009,
- (j) The nature, scale and design of the proposed development,
- (k) The availability in the area of a range of social, community and transport infrastructure,
- (l) The pattern of existing and permitted development in the area,
- (m) The planning history of the site and within the area,
- (n) The submissions and observations received,
- (o) The report of the Chief Executive of Kildare County Council, and
- (p) The report of the Inspector

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, 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 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 and that a Stage 2 Appropriate Assessment is not, therefore, required.

Environmental Impact Assessment

The Board completed an environmental impact assessment screening of the proposed development and considered 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:

- a) 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,
- b) The location of the site on lands governed by zoning objective C: New Residential, zoning objective A: Town Centre, zoning objective F: Open Space and Amenity, zoning objective B: Existing Residential and Infill, and zoning objective I: Agricultural,
- c) The existing use on the site and pattern of development in surrounding area,
- d) The planning history relating to the site,
- e) The availability of mains water and wastewater services to serve the proposed development,
- f) The location of the development outside of any sensitive location specified in article 299(C)(1)(a)(v)(I) of the Planning and Development Regulations 2001 (as amended),
- g) 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),

- h) The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended), and
- i) The features and measures proposed by applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Construction and Demolition Waste Management Plan,

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, apart from the core strategy figures, broadly compliant with the current Kildare County Development Plan 2017-2023 and Kilcullen LAP 2014 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 the core strategy. The Board considers that, having regard to the provisions of section 37(2) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention of the Kildare County Development Plan 2017-2023 would be justified for the following reasons and considerations:

With regard to S.37(2)(b)(i), the proposed development is in accordance with the definition of Strategic Housing Development, as set out in section 3 of the Planning

and Development (Housing) and Residential Tenancies Act 2016 and has the potential to deliver on the Government’s policy to increase delivery of housing from its current under-supply as set out in Rebuilding Ireland Action Plan for Housing and Homelessness (July 2016), and Housing for All – A New Housing Plan for Ireland (2021).

Having regard to the location of the site and design and layout, which supports the policies and objectives of the NPF and EMRA-RSES, Urban Development and Building Height Guidelines, Sustainable Urban Housing: Design Standards for New Apartments Guidelines, and Sustainable Residential Development in Urban Areas, I consider the proposed development is in accordance with national guidance and the proposal would be justified under S.37(2)(b)(iii).

Conditions

1.	<p>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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Prior to commencement of any works on site, revised details shall be submitted with regard to the following:</p> <ul style="list-style-type: none"> (a) Omit Apartment no C-G-04 (ground floor, 1 bedroom apartment) and relocate PV Battery Store, ESB Sub Station, bin store and bike store to that space. (b) Duplex units 17 and 18, housing units 42 and 53, and duplex units 53 and 54 shall be omitted from the development and the

	<p>remaining end units shall be designed as double fronted units, addressing the eastern boundary and their adjoining streets. The remaining space shall be incorporated as open space with a pedestrian path traversing the site north-south along the eastern boundary, connecting into the open space along the northern and southern boundaries.</p> <p>(c) Revised plans and particulars in relation to the location of the proposed new northern and eastern boundary treatments shall be agreed on site with the planning authority, in the presence of the site ecologist.</p> <p>Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the relevant 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.</p> <p>Reason: In the interests of proper planning and sustainable development and to safeguard the amenities of the area.</p>
3.	<p>Mitigation and monitoring measures outlined in the plans and particulars, including the Ecological Impact Assessment submitted with this application, shall be carried out in full, except where otherwise required by conditions attached to this permission.</p> <p>Reason: In the interest of protecting the environment and in the interest of public health.</p>
4.	<p>Prior to the commencement of any development works, the developer shall submit and agree in writing with the planning authority a comprehensive Invasive Species Management Plan, which shall include an assessment of measures taken to date on the site in relation to invasive species and detailed measures for the elimination of alien invasive plant species from the site.</p> <p>Reason: To ensure the eradication from the development site of invasive plant species and to protect biodiversity.</p>

5.	<p>A suitably qualified ecologist shall be retained by the developer to oversee the site works and construction of the proposed development and the implementation of mitigation and all monitoring measures relating to ecology, in particular relating to the northern and eastern treeline and hedgerow boundaries and the linear open space along the river Liffey. The ecologist shall be present during site construction works. Ecological monitoring reports detailing all monitoring of the site works shall be prepared by the appointed ecologist to be kept on file as part of the public record.</p> <p>Reason: In the interest of nature conservation and the protection of the environment.</p>
6.	<p>A revised landscaping scheme shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. This scheme shall include the following:</p> <ul style="list-style-type: none"> (a) Details of a lighting scheme and pathway network, located entirely outside the 10m riparian corridor of the river Liffey, and which shall be designed in accordance with guidance contained in Institution of Lighting Professionals (ILP) (2018), Guidance Note 08/18: Bats and artificial lighting in the UK, and signed off on by a bat specialist before submission to the planning authority for its written agreement. (b) Details in relation to layout and design of play facilities and equipment in the linear park north of the river Liffey. (c) Details in relation to public furniture/benches; (d) All planting shall be adequately protected from damage until established and maintained thereafter. Any plants which die, are removed or become seriously damaged or diseased in the first 5 years of planting, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority. The

	<p>boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.</p> <p>(e) Any clearance of vegetation from the development site shall only be carried out in the period between the 1st of September and the end of February i.e., outside the main bird breeding season.</p> <p>Reason: In the interest of amenity, ecology and sustainable development, and in the interests of visual amenity.</p>
7.	<p>a) Prior to commencement of development, all trees, groups of trees, hedging and shrubs which are to be retained shall be enclosed within stout fences not less than 1.5 metres in height. This protective fencing shall enclose an area covered by the crown spread of the branches, or at minimum a radius of two metres from the trunk of the tree or the centre of the shrub, and to a distance of two metres on each side of the hedge for its full length and shall be maintained until the development has been completed.</p> <p>(b) No construction equipment, machinery or materials shall be brought onto the site for the purpose of the development until all the trees and hedgerows which are to be retained have been protected by this fencing. No work shall be carried out within the area enclosed by the fencing and, in particular, there shall be no parking of vehicles, placing of site huts, storage compounds or topsoil heaps, storage of oil, chemicals or other substances, and no lighting of fires, over the root spread of any tree to be retained.</p> <p>(c) Excavations in preparation for foundations and drainage, and all works above ground level in the immediate vicinity of tree(s) proposed to be retained, as submitted with the application, shall be carried out under the supervision of a specialist arborist, in a manner that will ensure that all major roots are protected and all branches are retained.</p> <p>(d) No trench, embankment or pipe run shall be located within three metres of any trees which are to be retained on the site, unless by</p>

	<p>prior agreement with a specialist arborist.</p> <p>Reason: To protect trees, hedgerows and planting during the construction period in the interest of visual amenity.</p>
8.	<p>Before any part of the development commences, (or, at the discretion of the Planning Authority, within such further period or periods of time as it may nominate in writing), a development programme, including inter alia a detailed comprehensive site layout, showing all proposed phases, shall be submitted to and agreed in writing with the planning authority. The linear park and associated playground shall be included as a phase 1 of the development and delivered prior to the occupation of any units.</p> <p>Reason: To ensure the timely delivery of services, for the benefit of the occupants of the proposed dwellings.</p>
9.	<p>Details of the materials, colours and textures of all the external finishes to the proposed buildings and detailed public realm finishes, including pavement finishes and bicycle stands, shall be submitted to, and agreed in writing with, the relevant planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
10.	<p>All plant and machinery shall be enclosed and soundproofed in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of residential amenity.</p>
11.	<p>Proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed</p>

	<p>scheme. The proposed name(s) 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).</p> <p>Reason: In the interest of urban legibility and to ensure the use of locally appropriate placenames for new residential areas.</p>
12.	<p>Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.</p> <p>Reason: In the interests of amenity and public safety.</p>
13.	<p>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.</p> <p>Reason: In the interests of visual and residential amenity.</p>
14.	<p>(a) Details of the bicycle parking space location, layout, access, storage arrangement for bicycles, marking demarcation, and security provisions for bicycle spaces shall be submitted for the written agreement of the planning authority prior to commencement of development.</p>

	<p>(b) Electric charging facilities shall be provided for bicycle parking and proposals shall be submitted to and agreed in writing with the planning authority prior to the occupation of the development.</p> <p>Reason: To ensure that adequate bicycle parking provision is available to serve the proposed development, and in the interest of orderly development and to provide for and future proof the development as would facilitate the use of electric bicycles.</p>
15.	<p>a)The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs, vehicular entrances and undercroft car park shall be in accordance with the detailed construction standards of the relevant 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.</p> <p>b)Prior to the occupation of the development, a Car and Cycle Parking Management Plan shall be prepared for the development and shall be submitted to and agreed in writing with the relevant planning authority. This plan shall provide for the permanent retention of the designated residential parking spaces and shall indicate how these and other spaces within the development shall be assigned, and how car park spaces shall be continually managed.</p> <p>Reason: In the interest of the proper planning and sustainable development of the area.</p>
16.	<p>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, 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 have not</p>

	<p>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.</p> <p>Reason: To provide for and/or future proof the development such as would facilitate the use of Electric Vehicles.</p>
17.	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health and surface water management</p>
18.	<p>Prior to commencement of development, the developer shall enter into water and wastewater connection agreements with Irish Water.</p> <p>Reason: In the interest of public health.</p>
19.	<p>The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:</p> <p>(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, and</p> <p>(b) employ a suitably qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.</p> <p>The assessment shall address the following issues:</p> <p>(i) the nature and location of archaeological material on the site, and</p> <p>(ii) the impact of the proposed development on such archaeological material.</p> <p>A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the</p>

	<p>developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.</p> <p>In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.</p>
20.	<p>Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company or such other security as may be accepted in writing by the planning authority, to secure the protection of the trees and hedgerows on site to be retained and to make good any damage caused during the construction period, coupled with an agreement empowering the planning authority to apply such security, or part thereof, to the satisfactory protection of any trees and hedgerows on the site or the replacement of any such trees and hedgerows which die, are removed or become seriously damaged or diseased within a period of three years from the substantial completion of the development with others of similar size and species. 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.</p> <p>Reason: To secure the protection of the trees on the site.</p>
21.	<p>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 shall be submitted to, and agreed in writing with, the planning authority not later than six months from the date of commencement of the development. Thereafter, the waste</p>

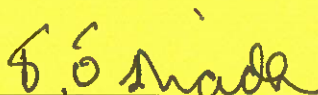
	<p>shall be managed in accordance with the agreed plan.</p> <p>Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.</p>
22.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted 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.</p> <p>Reason: In the interests of public safety and residential amenity</p>
23.	<p>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.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
24.	<p>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</p>

	<p>occupation of social and/or affordable housing, including cost rental housing.</p> <p>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.</p>
25.	<p>The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company, or by the local authority in the event of the development being taken in charge. Detailed proposals in this regard shall be submitted to, and agreed in writing with, the planning authority prior to occupation of the development.</p> <p>Reason: To ensure the satisfactory completion and maintenance of this development.</p>
26.	<p>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.</p>

	<p>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.</p>
27.	<p>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 reinstatement of public roads which may be damaged by the transport of materials to the site, to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, 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 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.</p> <p>Reason: To ensure the satisfactory completion of the development.</p>
28.	<p>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.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in</p>

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

Board Member


Terry Ó Niadh

Date: 17/08/2022

