



Planning and Development Acts 2000 to 2019

Planning Authority: Wicklow County Council

Planning Register Reference Number: 18/603

APPEAL by Brian Walsh of Kingfisher, Ashford, County Wicklow and by The Ashford Development Association Limited care of Matthew Weiss, of Ashford Community and Heritage Centre, River Run Studio, Nun's Cross, Ashford, County Wicklow against the decision made on the 9th day of November, 2018 by Wicklow County Council to grant subject to conditions a permission to Myles Kirby care of CDP Architecture of 4 The Mall, Main Street, Lucan Village, County Dublin.

Proposed Development Retention and completion of development commenced under planning register reference 08/1704. Retention is sought for nine number two-storey terraced residential units over nine number retail units in three-storey Blocks A and B, as constructed, and permission to complete same, retention for 11 number three-storey residential terraced units, as constructed, (Blocks C and D) and permission to complete same, retention of four number semi-detached three-storey four-bedroom residential units in Block E, as constructed, and permission to complete same, together with retention and permission to complete all ancillary site works and services including landscaping and boundary treatments, all in line with the submitted

documents and drawings as part of this retention and completion proposal. A Natura Impact Statement was received by An Bord Pleanála on the 24th day of July, 2019, all at Mount Usher View, Main Street, Ashford, County Wicklow, as revised by the further public notice received by An Bord Pleanála on the 14th day of November, 2019.

Decision

REFUSE permission for the above proposed development in accordance with the reasons and considerations set out below.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

It is considered, on the basis of the documentation submitted by the applicant, including Appropriate Assessment Screening and a Natura Impact Statement, that the proposed construction works involved in the subject development have the potential to have significant effects on The Murrough Wetlands Special Area of Conservation (Site Code 002249) and The Murrough Special Protection Area (Site Code 004186), in the light of the conservation objectives and qualifying interests of these two European sites, through negatively affecting water quality in these sites via groundwater, and that, in the absence of mitigation measures, as set out in the submitted Natura Impact Statement, the proposed development would adversely affect the integrity of these European sites. Since the planning application, as submitted, involves not only future development but also the retention of existing development that has already taken place, and because that existing development also involved construction works on the subject site, including substantial removal of soils and excavation into the site to the rear, the Board is not satisfied, beyond reasonable scientific doubt, that the development for which retention is sought would not have had significant effects on these European sites and, therefore, that the development for which retention is sought would have required Appropriate Assessment. In such circumstances, having regard to case law and to the provisions of section 34 (12) of the Planning and Development Act, 2000, as amended, the Board is precluded from granting planning permission for the subject development.

In deciding not to accept the Inspector's recommendation to grant permission, the Board did not agree with the Inspector's screening assessment, and accepted the documentation in this regard submitted by the applicant. The Board considered that the measures, as set out in the Appropriate Assessment Screening Report and in the Natura Impact Statement submitted by the applicant, were of a type to which the European Court of Justice referred in Case C-323/17 People over Wind v Coillte, that is, measures which are intended to avoid or reduce the impacts of the development on the European sites in question, and did not agree with the Inspector in relation to his interpretation of case law in this context. The Board, therefore, is fully satisfied that the proposed development works required to be the subject of Stage 2 Appropriate Assessment. Accordingly, as the application is expressed to be for the retention of the development that has taken place, as well as future development, and as the previous planning permission (Wicklow County Council register reference number 08/1704), under which the existing development took place, was not the subject of Appropriate Assessment, the Board is precluded from considering a grant of permission in this instance, as recommended by the Inspector.

Philip Jones

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this day of 2020.