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**Planning and Development Acts 2000 to 2019**

**Planning Authority: Kilkenny County Council**

**Planning Register Reference Number: 19/56**

**Appeal** by Brendan and Michael Dowling of 4 Ogenty, Kilkenny Road, Gowran, County Kilkenny against the decision made on the 23<sup>rd</sup> day of October, 2019 by Kilkenny County Council to grant subject to conditions a permission to Bellerin 2 Limited care of Cunnane Stratton Reynolds Limited of 3 Molesworth Place, Dublin in accordance with plans and particulars lodged with the said Council:

**Proposed Development:** (1) The construction of 40 number two-storey residential dwellings consisting of 10 number four-bed dwellings, 17 number three-bed dwellings and 13 number two-bed dwellings; (2) Provision of public open space; (3) 87 number car parking spaces and vehicular access; (4) Landscaping and boundary treatments; (5) Road widening alignment and provision of a public footpath along the western boundary of the application site; (6) Underground water storage tank and all associated site development works, all at Ogenty, Kilkenny Road, Gowran, County Kilkenny, as revised by the further public notice received by the planning authority on the 27th day of September, 2019.

## **Decision**

**GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions 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**

Having regard to the pattern of development in the area, to the provisions of the Kilkenny County Development Plan 2014-2020, and to the layout and design of the proposed development, the Board considers that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of adjoining properties, would not seriously injure the residential amenities of future occupants and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **Appropriate Assessment**

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) is the only European Site for which there is a likelihood of significant effects.

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 the European Site in view of the site's Conservation Objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment. In completing the assessment, the Board considered, in particular, the

- (i) likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- (ii) mitigation measures which are included as part of the current proposal,
- (iii) Conservation Objectives for the European Site,
- (iv) view of the Department of Culture, Heritage and the Gaeltacht.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the European Site: River Barrow and River Nore Special Area of Conservation (Site Code: 002162), having regard to the site's Conservation Objectives. In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of the European site in view of the site's Conservation Objectives.

## 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 on the 27<sup>th</sup> day of September 2019, 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 proposed development shall be amended as follows:
  - (a) The site layout plan shall be revised in accordance with the requirements of the Design Manual for Urban Roads and Streets to improve pedestrian connectivity through the site.
  - (b) Full details of the Local Road L6697 re-alignment and up-grading proposals, including a timeframe for the implementation and details of finishes and specifications, shall be provided.
  - (c) The road within the estate shall be in compliance with the Design Manual for Urban Roads and Streets and shall be no wider than 5.5 metres.

- (d) A minimum of 10% of the car parking spaces shall provide facilities for charging electric vehicles. All parking spaces shall be provided with the necessary ducting to enable provision for charging facilities for electric vehicles.
- (e) Full details of proposed lighting scheme for the site shall be provided.

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:** In the interests of clarity, traffic safety and convenience, and sustainable transport.

3. The development shall be carried out on a phased basis as follows:
  - (a) Unit numbers 26 to 42 and the entirety of the central public open space, including the children's play area adjacent to proposed unit number 65, shall be completed as part of the first phase of the development and no dwelling shall be made available for occupation until the entirety of the public open space has been completed.
  - (b) The final phase of the development, which will include unit numbers 43 to 65, shall not commence until the mitigation measures detailed in the Landfill Risk Assessment have been implemented at the former Gowran Landfill.

**Reason:** In the interest of residential amenities, to ensure the timely provision of services, for the benefit of the occupants of the proposed dwellings and in the interest of proper planning and sustainable development.

4. The developer shall facilitate the preservation, recording and protection of archaeological materials or features which exist within the site. In this regard, the developer shall notify the planning authority in writing at least four weeks in advance of the commencement of development works on the site.

The developer shall also comply with the following requirements:-

- (a) An archaeological excavation shall be carried out on the site in those areas which are identified as having been unavailable in the Stafford McLoughlin Archaeology Report submitted in support of the planning application. The test excavation shall be carried out by the archaeologist who shall be licenced under the National Monuments Acts 1930-1994, and in consultation with the National Monuments Section of the Department of Culture, Heritage and the Gaeltacht. The archaeological excavation shall be carried out prior to commencement of development or at such later date as may be agreed in writing with the planning authority;

- (b) Satisfactory arrangements for the execution (or supervision) by a suitably qualified archaeologist of all archaeological excavations, investigations and site development works, shall be agreed with the planning authority. This archaeologist shall advise on such measures as may be necessary to ensure that any damage to the remaining archaeological material, including the extensive subsurface archaeological features, including the town defences, associated with the historic town of Gowran, is avoided or minimised. In this regard, the proposed locations of foundations, etcetera shall be the subject of continuing review and full details of any revisions to the proposed location or levels of pipe caps, ground beams, service trenches or other subsurface works shall be submitted to, and agreed in writing with, the planning authority in advance of their incorporation within the development. No services/road/pathways shall cross the line of the town ditch except those agreed in advance with the Department of Culture, Heritage and the Gaeltacht;
- (c) All deposits which have been identified as of archaeological, or possible archaeological significance referred to in the assessment reports submitted under licence save for those portions of the possible town ditch being preserved in situ, shall be excavated under licence and prior to any development commencing on site;

- (d) Satisfactory arrangements for post-excavation research and the recording, removal and storage, of any archaeological remains which may be considered appropriate to remove, shall be agreed with the planning authority following consultation with the Department of Culture, Heritage and the Gaeltacht. In this regard, a comprehensive report on the completed archaeological excavation shall be prepared and submitted to the planning authority and the Department of Culture, Heritage and the Gaeltacht within a period of six months or within such extended period as may be agreed with the planning authority.

In default of agreement between the parties regarding compliance with any of the requirements of this condition, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In order to conserve the archaeological heritage of the site.

5. Water supply and drainage arrangements, including the 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.

6. Prior to commencement of development, the developer shall enter into water and/or waste water connection agreement(s) with Irish Water.

**Reason:** In the interest of public health.



7. 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.

8. Proposals for a development/estate name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.

**Reason:** In the interest of urban legibility and to ensure the use of locally appropriate place names for new residential areas.

9. Site development and building works shall be carried out only between the hours of 0800 and 1800 from Mondays to Fridays inclusive, between the hours of 0800 and 1300 on Saturdays, and not at all on Sundays or 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 the interest of protecting the residential amenities

10. The development hereby permitted, including all roads, footpaths, and public lighting, shall be carried out in accordance with the standards and requirements of the planning authority for taking in charge. The development shall be maintained by the developer until taken in charge by the authority and shall not be operated or maintained by a private management company.

**Reason:** In order to comply with national policy in relation to the maintenance and management of residential estates, and to ensure that the development, when completed, can be taken in charge by the planning authority.

11. The areas of open space shown on the lodged plans shall be reserved for such use and shall be levelled, contoured, soiled, seeded, and landscaped in accordance with the detailed requirements of the planning authority. The play areas shall be developed in accordance with details to be submitted to, and agreed in writing with, the planning authority prior to commencement of development. All of this work, including the play areas, shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open space by the developer until taken in charge by the local authority. When the estate is taken in charge, the open spaces and play area shall be vested in the planning authority, at no cost to the authority,

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

12. All trees and hedgerows shown on the submitted plans shall be retained on the site and shall be adequately protected during the period of construction in accordance with BS: 5837. Such measures shall include a protection fence which shall be erected beyond the branch spread, and no construction work or storage shall be carried out within the protective barrier.

**Reason:** In the interests of visual amenity and of protecting the residential amenities of adjoining properties.

13. 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 provide details of intended construction practice for the development, including noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interests of clarity, orderly development and amenity.

14. A construction traffic management plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The plan shall include details of arrangements for routes for construction traffic and parking during the construction phase, the location of the compound for storage of plant and machinery and for storage of deliveries to the site.

**Reason:** In the interests of public safety and residential amenity.

15. The developer shall engage the services of an appropriately qualified environmental consultant with experience in the field of land contamination, to carry out site investigations, risk assessment, prepare a report and recommend remedial measures where appropriate. This report shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of any development on site.

**Reason:** In the interests of environmental protection and sustainable development having regard to the prior use of the site as a dumping ground for construction waste.

16. 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.

17. 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 until taken in charge, of the development.

18. 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.

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**John Connolly**

**Member of An Bord Pleanála**

**duly authorised to authenticate  
the seal of the Board.**

**Dated this            day of            2020.**