

An
Bord
Pleanála

Board Direction
BD-011092-22
ABP-313208-22

The submissions on this file and the Inspector's report were considered at a Board meeting held on 10/08/2022.

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.

1.0 Reasons and Considerations

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

- (a) the location of the site in the settlement boundary area of Newtownmountkennedy on a site zoned for residential in the Newtownmountkennedy Local Area Plan extended to 2018;
- (b) the policies and objectives of the Wicklow County Development Plan 2016-2022 and the Newtownmountkennedy Local Area Plan extended to 2018;
- (c) The Rebuilding Ireland Action Plan for Housing and Homelessness 2016 and Housing for All – A New Housing Plan for Ireland;
- (d) 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;
- (e) Urban Development and Building Heights Guidelines for Planning Authorities, prepared by the Department of Housing, Planning and Local Government in December 2018;

- (f) The Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government 2020;
- (g) 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;
- (h) The Architectural Heritage Guidelines for Planning Authorities and Framework and Principles for the Protection of the Archaeological Heritage Department of Arts, Heritage, Gaeltacht and the Islands 1999;
- (i) The nature, scale and design of the proposed development and the availability in the area of infrastructure;
- (j) The pattern of existing development in the area;
- (k) The planning history of the site and surrounding area;
- (l) The submissions and observations received;
- (m) The Chief Executive Report from the Planning Authority recommending that the application be refused; and
- (n) The report of the inspector.

The Board considered that, subject to compliance with the conditions set out below, the proposed development would enhance the protected structure on the site, would not seriously injure the residential or visual amenities of the area or of property in the vicinity and would be acceptable in terms of pedestrian and traffic safety and convenience. 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 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 in the Newtownmountkennedy Local Area Plan 2008-2014 (extended to 2018) as 'R1' 'Proposed Residential' with the objective 'to protect, provide and improve residential amenities' where residential with ancillary childcare facility is in conformity with the land uses.

(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, via extension of the network.

(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, Outline Construction Management Plan, and Outline Construction Waste and Environmental 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 Newtownmountkennedy Local Area Plan extended to 2018, the pattern of existing and approved development in the immediate vicinity of the site, the AA Screening Report submitted with the application and subsequent Appropriate Assessment Screening in the Inspectors Report, the location in the existing settlement area for Newtownmountkennedy and a reasonable walking distance to the town centre and public transport links, it is considered that, subject to complying 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.

The Board considered that, while a grant of permission for the proposed Strategic Housing Development would not materially contravene a zoning objective of the

statutory plans for the area, a grant of permission could materially contravene the Newtownmountkennedy Local Area Plan extended to 2018 in relation to density (proposed at 32.5 uph and exceeding 25 uph set out in the LAP), quantum of development (exceeding 100 houses as described in the LAP) and phasing (in relation to the provision of the distributor road and completion of public park works in phase 1, which is to be substantially completed prior to phase 2 development of which the subject site is apart).

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 County Development and Local Area Plans would be justified for the following reasons and consideration.

In relation to section 37(2)(b) (i) of the Planning and Development Act 2000 (as amended):

The proposed density, quantum of development and phasing is justified in light of the strategic nature of the site for the delivery of housing in Newtownmountkennedy, in light of the characteristics of the site and the context of national planning policy documents and guidelines which promote compact growth. Including Rebuilding Ireland, An Action Plan for Housing and Homelessness and Project Ireland 2040 – National Planning Framework and Equal Housing for All.

In relation to section 37(2)(b) (ii) of the Planning and Development Act 2000 (as amended):

In relation to density, the Newtownmountkennedy Local Area Plan (LAP) contains conflicting development principles, with objective HD5 'Density' of the Wicklow County Development Plan 2016-2022 which states that residential development should aim for the highest density indicated for the lands in the Development and Design Standards appended to the Plan.

In relation to the quantum of development proposed, conflicting policies / objectives for the site as part of the AA1 lands are described in the LAP, specifically in relation to a restriction on estate size to 100 houses, compared to the Core Strategy and

objective HD5 'Density' of the Wicklow County Development Plan 2016-2022 which support population growth for the area at a scale proposed in this application, and without any restriction on estate size.

In relation to section 37(2)(b) (iii) of the Planning and Development Act 2000 (as amended):

In relation to the density, quantum of development and phasing proposed, permission for the development should be granted having regard to Section 28 guidelines, with specific regard to the conformity of the proposed development density with the standards set down for 'edge of centre sites' in the Sustainable Residential Development Guidelines (Section 6.11) and within the range of 20-35 dwellings per hectare. The subject site also demonstrates the characteristics of a Peripheral and/or Less Accessible Urban Location under the Apartment Guidelines, where densities of less than 45 uph are considered to be acceptable, being situated a reasonable walking distance to the centre of Newtownmountkenedy and bus stops. As well as conformity with design principles as described in the development management criteria under section 3.2 of the Urban Development and Building Heights Guidelines, and SPPRs set out in the Design Standards for New Apartments Guidelines. National planning policy and guidelines also promote increased housing delivery on appropriate sites, including Rebuilding Ireland, An Action Plan for Housing and Homelessness and Project Ireland 2040 – National Planning Framework and specifically NPO 1b and NPO 3a.

2.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development, or as otherwise stipulated by conditions hereunder, and the development shall be carried out and completed in accordance with the agreed

particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. Details of the proposed development to be submitted as follows:

- (a) Final design of the Fishers Junction upgrade and link road from the development to this junction;
- (b) The incorporation of required measures following a Stage 2 and 3 Road Safety Audit;
- (c) Complete specification of the proposed community use at the community facility,
- (d) A Final Landscape Masterplan to reflect the submitted details and include wildflower planting.

Complete specification (including revised drawings if necessary) showing the detailing of these elements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of residential amenity, traffic and pedestrian safety.

3. The mitigation measures contained in the Ecological Impact Assessment (EclA) which was submitted with the application shall be implemented in full (including in relation to invasive species, phasing/construction/demolition timing and landscaping/vegetation clearance timing).

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

4. a) 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 prior to commencement of any development.)

- b) The phasing scheme shall provide for the provision of the Link/Distributor Road to be completed as far as Fishers Junction and operational, prior to the occupation of any dwelling.

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

5. 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, 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.

6. 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.

7. 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. 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.

8. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through 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 house.

Reason: In the interests of amenity and public safety.

9. Drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

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 that 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.

10. The site shall be landscaped in accordance with the detailed comprehensive scheme of landscaping (including boundary treatments), 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

11. The areas of public open space shown on the lodged plans shall be reserved for such use and shall be levelled, contoured, soiled, seeded, and landscaped in accordance with the landscape scheme submitted to An Bord Pleanála with this application, unless otherwise agreed in writing with the planning authority. This work shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open space by the developer until taken in charge by the local authority or management company. 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.

Reason: In order to ensure the satisfactory development of the public open space areas, and their continued use for this purpose.

12. 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. 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.

13. 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 (but not limited to):

- 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 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 to be initiated at the earliest stage of the project on site.
- 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.
- o) Complete specification of cut and fill works to the site.
- p) Construction Traffic Management Plan.
- q) A Ecological Clerk of Works to oversee all environmental/biodiversity mitigation measures set out in the CEMP, including supervision of structure (including stone walls) and vegetation clearance from the site, with pre-clearance checks for bat roosts.

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

14. 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.

15. 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.

16. 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.

17. The developer shall enter into water and/or wastewater connection agreement(s) with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

18. Details of the materials, colours and textures of all the external finishes to the proposed dwellings/buildings shall be as submitted with the application, unless otherwise agreed in writing with, the planning authority/An Bord Pleanála prior to commencement of development. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of visual amenity.

19. 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. 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, segregated by use and how the car park shall be continually managed.

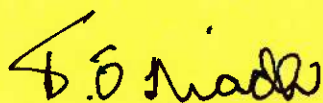
Reason: To ensure that adequate parking facilities are permanently available to serve the proposed residential units (and the remaining development).

20. A minimum of 10% of all car parking spaces should be provided with 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 has not been submitted with the application, in accordance with the above noted requirements, the development shall submit 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.

Plus: Model ABP conditions on Management Company for Duplexes/Apartments and Electric Bicycles.

Board Member



Terry Ó Niadh

Date: 10/08/2022

DECISION QUASHED