



Planning and Development Acts 2000 to 2020

Planning Authority: Kilkenny County Council

Planning Register Reference Number: 19/887

Appeal by Daly's Hill Limited care of HRA Planning of 3 Hartstonge Street, Limerick and by Conor Foley, Patrick Woodcock and others care of 14 Rothe Terrace, Kennyswell Road, Kilkenny against the decision made on the 15th day of July 2020 by Kilkenny County Council to grant subject to conditions a permission to the said Daly's Hill Limited in accordance with plans and particulars lodged with the said Council.

Proposed Development: A 10 year planning permission is sought for the proposed development which will consist of (i) 266 number residential units including 133 number houses (17 number four bed units; 106 number three bed units and 10 number two bed units) and 133 number apartment and duplex units (46 number one bed units; 77 number two bed units; and 10 number three bed units); (ii) 126 number bed nursing home of 7,236.79 square metres with ancillary office; (iii) crèche facility of 733.12 square metres; (iv) two number office blocks with a gross floor area of 3,548.38 square metres including provision for basement car parking; (v) two number commercial/retail units with a gross floor area of 327.40 square metres (net retail area of 99.6 square metres and 82.3 square metres each) with four number office units overhead with a gross floor area of 722.26 square metres;

(vi) provision of 3.96 hectares of open parkland comprising part of the Breagagh Regional Park including the provision of combined cycleway/footpath through the park and a playing pitch and (vii) supporting development works including (a) ESB substation; (b) three number combined bin and bicycle stores; (c) underground surface water attenuation; (d) temporary construction signage; (e) estate signage and (f) all associated site development works. The primary access to the site shall be from a roundabout to be delivered as part of the proposed new Western Environs Road. The proposed development will construct a new access road from this roundabout with a new bridge over the Breagagh River. A minor secondary access road shall be provided to serve a limited number of units from the Kennyswell Road, all at site situated at Circular Road and Kennyswell Road, Robertshill, Kilkenny.

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 following:

- (a) the policies and objectives on consolidated growth in targeted urban locations in National Planning Framework,
- (b) the policies and objectives in the Regional Spatial and Economic Strategy (RESES) for the Southern Region, which identifies Kilkenny City as a significant key town,
- (c) the policies and objectives in the Kilkenny City and Environs Development Plan 2014-2020, in particular Z1: Robertshill Mixed Use Zoning objective,
- (d) the terms of Kilkenny County Council Development Contribution Scheme 2016-2017, as extended,
- (e) the Guidelines for Planning Authorities on Urban Development and Building Heights issued by the Department of Housing, Planning and Local Government in December 2018,
- (f) the Sustainable Residential Development in Urban Areas (Cities, Towns & Villages) - Guidelines for Planning Authorities issued by the Department of the Environment, Housing and Local Government in May 2009,
- (g) 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, 2020,
- (h) the Planning System and Flood Risk Management, Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in November, 2009,

- (i) the Design Manual for Urban Roads and Streets (DMURS) issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government in March 2013,
- (j) the Childcare Facilities - Guidelines for Planning Authorities issued by the Department of the Environment, Community and Local Government in June, 2001,
- (k) the contents of the Environmental Impact Assessment Report, the Natura Impact Statement, and other supplementary documentation submitted by the applicant (as amended by the further information submitted on the 22nd day of May, 2020),
- (l) the availability in the area of a range of social, community and transport infrastructure,
- (m) the nature, scale and design of the proposed development,
- (n) the pattern of existing and permitted development in the area,
- (o) the submissions made in the course of the planning application and appeal, and
- (p) the report of the Inspector.

it is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the National, Regional and Local policy, would constitute an acceptable mix of land uses and residential density at this location, would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would be acceptable in terms of design, height and quantum of development, would be acceptable in terms of pedestrian and traffic safety and convenience and would not be prejudicial to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

In not agreeing with the Inspectors recommendation to grant a planning permission duration for a period of seven years, the Board considered the rationale provided by the applicant for a duration of ten years planning permission to be reasonable in this instance, given the nature and scale of the proposed development and the significant external infrastructural works programme for the area planned to be delivered by the planning authority and other state agencies, and decided to allow a planning permission duration for a period of ten years.

Appropriate Assessment Screening

In completing the screening for Appropriate Assessment, the Board accepted and adopted the screening assessment and conclusion 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 potential likely significant effects of the proposed development, either individually or in combination with other plans or projects, on these European sites in view of the site's conservation objectives. The Board was satisfied that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on any European site, in view of the site's conservation objectives other than the River Barrow and River Nore Special Area of Conservation (Site Code 002162) which is the European site for which there is a likelihood of significant effects.

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 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 on the River Barrow and River Nore Special Area of Conservation (Site Code 002162) 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, and
- (iii) conservation objectives for the European site.

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 aforementioned European site, having regard to the site's conservation objectives.

In the overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of the River Barrow and River Nore Special Area of Conservation (Site Code 002162), or any other European site, in view of the site's conservation objectives.

Environmental Impact Assessment Report

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

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

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

Reasoned Conclusions on the Significant Effects

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, provided information which is reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account current knowledge and methods of assessment and the results of the examination set out in the Inspector's Report. The Board is satisfied that the information contained in the

Environmental Impact Assessment Report is up to date and complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU. The Board considered that the main significant direct and indirect effects of the proposed development on the environment are those arising from the impacts listed below. A Construction and Environmental Management Plan is the overarching general mitigation relevant to the project design and delivery for the construction stage.

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

- (a) Impacts on Population and Human Health: There will be a slight to moderate nuisance impact during construction which will be mitigated by measures described in the Construction and Environmental Management Plan. During operation, the development of additional housing will result in a positive impact.
- (b) Impacts on the landscape through the permanent change from a greenfield site to an urban environment and the development of the Breagagh Park, to be mitigated by the implementation of the proposed landscaping masterplan and the retention and protection of existing planting along the Breagagh River.
- (c) Impacts on material assets due to an increase in vehicular, pedestrian and cycle activity on the surrounding road network; in demand on the existing water services systems and additional surface water run-off and in demand for the disposal of construction and operation waste, to be mitigated by the management of construction traffic, management of surface water run-off during construction while operational impacts are to be mitigated by surface water attenuation to prevent flooding, and by implementation of Construction and Environmental Management Plans.

- (d) Impacts on land and soils at surface through site clearance, soil removal, hardstanding and buildings and at subsurface through the construction of the basement car parking and the surface water attenuation tank, to be mitigated by the implementation of construction management plans including storage and reuse of topsoil and subsoil, surface water runoff and sediment control measures management, and procedures for fuel and waste material storage and disposal.
- (e) Impacts on biodiversity through the loss of habitats of local value and importance, and on fauna using the site including the river such as otter, bat and fish populations, to be mitigated by retention and protection of existing planting, additional planting/landscaping and appropriate work practices.
- (f) Impacts on hydrogeology and hydrology through the construction of the access road and the bridge over the Breagagh River in part of the floodplain, to be mitigated by the management of construction traffic and the implementation of Construction and Environmental Management Plans.
- (g) Impacts on cultural heritage through the excavation as necessary of material exposed through site clearance works, mitigated by the requirement imposed through condition of planning permission for pre-construction archaeological testing, retention of key features in the scheme and archaeological monitoring of groundworks.

The Board completed an Environmental Impact Assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures set out in the Environmental Impact Assessment Report, and subject to compliance with the conditions set out below, the effects on the environment of the proposed development, by itself and in combination with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the Inspector.

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 22nd day of May, 2020, 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. All mitigation and monitoring measures outlined in the plans and particulars, including the Environmental Impact Assessment Report, as set out in Chapter 18 of the Environmental Impact Assessment Report 'Summary of Mitigation Measures' and in the Natura Impact Statement, as set out in 'Step 4: Mitigation' submitted with the application, as amended by the further information submitted on the 22nd day of May 2020, 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 schedule of mitigation measures as identified to the planning authority for written agreement.

Reason: In the interest of clarity, and to protect the environment.

3. The proposed development shall be amended to provide the ground floor apartments in building Types A, E, F, G, H and L with a minimum 2.7 metres floor to ceiling height. Revised drawings showing compliance with this requirement shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of residential amenity.

4. The period during which the development hereby permitted may be carried out shall be ten years from the date of this Order. The development shall be carried out on a phased basis, in accordance with the Phasing Plan set out in the Indicative Phasing Layout drawing 18271-PLA-007 rev A, lodged with the application, as amended by the further information submitted on the 22nd day of May 2020, in respect of the provision of surface water infrastructure.

Reason: In the interest of clarity, and to ensure the timely provision of development and supporting infrastructure.

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

Reason: To protect the visual amenities of the area.

6. Details of the layout, height, materials and external finishes of the front and rear screen/boundary walls to residences, and site boundaries shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development

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

7. The use of the two ground floor units in the local services centre shall be within the definition of 'shop' set out in the Planning and Development Regulations, 2001, as amended.

Reason: In the interest of clarity, and to protect the residential amenity of adjacent properties.

8. Details of all security shuttering, external shopfronts, lighting, and signage for the retail units, offices, childcare facility, and nursing home shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of clarity, and to protect the visual amenities of the area.

9. 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.

Reason: In the interest of clarity, and to protect the visual amenities of the area.

10. Proposals for a development name, offices and identification of retail units 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.

11. Proposals for an estate/street name, house/apartment 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 and street signs, and house/apartment numbers, shall be provided in accordance with the agreed scheme. The proposed name(s) 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(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, and to ensure the use of locally appropriate place names for new residential areas.

12. Comprehensive details of the proposed public lighting system, which shall include lighting along pedestrian routes through open spaces, to serve the development shall be submitted to, and agreed in writing with, the planning authority prior to installation of the lighting. The agreed lighting system shall be fully implemented and operational before any of the residences and/or commercial units are made available for occupation.

Reason: In the interests of public safety and visual amenity.

13. 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.

14. The final details of each of the following shall be submitted to, agreed in writing with, the planning authority prior to commencement of development:
- (a) the vehicular entrances (onto Kennyswell Road and Circular Road roundabout),
 - (b) the pedestrian entrances (onto the laneway at the rear of Fatima Place),
 - (c) the internal road network including turning bays, junctions, parking areas, footpaths and kerbs, and the underground car park,
 - (d) the bridge and access road over the Breagagh River, and
 - (e) the cycle tracks.

These 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.

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

15. (a) The car parking facilities (including a total of 760 number spaces) hereby permitted shall be reserved solely to serve the proposed development. 485 number clearly identified car parking spaces shall be assigned permanently for the residential development (including visitor) and shall be reserved solely for that purpose. These residential spaces shall not be utilised for any other purpose, including for use in association with any other uses of the development hereby permitted, unless the subject of a separate grant of planning permission.
- (b) The bicycle parking facilities (including a total of 371 number spaces) hereby permitted shall be reserved solely to serve the proposed development. 278 number clearly identified bicycle parking spaces shall be assigned permanently for the residential development (including visitor) and shall be reserved solely for that purpose.
- (c) Prior to the occupation of the development, a Car and Bicycle Parking Management Plan shall be prepared for the development and shall be submitted to, and agreed in writing with, the planning authority. This plan shall provide for the permanent retention of the designated residential car and bicycle parking spaces and shall indicate how these and other spaces within the development shall be assigned, segregated by use and how the car and bicycle parking shall be continually managed.

Reason: To ensure that adequate parking facilities are permanently available to serve the residential units and the commercial development, and to prevent inappropriate commuter parking.

16. A minimum of 10% of all car parking spaces shall be provided with 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. Details of how it is proposed to comply with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of sustainable transport.

17. The site shall be landscaped (and earthworks carried out) in accordance with the detailed comprehensive landscaping plans and particulars lodged with the application, as amended by the further information submitted on the 22nd day of May 2020, unless otherwise agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of residential and visual amenity.

18. The areas of public open space shown on the lodged plans shall be reserved for such use and shall be levelled, contoured, soiled, seeded, constructed, and landscaped in accordance with the landscaping plans and particulars lodged with the application, as amended by the further information submitted on the 22nd day of May 2020, unless otherwise agreed in writing with, the planning authority prior to commencement of development. This work shall be completed in accordance with the Phasing Plan and such areas shall be maintained as public open spaces by the developer until taken in charge by the local authority and/or management company.

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

19. 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.

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

20. 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.

21. (a) The communal open spaces, including hard and soft landscaping, car parking areas and access ways, communal refuse/bin storage, and all areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company.
- (b) 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 commercial and/or residential units are made available for occupation in Phase 2 of the Phasing Plan.

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

22. Surface water drainage arrangements for the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of public health.

23. The developer shall enter into water and/or wastewater connection agreement(s) with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

24. The construction of the development shall be managed in accordance with a Construction Environmental Management Plan (CEMP), in accordance with the commitments included in the outline Construction Environmental Management Plan and the Environmental Impact Assessment Report lodged with the application, as amended by the further information submitted on the 22nd day of May 2020, 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 finalised traffic management measures, and off-site disposal of construction/ demolition waste. In particular, this plan shall stipulate that construction traffic for Phase 1 of the Phasing Plan lodged with the application, as amended by the further information submitted on the 22nd day of May 2020, shall use the Kennyswell Road entrance. Construction traffic for all remaining phases shall only use the Circular Road entrance. Deviation from this arrangement may be facilitated in limited circumstances subject to prior written agreement with the planning authority.

Reason: In the interests of protecting the environment, amenities, public health and safety.

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

26. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -
- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
 - (b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and
 - (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

27. 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.

28. 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.

29. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities (in respect of Roads infrastructure only calculated at 46% of the floorspace of the proposed development) benefiting development in Kilkenny County Council's administrative area that is provided or intended to be provided by or on behalf of the local 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 amount of the financial 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. In accordance with the current scheme the amount of the contribution is calculated at €426,621.94 (four hundred and twenty six thousand, six hundred and twenty one euros and ninety four cents). 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. In particular, the social housing provision included in the Part V agreement subject of condition number 27 of this grant of permission shall be exempted from payment of the Roads infrastructure contribution.

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.

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

Dated this day of 2021.