

**An
Bord
Pleanála**

**Board Direction
BD-011844-23
ABP-313144-22**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 02/03/2023.

The Board decided to grant permission generally in accordance with the Inspector's recommendation, for the following reasons and considerations, and subject to the following conditions.

Reasons and Considerations

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

- (a) the location of the site in the established settlement area for Lusk in an area zoned for residential (Objective RA – Residential Area, where residential (and childcare) is permitted in principle.);
- (b) the policies and objectives of the Fingal Development Plan 2017-2023;
- (c) The Rebuilding Ireland Action Plan for Housing and Homelessness 2016;
- (d) the provisions of Housing for All, A new Housing Plan for Ireland issued by the Department of Housing, Local Government and Heritage, September 2021;
- (e) 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;
- (f) Urban Development and Building Heights Guidelines for Planning Authorities, prepared by the Department of Housing, Planning and Local Government in December 2018;

- (g) The Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government 2020;
- (h) 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;
- (i) The nature, scale and design of the proposed development and the accessibility of the site to surrounding facilities and feasibility of connection to water services infrastructure;
- (j) The pattern of existing and permitted development in the area;
- (k) The planning history of the area;
- (l) The submissions and observations received;
- (m) The Chief Executive Report from the Planning Authority; and
- (n) 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 European Sites, taking into account the nature and scale of the proposed development on serviced lands, the nature of the receiving environment, 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 an 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.

Environmental Impact Assessment Screening

The Board completed an environmental impact assessment screening of the proposed development and considered that the Environment Report submitted by the applicant, identifies and describes adequately the direct, indirect, secondary, and cumulative effects of the proposed development on the environment.

Having regard to: -

(a) the nature and scale of the proposed development, which is below the threshold in respect of Class 10(iv) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended.

(b) the location of the site on lands zoned under the Fingal County Development Plan 2017-2023 as residential.

(c) The pattern of development and planning approvals in surrounding area.

(d) The availability of mains water and wastewater services to serve the proposed development.

(e) 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).

(f) The guidance set out in the "Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development", issued by the Department of the Environment, Heritage and Local Government (2003).

(g) The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended); and

(h) The features and measures proposed by the applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Ecological Impact Assessment, Construction and Demolition Waste Management Plan and Outline Construction Management Plan.

The Board concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment. The Board decided, therefore, that an environmental impact assessment report for the proposed development was not necessary in this case.

Conclusions on Proper Planning and Sustainable Development

Having regard to the zoning objective for the site as set out in the Fingal County Development Plan 2017-2023, the pattern of existing and approved development in the immediate vicinity of the site, the Appropriate Assessment Screening Report submitted with the application, the location in the existing settlement area of Lusk and within a reasonable walking distance to the town centre and public transport links, 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 in the vicinity. The proposed development would be consistent with national and regional policy, would be in accordance with the relevant provisions of the Fingal County Development Plan 2017-2023 and would not materially contravene the Plan, and would be acceptable in terms of design, scale, height, mix and quantum of development, and would be acceptable 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. The proposed development shall be amended as follows:
 - (a) Revise apartment block E to a maximum four storey height, with the removal of the third floor to preserve the recess from the main elevations at the top storey level.
 - (b) Omit apartment block C.
 - (c) Where residential property boundaries directly adjoin public open space (including along the south-eastern boundary adjacent to the GAA pitch) a wall shall be incorporated instead of a fence.

As a result of these amendments, the total number of units in the scheme is reduced to 291.

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 interests of visual and residential amenity

3. The mitigation measures contained in the Ecological Impact Assessment (EclA) which was submitted with the application shall be implemented in full. Clearance of vegetation from the development site shall only be carried out between September and February outside main bird breeding season.

Reason: In the interest of clarity and proper planning and sustainable development of the area and to ensure ecological best practice.

4. The development shall be carried out on a phased basis, in accordance with a phasing scheme submitted with the planning application, (unless otherwise agreed in writing with the planning authority/An Bord Pleanála prior to commencement of any development.)

Reason: To ensure the timely provision of services, for the benefit of the occupants of the proposed dwellings.

5. Drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. Rainwater butts shall be installed to each house. Prior to

commencement of development the developer shall submit to the Planning Authority for written agreement a Stage 2 - Detailed Design Stage Storm Water Audit. Upon Completion of the development, a Stage 3 Completion Stormwater Audit to demonstrate Sustainable Urban Drainage System measures have been installed, and are working as designed and that there has been no misconnections or damage to storm water drainage infrastructure during construction, shall be submitted to the planning authority for written agreement.

Reason: In the interest of public health and surface water management.

6. Prior to commencement of development the developer shall enter into water and/or waste water connection agreement(s) with Irish Water/.

Reason: In the interest of public health.

7. The site shall be landscaped in accordance with the detailed comprehensive scheme of landscaping (including specification of tree planting, playspace and boundary treatments throughout the site, as well as the incorporation of a biodiversity pond to serve amphibians), to be submitted and agreed in writing with the planning authority prior to commencement of development. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development [or until the development is taken in charge by the local authority, whichever is the sooner], shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority. A piece of public art or sculpture or architectural feature should also be incorporated, the location of which shall be agreed with the Planning Authority in writing.

Reason: In the interest of residential and visual amenity.

8. (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.

(b) No construction equipment, machinery or materials shall be brought onto the site for the purpose of the development until all the trees which are to be retained have been protected by this fencing. No work is 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.

(c) Excavations in preparation for foundations and drainage, and all works above ground level in the immediate vicinity of trees and hedges to be retained, as submitted with the application or subsequently agreed with the Planning Authority in accordance with conditions under this consent, 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.

(d) No trench, embankment or pipe run shall be located within three metres of any trees or hedging which are to be retained on the site.

Reason: To protect trees and planting during the construction period in the interest of visual amenity.

9. 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 hedges/trees on site 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 hedges/trees on the site or the replacement of any such hedges/trees 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.

Reason: To secure the protection of the hedges/trees on the site.

10. The cycleway and footpath along the frontage of the site on Minister's Road shall be provided prior to occupation of the development. Details of such provision, including construction and demarcation, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of sustainable transportation.

11. The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs, access road and the underground car park (including access ramp with segregated provision for cyclists) shall be in accordance with the detailed construction standards of the planning authority for such works and design standards outlined in DMURS. Details shall be submitted to, and agreed in writing with, the planning authority prior to the 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 amenity and of traffic and pedestrian safety.

12. A minimum of 10% of all communal car parking spaces 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.

13. 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. All

existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

14. 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.

Reason: To ensure the satisfactory completion and maintenance of this development.

15. 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:

- (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
- (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the 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.

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 area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

16. A Hedgerow Management Plan for the development site to set out measures to maintain the biodiversity value of retained hedgerows, including their usage by yellowhammers, shall be submitted to the planning authority for its written agreement prior to the commencement of development on the site, and shall be implemented in full.

Reason: To maintain the biodiversity value of retained hedgerows and conserve bird species.

17. Comprehensive details of the proposed public lighting system to serve the development shall be submitted to and agreed in writing with the planning authority, prior to commencement of development/installation of the lighting. The proposed lighting should be signed off by a bat specialist prior to submission to the planning authority. The agreed lighting system shall be fully implemented and operational, before the proposed development is made available for occupation.

Reason: In the interest of public safety and visual amenity.

18. Bat roosts/boxes shall be incorporated into the site and the recommendation of the EclA report in relation to bats shall be carried out on the site to the written satisfaction of the planning authority and in accordance with the details submitted to An Bord Pleanála with this application unless otherwise agreed in writing with the planning authority.

Reason: To ensure the protection of the natural heritage on the site.

19. Details of the materials, colours and textures of all the external finishes to the proposed dwellings/buildings shall be agreed in writing with, the planning authority/An Bord Pleanála prior to commencement of development. In default of agreement the matters in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of visual amenity.

20. A plan containing details for the management of waste within the development, including the provision of facilities for the storage, separation and collection of waste, and, in particular, recyclable materials and for the ongoing operation of these facilities for each apartment and non-residential unit 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 shall be managed in accordance with the agreed plan.

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

21. The construction of the development shall be managed in accordance with a Construction and Environmental 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) Provision of parking for existing properties at [specify locations] during the construction period;
- j) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;

- k) 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.
- l) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- m) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.
- n) 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.

22. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between the hours of 0800 to 1400 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. The proportion of residential units to be made available for occupation before completion and operation of the childcare facility, shall be agreed in writing with the Planning Authority, prior to commencement of the development.

Reason: To ensure that childcare facilities are provided in association with residential units, in the interest of residential amenity.

24. Prior to any additional development taking place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, details to be submitted to the Planning Authority for approval in writing.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

25. 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

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).

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

26. All of the permitted house or duplex units in the development, when completed, shall be first occupied as a place of residence by individual purchasers who are not a corporate entity and or by persons who are eligible for the occupation of social or affordable housing, including cost rental housing. Prior to commencement of development, the applicant or any person with an interest in the land shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000, as amended, to this effect. Such an agreement must specify the number and location of each house or duplex unit.

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.

27. 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.

28. 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.

29. 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.

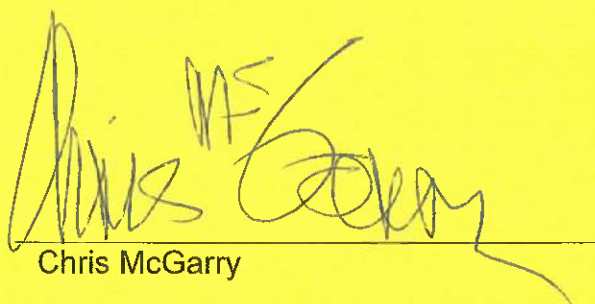
Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Note:

(1) the Board noted condition 2 (c) as recommended by the Inspector. However having considered the totality of the documentation on file, including the layout drawings and the submissions of the Planning Authority, the Board noted that the overall site is zoned for development purposes and determined that the nature of the permitted layout along Minister Road was appropriate in terms of urban design and form and that little opportunity would arise in practice to reduce hedgerow removal at this part of the site due to the specific elements of design including new footpath and cycleway, main site entrance and individual house entrances. Furthermore, the Board was satisfied that the removal of a number of hedgerow areas was justified having regard to the land zoning objective for the site, and to the relevant conditions attached to the permission relating to the provision of additional landscaping and planting, and to the preparation and implementation of a hedgerow management plan for retained hedgerows on the site.

(2) The Board noted condition 2 (d) as recommended by the Inspector. However having considered the totality of the documentation on file, including the layout drawings showing ramped surfacing on the street alongside the creche, and the submissions of the Planning Authority, the Board determined that the change in the parking provision at this part of the site was not warranted.

Board Member



Chris McGarry

Date: 03/03/2023

