

An
Bord
Pleanála

Board Direction
BD-019222-25
ABP-319236-24

The submissions on this file and the Inspector's report were considered at a Board meeting held on 13/03/2025.

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

Having regard to the relevant provisions of the Kilkenny City and County Development Plan 2021-2027, and the relevant provisions of the Thomastown Local Area Plan 2019, to the Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities issued by the Department of Housing, Local Government and Heritage in January 2024), to 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, and to the pattern and character of development in the area and the design and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable quantum and quality of residential development at this location, would not seriously injure the amenities of surrounding properties or detract from the character, heritage value or visual amenity of the area, would be adequately served by existing and proposed infrastructure, and would be acceptable in terms of pedestrian and traffic safety and convenience.

The Board considered that the proposed development would comply with the provisions of the Thomastown Local Area Plan 2019 and the Kilkenny City and County Development Plan 2021-2027, with the exception of a minor shortfall in the permitted number of car parking spaces to serve apartment units 27-30. However, the Board did not consider that this would materially contravene the Development Plan having regard to the discretion allowed in the application of car-parking standards under section 12.12 of the Development Plan, and concluded that the permitted number would be acceptable having regard to the application of maximum parking standards under SPPR 3 of the Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities. 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, scale and location of the proposed development, the Appropriate Assessment Screening Report submitted with the application and the Inspector's report and submissions on file. In completing the screening exercise, the Board adopted the report of the Inspector and concluded that, by itself or in combination with other development in the vicinity, the proposed development would potentially be likely to have a significant effect on the River Barrow and River Nore Special Area of Conservation (site code: 002161) and the Rive Nore Special Protection Area (site code: 004233) in view of the sites' conservation objectives, and that a Stage 2 Appropriate Assessment (and submission of a Natura impact statement) is, therefore, required.

Appropriate Assessment

The Board considered the Natura impact statement submitted to the planning authority, the inspectors report and all submissions on file. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment.

Following an Appropriate Assessment, it has been ascertained beyond reasonable scientific doubt that the proposed development, individually or in combination with

other plans or projects, would not adversely affect the integrity of the River Barrow and River Nore Special Area of Conservation (site code: 002161) and the Rive Nore Special Protection Area (site code: 004233), or any other European site, in view of the sites' Conservation Objectives. This conclusion is based on:

- (a) a full and detailed assessment of all aspects of the proposed project including proposed mitigation measures and monitoring in relation to the conservation objectives of the River Barrow and River Nore Special Area of Conservation (site code: 002161) and the Rive Nore Special Protection Area (site code: 004233),
- (b) detailed assessment of cumulative and in-combination effects with other plans and projects, and
- (c) no reasonable scientific doubt as to the absence of adverse effects on the integrity of the River Barrow and River Nore Special Area of Conservation (site code: 002161) and the Rive Nore Special Protection Area (site code: 004233).

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 plans and particulars submitted to the planning authority on the 12th day of December, 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 mitigation measures contained in the Natura Impact Statement (NIS) submitted to the planning authority on the 12th day of December, 2023 shall be implemented.

Reason: To protect the integrity of European Sites.

3. The mitigation measures of the Bat Survey report submitted on the 12th of December, 2023 shall be implemented.

Reason: In the interest of the protection of bats.

4. The proposed development shall be amended as follows:
 - (a) the apartment block containing unit numbers 27-30 shall be relocated a distance of 3 metres to the northwest and the adjoining parking area shall be redesigned, all in accordance with the suggested layout drawing as submitted to An Bord Pleanála on the 8th day of April, 2024,
 - (b) the ground floor apartment units shall be provided with private amenity space (at least seven square metres) adjoining the living room, which shall be bounded by privacy planting (at least 1.5 metres in width), and
 - (c) the south-facing boundary of the balconies serving apartment units 28 and 30 shall consist of obscured glazing.

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: To protect the residential amenities of existing and future residents.

5. Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

6. 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.

7. The internal road network serving the proposed development [including turning bays, junctions, parking areas, footpaths, and kerbs] [access road to the service area] [and the underground car park] shall comply with the detailed construction standards of the planning authority for such works and design standards outlined in Design Manual for Urban Roads and Streets (DMURS). Option to include (b) Footpaths shall be dished at road junctions in accordance with the requirements of the planning authority. Details of all locations and materials to be used shall be submitted to, and agreed in writing with the planning authority prior to the commencement of development.

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

8.
 - (a) The proposed access and associated alterations to 48 Mallfield shall be completed to the satisfaction and written agreement of the planning authority prior to the carrying out of further development on site.
 - (b) The alterations to 48 Mallfield shall include the retention of tree numbers 55 and 56. This shall be clarified through the submission of a detailed plan for the relocated side boundary of 48 demonstrating that the boundary alignment and/or materials will ensure the protection of the trees and their root systems.

Reason: In the interests of traffic and pedestrian safety, visual amenity, and natural heritage.

9. All the communal parking areas serving the residential units shall be provided with functional electric vehicle charging points, and all of the in-curtilage car parking spaces serving residential units shall be provided with electric connections to the exterior of the houses to allow for the provision of future electric vehicle charging points. Details of how it is proposed to comply with these requirements and section 12.14 of the Kilkenny City and County Development Plan 2021-2027 shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of sustainable transportation.

10. Public lighting shall be provided in accordance with a scheme which shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. The scheme shall include lighting along pedestrian routes through open spaces and shall take account of existing trees to be retained. Such lighting shall be provided prior to the making available for occupation of any residential unit.

Reason: In the interests of amenity, public safety, and nature conservation.

11. 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.

12. 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.

13. (a) Prior to the commencement of development, the developer shall enter into Connection Agreements with Uisce Éireann (Irish Water) to provide for service connections to the public water supply and wastewater collection network.
- (b) The diversion of the existing foul sewers on site shall comply with the requirements of Uisce Éireann and the mitigation measures outlined in the Natura impact statement and Construction Environmental Management Plan. A detailed method statement shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of public health, to ensure adequate water/wastewater facilities, and to protect the integrity of European Sites.

14. (a) All landscaping (hard and soft), tree/hedgerow protection and planting shall be carried out and completed in accordance with the landscaping plans, tree survey (arboricultural impact assessment) and related documentation submitted to the planning authority, as amended by the proposals submitted on the 12th day of December, 2023. All planting shall be completed within the first season following occupation of the first residential unit.
- (b) The landscaping shall be updated to include a row of semi-mature deciduous trees along the shared boundary with 19 The Meadows.
- (c) The existing stone wall in the centre of the site shall be retained and repaired/stabilised where necessary to the extent shown on the revised site layout plan submitted to the planning authority on the 12th day of December, 2023. The stone from the section of the existing wall to be removed shall be retained and reused on site.
- (d) Unless otherwise stated, boundary treatments shall be in accordance with the requirements of the planning authority.

Proposals in relation to (a) to (d) above shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of residential and visual amenity.

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 within each house plot and/or for each apartment unit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the agreed waste facilities shall be maintained and waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

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 proper planning and sustainable development.

17. 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 confirm that the location of the construction compound will be in the vicinity of houses numbers 15-18, and that it will be large enough to facilitate the eventual construction of houses numbers 15-18. It shall provide details of intended construction practice for the development, including:
- (a) Location of area(s) identified for the storage of construction refuse, site offices and staff facilities;
 - (b) Details of site security fencing and hoardings;
 - (c) Details of on-site car parking facilities for site workers during the course of construction;
 - (d) 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;
 - (e) Measures to obviate queuing of construction traffic on the adjoining road network;
 - (f) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
 - (g) 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;

- (h) Provision of parking for existing properties during the construction period;
- (i) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (j) 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;
- (k) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (l) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.
- (m) A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be available for inspection by the planning authority.

Reason: In the interests of amenities, public health and safety, and environmental protection.

18. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays, and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the amenities of property in the vicinity.

19. All areas not intended to be taken in charge by the local authority, shall be maintained by a legally-constituted management company. Details of the

management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.

Reason: To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

20. (a) The developer shall engage a suitably qualified archaeologist (licensed under the National Monuments Acts) to carry out pre-development archaeological testing in areas of proposed ground disturbance and to submit an archaeological impact assessment report for the written agreement of the planning authority, following consultation with the National Monuments Service, in advance of any site preparation works or groundworks, including site investigation works/topsoil stripping/site clearance/dredging/underwater works and/or construction works.
- (b) The report shall include an archaeological impact statement and mitigation strategy. Where archaeological material is shown to be present, avoidance, preservation in-situ, preservation by record [archaeological excavation] and/or monitoring may be required.
- (c) Any further archaeological mitigation requirements specified by the planning authority, following consultation with the National Monuments Service, shall be complied with by the developer. No site preparation and/or construction works shall be carried out on site until the archaeologist's report has been submitted to and approval to proceed is agreed in writing with the planning authority.
- (d) The planning authority and the National Monuments Service shall be furnished with a final archaeological report describing the results of any subsequent archaeological investigative works and/or monitoring following the completion of all archaeological work on site and the

completion of any necessary post-excavation work. All resulting and associated archaeological costs shall be borne by the developer.

Reason: To ensure the continued preservation [either in situ or by record] of places, caves, sites, features or other objects of archaeological interest.

21. (a) Prior to the commencement of 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 relevant residential 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.
- (b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each of the residential units for use by individual purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.
- (c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified housing units, in which case the planning authority shall confirm in writing to the applicant or any person with an interest in the land that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing 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.

22. Prior to the commencement of development, the applicant/developer shall enter into a legal agreement with Kilkenny County Council under Section 47 of the Planning and Development Act 2000, as amended, in respect of future access and pedestrian/cycle links between the proposed development site and adjoining Local Area Plan zoned lands, estate roads and/or other suitable connection points. The applicant shall set aside such areas for such purpose as may be necessary, which shall be agreed in advance when and if Kilkenny County Council decides to require and/or implement such connection links either separately or in tandem with future adjoining development, with all costs borne by the applicant/developer and/or successors.

Reason: To ensure a satisfactory standard of development and to promote smarter travel permeability/links in the urban area in the interest of proper planning and sustainable development.

23. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority [in relation to the transfer of a percentage of the land, to be agreed with the planning authority, in accordance with the requirements of section 94(4) and section 96(2) and 96(3)(a), (Part V) of the Planning and Development Act 2000, as amended, and/or the provision of housing on lands in accordance with the requirements of section 94(4) and section 96(2) and 96(3) (b), (Part V) of the Planning and Development Act 2000, as amended], unless an exemption certificate has been granted under section 97 of the Act, as amended. Where such an agreement cannot be reached between the parties, the matter in dispute (other than a matter to which section 96(7) applies) shall 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 for the area.

24. 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.

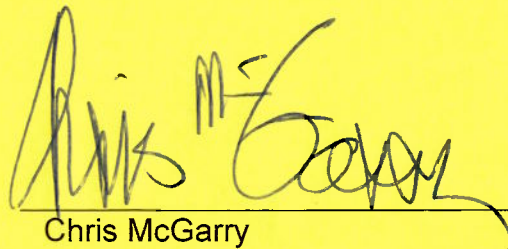
Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

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

the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

Board Member


Chris McGarry

Date: 18/03/2025