



**An
Bord
Pleanála**

**Board Direction
BD-016064-24
ABP-318736-23**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 28/03/2024.

The Board decided by a majority of two to one to grant permission, for the following reasons and considerations, and subject to the conditions set out below.

Reasons and Considerations

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

- (a) the policies and objectives of the Westmeath County Development Plan 2021-2027;
- (b) the location of the site in the Regional Growth Centre of Athlone on lands zoned for residential use as well as for open space under the Athlone Town Development Plan 2014-2020 which remains applicable;
- (c) the nature, scale and design of the proposed development and the availability in the area of infrastructure;
- (d) the pattern of existing and permitted development in the area;
- (e) the provisions of the Urban Development and Building Heights Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in December 2018;

- (f) the provisions of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities issued by the Department of Housing, Local Government and Heritage in December 2022;
- (g) the provisions of Sustainable Residential Development and Compact Settlement Guidelines for Planning Authorities issued by the Department of Housing, Local Government and Heritage in January 2024;
- (h) the submissions and observations received; and
- (i) the report of the Planning Inspector.

Appropriate Assessment - Stage 1 Screening

The Board noted that the proposed development is not directly connected with or necessary to the management of a European Site.

In completing the screening for Appropriate Assessment, the Board had regard to the Appropriate Assessment Screening Report provided by the applicant. The Board accepted and adopted the screening assessment carried out in the Inspector's report in respect of the identification of the European sites which could potentially be affected, and the identification and assessment of the likely significant effects of the proposed development with the exception of the following:

- the potential impacts for surface water run-off containing pollutants such as hydrocarbons and silt to enter the Garrynafela Stream and the downstream European sites within Lough Ree, namely Lough Ree Special Area of Conservation (000440) and Lough Ree Special Protection Area (004064).

The Board identified that, in the absence of mitigation measures, the main potential significant impact(s) arising from the proposed development would be on the water quality of Lough Ree Special Area of Conservation (000440) and Lough Ree Special Protection Area (004064). It is a conservation objective of the Lough Ree Special Area of Conservation (000440) to restore the favourable conservation condition of Natural eutrophic lakes with Magnopotamion or

Hydrocharition and maintain the favourable conservation condition of Otter. It is a conservation objective to maintain or restore the favourable conservation condition of the bird species listed as special conservation interests in Lough Ree Special Protection Area (004064) and maintain or restore the favourable conservation condition of the wetland habitat as a resource for the regularly-occurring migratory waterbirds that utilise Lough Ree Special Protection Area.

Water quality in the Garrynafela Stream and downstream to Lough Ree is considered to be significant to this objective. Having regard to the indirect hydraulic connectivity between the site and Lough Ree, the Board concluded that the proposed development would be likely to have a significant effect on the objective to:

- restore the favourable conservation condition of the Annex I habitat Natural eutrophic lakes with Magnopotamion or Hydrocharition, and maintain the favourable conservation condition of the Annex II species Otter of Lough Ree Special Area of Conservation; and
- maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests in Lough Ree Special Protection Area and maintain or restore the favourable conservation condition of the wetland habitat as a resource for the regularly-occurring migratory waterbirds that utilise Lough Ree Special Protection Area.

The Board was satisfied that the proposed development would be likely to have a significant effect on Lough Ree Special Area of Conservation (000440) and Lough Ree Special Protection Area (004064), in view of the site's conservation objectives.

Appropriate Assessment - Stage 2

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment of the implications of the proposed development for Lough Ree Special Area of Conservation (000440) and Lough Ree Special Protection Area (004064), in view of the site's 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 sites conservation objectives using the best available scientific knowledge in the field.

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

- i. Site-specific conservation objectives for Lough Ree Special Area of Conservation (000440) and Lough Ree Special Protection Area (004064);
- ii. Current conservation status, threats and pressures of the qualifying interest features Natural eutrophic lakes with Magnopotamion or Hydrocharition and Otter as well as the bird species listed as special conservation interests in Lough Ree, and the wetland habitat as a resource for the regularly-occurring migratory waterbirds that utilise Lough Ree;
- iii. likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects, specifically the potential impacts for surface water run-off containing pollutants such as hydrocarbons and silt to enter the Garrynafela Stream and the downstream European sites within Lough Ree,
- iv. view of the Development Application Unit, and
- v. the avoidance and mitigation measures which are included as part of the current proposal.

Having regard to the

- i. scientific information set out in the Natura Impact Statement in respect of the qualifying interests of Lough Ree Special Area of Conservation (000440) and the special conservation interests of Lough Ree Special Protection Area (004064),
- ii. hydrological connection that exists between the proposed development site and Lough Ree via the Garrynafela Stream
- iii. potential, during the construction stage, for sediment, silt and pollutants to reach the Garrynafela Stream and ultimately flow into Lough Ree leading to a reduction in water quality negatively impacting the aforementioned European Sites,

- iv. possibility that a reduction in water quality could negatively impact the restoration of favourable conservation condition of Natural eutrophic lakes with Magnopotamion or Hydrocharition, and maintenance of the favourable conservation condition of Otter, bird species listed as special conservation interests and wetland habitat as a resource for the regularly-occurring migratory waterbirds in Lough Ree, as represented by their attributes and targets,
- v. the assessment that, in the absence of mitigation measures, contaminated surface water run-off/discharges from the proposed development may have the potential to negatively affect the qualifying interests of Lough Ree Special Area of Conservation (000440) and the special conservation interests of Lough Ree Special Protection Area (004064),
- vi. other developments within the vicinity set out in the Natura Impact Statement,
- vii. avoidance and mitigation measures proposed together with monitoring during the construction phase, and
- viii. effectiveness, therefore, of the mitigation measures proposed,

the Board concluded that the proposed development would not adversely affect the restoration of the favourable conservation condition of Natural eutrophic lakes with Magnopotamion or Hydrocharition, and the maintenance of the favourable conservation condition of Otter, bird species listed as special conservation interests and wetland habitat as a resource for the regularly-occurring migratory waterbirds in Lough Ree as once the avoidance and mitigation measures are implemented as proposed, no adverse impacts on Lough Ree Special Area of Conservation (000440) and the special conservation interests of Lough Ree Special Protection Area (004064) or their qualifying interests/special conservation interests are anticipated as a result of the proposed development, individually or in combination with other plans and projects.

In the overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of European sites in view of the site's conservation objectives and there is no reasonable scientific doubt as to the absence of such effects.

Environmental Impact Assessment

The Board completed an Environmental Impact Assessment of the proposed development taking account of:

- (a) the nature, scale, location, and extent of the proposed development,
- (b) the Environmental Impact Assessment Report and associated documentation submitted in support of the application,
- (c) the submissions received from the applicant, planning authority, prescribed bodies, and observers in the course of the application, and,
- (d) the Planning Inspector's report.

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the developer, 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 application.

Reasoned Conclusion on the Significant Effects

The Board considered that the main significant direct and indirect effects of the proposed development on the environment are as follows:

- Significant direct positive effects with regard to population and material assets due to the increase in the housing stock that it would make available in the urban area.
- A significant direct effect on land by the change in the use and appearance of a relatively large area of greenfield site to residential use. Given the location of the site on the periphery of the built-up area and the public need for housing in the region, this effect would not have a significant negative impact on the landscape character and surrounding environment.

- Potential significant effects on soil during construction, which will be mitigated by the re-use of material on the site and the removal of potentially hazardous material from the site, and the implementation of measures to control emissions of sediment to water and dust to air during construction.
- Potential effects arising from noise and vibration during construction which will be mitigated by appropriate management measures.
- Potential effects on air during construction which will be mitigated by a dust management plan including a monitoring programme.
- Biodiversity impacts mitigated by additional planting/landscaping and appropriate work practices.
- Potential indirect effects on water which will be mitigated during the occupation of the development by the proposed system for surface water management and attenuation with respect to stormwater runoff and the drainage of foul effluent to the public foul sewerage system, and which will be mitigated during construction by appropriate management measures to control the emissions of sediment to water.
- Traffic and Transportation impacts mitigated by the management of construction traffic by way of Construction and Environmental Management Plans.
- Archaeology and Architectural Heritage would be mitigated by landscaping and design and given the result of pre-construction testing and the location of the site adjacent to an urban area no significant adverse direct, indirect or cumulative effects are likely to arise.

The Board completed an Environmental Impact Assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures proposed as set out in the Environmental Impact Assessment Report, and subject to compliance with the conditions set out below, the effects of the proposed development on the environment, by itself and in combination with other plans and projects in the vicinity, would be acceptable. Overall, the Board is satisfied that the proposed development would not have any unacceptable effects on the environment.

Proper Planning and Sustainable Development

The Board considered that, having regard to the zoning of the site and the other provisions of the Westmeath County Development Plan 2021-2027 and to the established pattern of development in the area, the proposed development would, subject to compliance with the conditions set out below, provide housing of an acceptable scale and form at a suitable location. The proposed development would provide its residents with an adequate level of residential amenity and would not seriously injure the residential amenities of property in the vicinity. It is considered that the proposed development would make a positive contribution to the character and visual amenities of the area, would not seriously injure the natural heritage or ecology of the area, would not give rise to traffic hazard, would not be an undue risk of flooding and would not give rise to an undue risk of flooding on other land. The proposed development would be adequately served by wastewater and water supply networks.

The Board considered that the proposed development would comply with the provisions of the Westmeath County Development Plan 2021-2027 and would be in keeping with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board noted the Inspector's reasons for refusal relating to core strategy compliance, orderly expansion, compact growth and sequential development. However, the Board had regard to the location of the site within the Regional Growth Centre of Athlone, the zoning objective of the site inter alia to provide for residential development and associated services, the ongoing residential development and built footprint expansion in this locality to which the proposed development would contribute further whilst avoiding a 'leapfrogging' scenario, and available public transport services. While the Board acknowledged that compact development closest to the urban core is a priority, on balance the Board was satisfied the proposed development represents further sustainable development of the built footprint within a Regional Growth Centre into which it can be fully integrated in an orderly manner thereby delivering a sustainable urban extension. In concurring with the planning authority, and for the reasons set out above, the Board did not agree

the proposed development did not comply with the Development Plan core strategy or the guidelines for compact growth and sustainable development.

The Board also noted the Inspector's reason for refusal regarding the absence of a Settlement Capacity Audit for Athlone and the potential for prejudicing core strategy compliance and future settlement. However, the Board had regard to the fact that the current Athlone Town Development Plan and the Westmeath County Development Plan, which pre-dated the publication Development Plans - Guidelines for Planning Authorities (2023), was evaluated and assessed by the Office of the Planning Regulator to ensure inter alia consistency with the National Planning Framework, relevant guidelines issued under section 28 and policy directives issued under Section 29. The Board was therefore satisfied the provisions of the current Athlone Town Development Plan and the Westmeath County Development Plan enable the consideration of residential development and that a grant of permission to a proposed development in that regard would not potentially prejudice future settlement for Athlone and does not in itself warrant a reason for refusal.

In the appropriate assessment screening undertaken by the Inspector, the Board noted an assumption that a significant pollution event would be imperceptible to nearby European Sites due to applicable separation distances and the dilution that would occur as contaminated surface water moved downstream and did not consider this was sufficiently reasoned. Similarly, it was not clear from the information available to the Board that all the mitigation measures proposed by the applicant comprised best practice/control measures rather than specifically to protect the qualifying interests of the nearby European Sites. For these reasons, the Board undertook its own screening and appropriate assessment.

In accordance with Section 41 of the Planning and Development Act, as amended, the Board having regard to the nature and extent of the proposed development and the absence of other material considerations concurred with the planning authority in granting a permission for five years rather than ten years.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further information submitted on the 28th day of September, 2023, 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, and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The period during which the development hereby permitted may be carried out shall be five years from the date of this order.

Reason: In the interests of clarity.

3. Prior to commencement of development, revised plans shall be submitted to and approved in writing by the Planning Authority which shall include:
 - (a) All upper floor side elevation windows of proposed residential dwellings within this development, excluding the proposed apartment blocks, shall be obscurely glazed and thereafter maintained as such, unless otherwise agreed in writing with the Planning Authority.
 - (b) All windows serving stairwells, wardrobes, and WC facilities within this development shall be obscurely glazed and thereafter maintained as such, unless otherwise agreed in writing with the Planning Authority.

Reason: In the interests of residential amenity.

4. All mitigation measures set out in the submitted Natura Impact Statement Report and the Ecological Impact Assessment Report shall be implemented in full in the carrying out and occupation of the permitted development.

Reason: To protect residential amenity and natural heritage.

5. The development shall be carried out on a phased basis, in accordance with a phasing scheme which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any development.

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

6. The materials, colours and textures of all the external finishes to the proposed development shall be as submitted with the application, unless otherwise agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

7. The permitted development shall be landscaped and boundary treatments provided in accordance with the detailed comprehensive scheme of landscaping which accompanied the application, unless otherwise agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of residential and visual 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 the scheme submitted with the application to the satisfaction of the planning authority.

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 road network serving the proposed development, including the footpaths, kerbs, cycleways, driveways and parking areas shall be in accordance with the requirements of the Design Manual for Urban Roads and Streets (DMURS) and the detailed construction standards of the planning authority for such works.

Reason: In the interest of amenity and of traffic and pedestrian safety.

12. 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, 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 requirements, such proposals shall be submitted to 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 and in the interest of sustainable transport.

13. 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.

14. The developer shall enter into water and wastewater connection agreements with Uisce Éireann, prior to commencement of development.

Reason: In the interest of public health.

15. 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 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.

16. Prior to the commencement of development, the developer or any agent acting on its behalf, shall prepare a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) including demonstration of proposals to adhere to best

practice and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness; these details shall be placed on the file and retained as part of the public record. The RWMP must be submitted to the planning authority for written agreement prior to the commencement of development. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

Reason: In the interest of sustainable waste management.

17. The construction of the development shall be managed in accordance with a Construction 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 with measures to reflect mitigation described in the submitted draft Construction Environmental Management Plan, Ecological Impact Assessment and Tree Survey, in addition to the following:
 - (a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
 - (b) Location of access points to the site for any construction related activity;
 - (c) Location of areas for construction site offices and staff facilities;
 - (d) Details of site security fencing and hoardings;
 - (e) Details of on-site car parking facilities for site workers during the course of construction;
 - (f) 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;

- (g) Measures to obviate queuing of construction traffic on the adjoining road network;
- (h) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network and for the cleaning of the same;
- (i) 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;
- (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.

18. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 and 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. The developer shall pay a financial contribution to the planning authority as a special contribution under Section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of the (i) existing Cornamaddy Roundabout and portion of the existing link road and (ii) completion of the Cornamaddy to Coosan Link Road which benefits the proposed development. The amount of the contribution 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 for determination. The contribution shall be paid prior to commencement of development or in such phased payments as may be agreed prior to the commencement of the development, and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the terms of payment of this financial contribution shall be agreed in writing between the planning authority and the developer.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority in respect of public services, which are not covered in the Development Contribution Scheme or the Supplementary Development Contribution Scheme and which will benefit the proposed development.

Board Member Eamonn James Kelly **Date:** 12/04/2024
Eamonn James Kelly