



An
Bord
Pleanála

Board Direction
BD-017054-24
ABP-319474-24

The submissions on this file and the Inspector's report were considered at a Board meeting held on 16/07/2024.

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) Policies and objectives set out in the National Planning Framework and the Regional Spatial and Economic Strategy for the Eastern and Midland Region 2019-2031.
- b) Policies and objectives set out in the Bray Municipal Local Area Plan 2018- 2024, including the location of the site on lands subject to Zoning Objective 'MU: Mixed Use' and 'Specific Local Objective 4', and the permitted in principle uses therein.
- c) Policies and objectives of the Wicklow County Development Plan 2022-2028.
- d) Housing for All, A New Housing Plan for Ireland, 2021.
- e) The Sustainable Residential Development and Compact Settlements, Guidelines for Planning Authorities, 2024.
- f) The Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2023.
- g) The Urban Development and Building Heights, Guidelines for Planning Authorities, 2018, as updated.
- h) The Design Manual for Urban Roads and Streets, 2013, as updated.

- i) The Childcare Facilities, Guidelines for Planning Authorities, 2001 as updated.
- j) The Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009 as updated.
- k) The Regulation of Commercial Institutional Investment in Housing, Guidelines for Planning Authorities, 2021, as updated.
- l) The Greater Dublin Area Transport Strategy 2022-2042,.
- m) The nature, scale, and design of the proposed development.
- n) The availability in the area of a range of social, community, and transport infrastructure.
- o) The pattern of existing and permitted development in the area.
- p) The planning history of the site and within the area.
- q) The reports of the planning authority.
- r) The submissions received by the planning authority from observers and prescribed bodies.
- s) The grounds of appeal.
- t) The response to the grounds of appeal by the applicant.
- u) The report and recommendation of the Planning Inspector including the examination, analysis and evaluation undertaken in relation to appropriate assessment and environmental impact assessment.

Appropriate Assessment Screening

The Board completed an Appropriate Assessment screening exercise (Stage 1) in relation to the potential effects of the proposed development on designated European sites, taking into account the nature and scale of the proposed development on serviced lands, the nature of the receiving environment, which comprises a built-up suburban area, the distances to the nearest European sites and the absence of any direct hydrological connections, submissions and observations on file, the information and reports submitted as part of the application and appeal, and the Planning Inspector's report. In completing the screening exercise, the Board adopted the report of the Planning Inspector and concluded that, by itself or in combination with other development, plans and projects in the vicinity, the proposed development would not be likely to have a significant effect on any European site in view of the conservation objectives of such sites, and that a Stage 2 Appropriate

Assessment and the preparation of a Natura Impact Statement would not, therefore, be required.

Environmental Impact Assessment Screening

The Board completed an Environmental Impact Assessment screening determination of the proposed development and considered that the Environmental Impact Assessment Screening Report and other documents submitted by the applicant identify and describe adequately the direct, indirect, and cumulative effects of the proposed development on the environment. The Board had regard to:

a) The nature and scale of the proposed development, which is below the thresholds in respect of Class 10(b)(i) and Class 10(b)(iv) of the Planning and Development Regulations 2001, as amended.

b) The location of the site on lands that are subject to Zoning Objective 'MU: Mixed Use' and 'Specific Local Objective 4' in the Bray Municipal Local Area Plan 2018-2024, and the results of the strategic environmental assessment of this plan undertaken in accordance with the SEA Directive (2001/42/EC).

c) The policies and objectives of the Wicklow County Development Plan 2022-2028, and the results of the strategic environmental assessment of this plan undertaken in accordance with the SEA Directive (2001/42/EC).

d) The infill, brownfield nature of the site and its location within a built-up suburban area which is well served by public services and infrastructure.

e) The planning history at the site and the existing pattern of development in the vicinity of the area.

f) The location of the site outside of any sensitive location specified in article 109(4)(a) the Planning and Development Regulations 2001, as amended and the absence of any potential impacts on such locations.

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

h) The criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as amended.

i) The available results, where relevant, of preliminary verifications or assessments of the effects on the environment carried out pursuant to European Union legislation other than the EIA Directive.

j) The features and measures proposed by the applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including those identified in the Construction and Environmental Management Plan, Resource and Waste Management Plan, Operational Waste Management Plan, Ecological Impact Assessment, Landscape and Biodiversity Design Statement, Tree Survey Report, Site Specific Flood Risk Assessment, Noise and Vibration Assessment, Traffic and Transport Assessment, and Mobility Management Plan.

The Board concluded that by reason of the nature, scale and location of the proposed development, the development would not be likely to have significant effects on the environment and that an Environmental Impact Assessment and the preparation of an Environmental Impact Assessment Report would not, therefore, be required.

Conclusion on Proper Planning and Sustainable Development

The Board considers that, subject to compliance with the conditions set out below, the proposed development would be consistent with the applicable 'MU: Mixed Use' zoning objective and 'Specific Local Objective 4' of the Bray Municipal Local Area Plan 2018-2024 and applicable policies and objectives of the Wicklow County Development Plan 2022-2028, would constitute an acceptable mix and quantum of residential development, would result in an appropriate density of residential development, would provide acceptable levels of residential amenity for future occupants, would not seriously injure the residential or visual amenities of property in the vicinity, would not cause adverse impacts on or serious pollution to biodiversity, lands, water, air, noise or waste, would be acceptable in terms of pedestrian, cyclist and traffic safety and convenience, and would be capable of being adequately served by water supply, wastewater, and surface water networks without risk of flooding. 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 and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. INSERT PLANNING AUTHORITY CONDITION 3.

3. Mitigation and monitoring measures outlined in the plans and particulars, including the Construction and Environmental Management Plan, Resource and Waste Management Plan, Operational Waste Management Plan, Ecological Impact Assessment, Landscape and Biodiversity Design Statement, Tree Survey Report, Site Specific Flood Risk Assessment, Noise and Vibration Assessment, Traffic and Transport Assessment, and Mobility Management Plan submitted with this application shall be carried out in full, except where otherwise required by conditions attached to this permission. Prior to the commencement of development, the developer shall submit a comprehensive list of mitigation and monitoring measures from the named reports and a corresponding timeline/ schedule for implementation of same to the planning authority for its written agreement.

Reason: In the interest of protecting the environment, public health, and clarity.

4. 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. 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.

5. a) Details of the materials, colours, and textures of all the external finishes to the proposed buildings and boundary treatments shall be as submitted with the application, unless otherwise agreed in writing with the planning authority prior to commencement of development.

b) Details of security shuttering, external lighting, and signage for the childcare facility shall be agreed in writing with the planning authority prior to commencement of development.

c) Details of a maintenance strategy for all external finishes within the proposed development shall be submitted for the written agreement of the planning authority.

Reason: In the interest of visual amenity.

6. a) No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas, or equipment, unless authorised by a further grant of planning permission.

b) Roof areas shall be accessed for maintenance purposes only and shall not be used for any amenity or recreational purpose.

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

7. a) Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces.

b) The design of the lighting scheme shall be approved of by a suitably qualified bat specialist. The details of the lighting scheme, including written evidence indicating approval by the bat specialist, shall be submitted to and agreed in writing with the planning authority prior to commencement of development/ installation of lighting. c) The agreed lighting system shall be fully implemented and operational before the proposed development is made available for occupation.

Reason: In the interests of amenity and public safety, and wildlife protection.

8. 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.

9. The internal road network serving the proposed development, including carriageway widths, corner radii, turning bays, junctions, set down/ drop off area, parking areas, footpaths, kerbs, pedestrian crossings, raised tables, and

cycle lanes shall be in accordance with the detailed construction standards of the planning authority for such works, and design standards outlined in the Design Manual for Urban Roads and Streets and the National Cycle Manual issued by the National Transport Authority. 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.

10. a) A minimum of 10% of all car parking spaces shall be provided with functioning electric vehicle charging stations/ points, and ducting shall be provided for all remaining car parking spaces, facilitating the installation of electric vehicle charging points/ stations at a later date. Where proposals relating to the installation of electric vehicle ducting and charging stations/ points have 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.
- b) Electric charging facilities shall be provided for motorcycle and/ or bicycle parking, and 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.

11. Prior to commencement of development and/ or occupation of the residential units, as applicable, final Road Safety Audit(s) and Quality Audit(s) shall be submitted to and agreed in writing with the planning authority.

Reason: In the interest of sustainable transportation, and traffic and pedestrian safety.

12. a) The management and maintenance of the 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 so taken in charge.
- b) The communal open spaces, hard and soft landscaping, car and cycle parking areas, access ways, refuse/ bin storage, and all areas not intended to

be taken in charge by the local authority, shall be maintained by the legally constituted management company.

c) 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: In the interests of orderly development and to provide for the satisfactory future maintenance of this development.

13. a) The areas of communal and public open space in the development shall be reserved for such use, levelled, contoured, soiled, seeded, and landscaped (hard and soft) in accordance with the Landscape and Biodiversity Design Rationale and associated landscape plans, unless otherwise agreed in writing with the planning authority.

b) Final design, finishes, methods of construction and/ or installation of footpaths, cycle paths, seating, crossing points over ditches/ watercourses/ SUDS features, and equipment in play areas shall be submitted to the planning authority for its written agreement.

c) The landscaping work shall be undertaken in accordance with the phasing requirements stipulated in Condition 2(b)-(d) and shall be completed before any of the apartments in Phase 2(a) and/ Phase 2(b), as relevant, are made available for occupation, unless otherwise agreed with the planning authority and completed.

d) A schedule of landscape maintenance shall be submitted to and agreed in writing with the planning authority prior to occupation of the development. This schedule shall cover a period of at least three years and shall include details of the arrangements for its implementation.

e) The areas of communal and public open space shall be reserved and maintained as such by the developer until taken in charge by the management company or by the local authority.

Reason: In the interest of nature conservation, residential amenity, and to ensure the satisfactory development of the open space areas and their continued use for this purpose.

14. The developer shall report immediately the discovery of any archaeological finds and/ or remains during the course of groundworks/ construction works to the National Museum of Ireland and the Department of Housing, Local Government, and Heritage to ensure the appropriate protection and treatment of any such finds and/ or remains and the developer shall be prepared to implement any mitigation measures deemed appropriate by the above heritage authorities to ensure the protection of any such finds/remains impacted by the development.

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

15. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, 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 residential amenities of property in the vicinity.

16. Prior to the commencement of development, 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) shall be prepared and submitted to the planning authority for written agreement. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness. 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 reducing waste and encouraging recycling.

17. Prior to the commencement of any works associated with the development hereby permitted, the developer shall submit a Construction Environmental Management Plan (CEMP) for the written agreement of the planning authority. The CEMP shall incorporate details for the following: collection and disposal of construction waste, surface water run-off from the site, onsite road

construction, and environmental management measures during construction including working hours, noise control, dust and vibration control and monitoring of such measures. A record of daily checks that the construction works are being undertaken in accordance with the CEMP shall be kept at the construction site office for inspection by the planning authority. The agreed CEMP shall be implemented in full in the carrying out of the development.

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

18. a) An Operational Waste Management Plan (OWMP) containing details for the management of waste within the development (apartment blocks and childcare facility), including the provision of facilities for the storage, separation, and collection of the waste and for the ongoing operation of these facilities, shall be submitted to and agreed in writing with the planning authority not later than 6 months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed OWMP. b) The OWMP shall provide for screened communal bin stores for the apartment blocks and the childcare facility, the locations, and designs of which shall be as indicated in the plans and particulars lodged within the application unless otherwise agreed in writing with the planning authority.

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

19. 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.

20. The developer shall enter into water and/ or wastewater connection agreement(s) with Uisce Eireann, prior to commencement of development.

Reason: In the interest of public health.

21. 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 sections 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.

22. (a) Unless otherwise agreed in writing with the planning authority, prior to the commencement of any residential 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 residential unit), pursuant to Section 47 of the Planning and Development Act 2000, as amended, that restricts all 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 residential unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each specified residential unit 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 authority 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 residential 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 residential 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.

23. 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 and/ or management company 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.

24. 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: The Board noted the recommendation of the Inspector to omit condition no. 5 as originally set out in the decision of the planning authority (now retained in an amended form, as condition 22 of this Order), on foot of her assessment and recommendation on the first party appeal in relation to condition no. 5. However, the Board considered the totality of the documentation on file, including the content of the First Party Appeal and references therein to the submission of the Office of the Planning Regulator (OPR) to the Wicklow County Development Plan 2022-2028, as material amendments stage. The Board noted that development plan objective CPO 6.2 which states, *'the sale of all developments of residential units, whether houses, duplexes or apartments, to commercial institutional investment bodies shall be prohibited'* was referenced in the OPR submission on the Development Plan at material amendment stage. Specifically, the OPR submission stated, *'the proposed policy objective has no statutory national or regional policy framework support, would conflict with the Regulation of Commercial Institutional Investment in Housing Guidelines (2021), and create internal inconsistencies in the development plan resulting in an unsound basis for decision making by your authority in its statutory development management function'*. Nevertheless, the Board noted and had regard to the fact that objective CPO 6.2 remained in the final adopted development plan and furthermore, that no challenge to the statutory standing of objective CPO6.2 has occurred, either by way of Judicial Review, or by Ministerial Direction subsequent to a recommendation of the OPR.

The Board also noted and had regard to Appendix 3, 'Housing Strategy' of the Wicklow County Development Plan 2022-2028, which states that a Housing Need Demand Assessment has not been carried out at this time, due to the timing of the initiation of the Development Plan review process, in advance of Circular 14/2021, but that it will be carried out in due course. In this context the Board consider it reasonable that the intent of objective CPO 6.2 is reflected in condition no. 22 of this Order, with flexibility to facilitate any amendments relevant to housing need and demand, such as tenure policy etc, as part of the HNDA which Wicklow County Council has committed to carrying out in due course. On this basis, the Board has inserted the phrase *'unless otherwise agreed in writing with the planning authority'*.

The Board also considered that the original condition no. 5 of the decision of the planning authority, did not align sufficiently with the principles set out in the 'Regulation of Commercial Institutional Investment in Housing Guidelines' published by the Department of Housing, Local Government and Heritage, in 2021 (and 2023) specifically indents (b) and (c) of same, and amendments have been inserted accordingly. In this context, it is noted that the original wording of condition no. 5 refers to first occupation, which wording reflects elements of the above-mentioned Ministerial Guidelines and in this context, it is considered reasonable that the associated elements of wording in those Guidelines should also be inserted in the final amended condition.

The Board also noted the Inspector's reference to precedent cases listed by the first party appellant. However, one case related to a different local authority. The others listed did not appear to have the issue of CPO 6.2 as a material element of the appeal case, whereas in the current appeal, it forms a specific stated argument from the first party appellant (noting that CPO 6.2 does not appear to be referenced in the commentary by the planning authority at LRD Opinion stage, within any assessment commentary of the planning authority's reports or decision on this case, nor in the wording of condition no 5).

Board Member



Date: 23/07/2024

Chris McGarry