

An  
Bord  
Pleanála

Board Order  
ABP-309367-21

## Planning and Development Acts 2000 to 2020

Planning Authority: Kildare County Council

Planning Register Reference Number: 20/808

**Appeal** by Pdraig McEvoy of Coiseanna Hill, College Road, Clane, County Kildare against the decision made on the 4<sup>th</sup> day of January, 2021 by Kildare County Council to grant subject to conditions a permission to Westar Investments Limited care of Hughes Planning and Development Consultants of 70 Pearse Street, Dublin in accordance with plans and particulars lodged with the said Council:

**Proposed Development:** (i) Construction of 58 number houses, comprising of 12 number four bedroom, two-storey, semi-detached houses; 25 number three bedroom, two-storey, semi-detached houses; 10 number three bedroom, two-storey, terrace houses; 4 number three bedroom, three-storey, terrace houses; and seven number two bedroom, two-storey, terrace houses. Each house is provided with a private rear garden; (ii) construction of 33 number apartments, comprising of 12 number one-bedroom maisonettes and 12 number two bedroom maisonettes provided in six number two-storey blocks and nine number two-bedroom apartments provided in a three-storey apartment block. Each apartment is provided with a private balcony or terrace; (iii) provision of a 346 square metres creche at ground floor level of the

proposed three-storey apartment block. The proposed development includes 182 number car parking spaces, inclusive of 44 number car parking spaces serving the apartments/maisonettes units, 116 number car parking spaces serving the houses, 15 number car parking spaces serving the creche, and seven number visitor car parking spaces; and 66 number bicycle parking spaces; (iv) provision of two number new vehicular entrances off the Brooklands Housing Estate; and (v) all associated site, landscaping and infrastructural works necessary to facilitate the development, all on lands at Capdoo, Clane, County Kildare, with frontage to the Brooklands Housing Estate.

## **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.

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## Reasons and Considerations

Having regard to the following:

- (a) the policy and objectives set out in the National Planning Framework, and the Regional Spatial and Economic Strategy for the Eastern and Midlands Regional Assembly,
- (b) the policies and objectives set out in the Kildare County Development Plan 2017–2023, as amended by Variation No. 1 (June, 2020),
- (c) the policies and objectives set out in the Clane Local Area Plan 2017–2023,
- (d) the Rebuilding Ireland - Action Plan for Housing and Homelessness, 2016,
- (e) the Design Manual for Urban Roads and Streets (DMURS) 2013 (as amended),
- (f) the Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities issued by the Department of Environment, Heritage 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 Urban Development and Building Height Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in 2018.

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- (i) the nature, scale and design of the proposed development,
- (j) the availability in the area of a range of social, community and transport infrastructure,
- (k) the pattern of existing and permitted development in the area,
- (l) the planning history associated with the site, including the Board's grant of planning permission under reference number ABP-308943-20 for 333 residential units of which the subject site forms part,
- (m) the grounds of the third-party appeal and the observations submitted in respect of the application and appeal,
- (n) the residential zoning objective relating to the site, and
- (o) the report of the Inspector,

it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would, otherwise, be in accordance with the proper planning and sustainable development of the area.

The Board considers that a grant of permission for the proposed development would materially contravene the Kildare County Council Development Plan Core Strategy, as amended by Variation No. 1.

The Board also considers that, having regard to the provisions of section 37(2)(b)(i), (ii), and (iii) of the Planning and Development Act 2000, as amended, the grant of permission is a material contravention of Table 3.3 of the Kildare County Development Plan 2017-2023, Settlement Hierarchy- Population and Housing Unit Allocation 2020-2023 and Table 4.1 of the Clane

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Local Area Plan 2017-2023, in relation to Core Strategy and dwelling unit allocation, and would be justified for the following reasons and considerations:

In relation to section 37(2)(b)(i) of the Planning and Development Act 2000, as amended,:

The proposed development is considered to be of strategic or national importance by reason of its potential to contribute to the achievement of the Government's policy to increase delivery of housing as set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016, and to facilitate the achievement of greater density and height in residential development in an urban centre close to public transport and centres of employment.

In relation to section 37(2)(b)(ii) of the Planning and Development Act 2000, as amended,:

It is considered that, in relation to the Core Strategy, the requirement in Policy CS 4 of the Kildare County Development Plan 2017-2023, to promote a compact urban form, conflicts with the dwelling allocation for Clane in Table 3.3 of the Kildare County Development Plan 2017-2023 and the dwelling allocation for KDA1 as per Table 4.1 of the Clane Local Area Plan 2017-2023.

In relation to section 37 (2) (b)(iii) of the Planning and Development Act 2000, as amended,:

It is considered that permission for the proposed development should be granted having regard to Government policies as set out in the National Planning Framework (in particular objectives 3a, 11 and 33), the Regional Spatial and Economic Strategy for the Eastern and Midland Regional Assembly (in particular Table 6.1), the Urban Development and Building Height Guidelines for Planning Authorities, (in particular SPPR 1 and

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SPPR 3), the Sustainable Residential Development in Urban Areas (in particular Chapters 5 and 6 and the accompanying Urban Design Manual), and the Sustainable Urban Housing: Design Standards for New Apartments (in particular Section 2.4). These guidelines and policies contain objectives which support the delivery of residential development in appropriate locations through the promotion of appropriate heights and densities. The proposed development is located on a serviced site identified as Key Development Area 1 in the Clane Local Area Plan 2017-2023, contiguous to the town which promotes compact urban form through the use of an appropriate quantum of development, density range and height, consistent with these 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 plans and particulars received by the planning authority on 19<sup>th</sup> day of October, 2020 and the 4<sup>th</sup> day of December, 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.

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2. The development shall be carried out on a phased basis. A total of 50 residential units together with the crèche facility and the main area of public open space associated with the development shall be fully completed within the first phase. Phase 2 of the development shall only proceed after the first phase is fully completed unless otherwise agreed in writing with the planning authority.

**Reason:** In the interest of clarity and the proper planning and sustainable development of the area.

3. Details of the materials, colours and textures of all external finishes to 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 visual amenity.

4. Prior to commencement of development, details of the proposed boundary treatment around the perimeter of the site shall be submitted to and agreed in writing with the planning authority.

**Reason:** In the interest of visual amenity.

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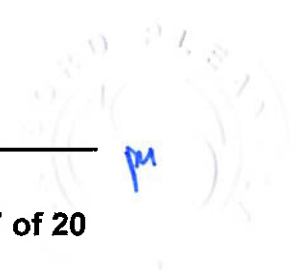
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5. The landscaping works schemes as indicated in the Landscape Masterplan submitted to the planning authority on the 4<sup>th</sup> day of December, 2020 shall be carried out within the first planting season following substantial completion of the external construction works. In addition to the proposals in the submitted scheme, the following shall be carried out:
- (a) The site shall be landscaped, using only indigenous deciduous trees and hedging species and there shall be no encroachment during construction on those hedgerows to be maintained as part of the works to be carried out.
  - (b) Play facilities shall be provided within the communal areas of the apartment development in line with the requirements of Section 4.1.3 of the Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (2018 and 2020).
  - (c) All details of the play facilities and passive recreational facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The details shall include a multi-games area provided as part of the strategic open space zoned lands and delivered through the required phased development.
  - (d) Compliance with the requirements and standards of the planning authority in relation to lighting and tree planting within the public open space.

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- (e) The services of a qualified arborist and arboricultural consultant shall be retained for the entire period of construction activity. Details of the appointment shall be agreed in writing with the planning authority prior to commencement of development.
- (f) A dedicated place space shall be provided for the crèche facility.
- (g) All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development or until the development is taken in charge by the local authority, whichever is the sooner, shall be replaced within the next planting season with others of similar size and species unless otherwise agreed in writing with the planning authority.

**Reason:** In the interest of residential and visual amenity.

- 6. 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. All existing over ground cables shall be relocated underground as part of the site development works.

**Reason:** In the interests of visual and residential amenity.

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7. 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 the commencement of development. Thereafter, all estate and street signs and house/apartment numbers shall be provided in accordance with the agreed scheme. The proposed names shall be based on local, historical or topographic features or other alternatives acceptable to the planning authority. No advertisement/marketing signage relating to the names of the development shall be erected until the developer has obtained the planning authority's written agreement for the proposed names.

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

8. (i) Water supply and drainage arrangements including the attenuation and disposal of surface water shall comply with the requirements of the planning authority for such works and service.
- (ii) Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority plans, cross-sections and maintenance details for the treatment of all drainage ditches on site including any proposal to culvert along the south of the site.
- (iii) Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority a Stage 2 – detailed design stage stormwater audit.

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- (iv) Upon completion of the development, a Stage 3 completion stormwater audit to demonstrate that sustainable urban drainage system measures have been installed and are working as designed and there has been no misconnections or damage to stormwater drainage infrastructure during the construction of the proposal, shall be submitted to and agreed in writing with the planning authority.

**Reason:** In the interest of public health and surface water management.

9. The developer shall enter into water and wastewater connection agreements with Irish Water prior to commencement of development.

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

10. Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority a site layout plan, at a scale to be agreed with the planning authority, showing the areas of the development that would be taken in charge by the planning authority. This layout shall also identify the structure and services that are to be taken in charge by the planning authority.

**Reason:** In the interest of the proper planning and sustainable development of the area

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11. 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.

12. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006.

**Reason:** In the interest of sustainable waste management.

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13. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which 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, and
- (b) employ a suitably-qualified archaeologist prior to commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

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

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**Reason:** In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

14. (a) Prior to commencement of development, a revised layout plan drawing at a scale of 1:500 indicating 16 car parking spaces to serve the apartment development located in the south-west of the site, shall be submitted to, and agreed in writing with, the planning authority.
- (b) All of the communal parking areas serving the residential units shall be provided with functional electric vehicle charging points. 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 transportation, and of the proper planning and sustainable development of the area.

15. The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths and kerbs shall be in accordance with the detailed construction standards of the planning authority for such works and design standards set out in DMURS.

**Reason:** In the interest of traffic safety.

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16. The findings of the Stage 1/2 Road Safety Audit which was received by the planning authority on the 23<sup>rd</sup> day of July, 2020 shall be closed out, signed off and incorporated into the development at the developer's expense. Stage 3 Audits shall be conducted. Exact details of any improvement measures shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of amenity and of traffic and pedestrian safety.

17. Details of the layout, marking and security provisions for the cycle spaces and cycle infrastructure shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

**Reason:** To ensure that adequate bicycle parking provision is available to serve the proposed development in the interest of sustainable transportation.

18. Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority a detailed design for a signalised four-arm junction of the R403 Regional Road/ Brookland/ Capdoo Link Road, including vulnerable road users (VRU) crossing facilities in line with current standards. The costs of the design, supervision and delivery of these works shall be borne by the developer. These works shall be completed prior to the residential units being occupied in Phase 1 of the development. The developer shall liaise with the Traffic Management Section of the planning authority with regard to these requirements.

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The upgrade works and junction improvements shall be in accordance with the planning authority's specification including:

- (a) the upgrade of existing traffic signals,
- (b) the upgrade of the existing controller to ELV and LED signals,
- (c) the installation of CCTV cameras and pole at the junction to assist the monitoring of traffic flows,
- (d) the installation of MOCA technology,
- (e) the upgrade of existing public lighting, and
- (f) the upgrade of the road layout and markings.

**Reason:** In the interest of proper planning, sustainable development and traffic safety.

19. Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority a final construction management plan containing the following information:

- (a) Details of all haul routes to and from the site for the delivery of the upgrade of the junction at the R403 Regional Road /Brooklands/ Capdoo Link Road to that of a signalised four-arm junction.
- (b) Construction related traffic is not permitted through Clane Main Street. The plan shall also contain mitigation measures to minimise the effects that the proposed development would have on the immediate road network and existing traffic movements.

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- (c) Wheel wash arrangements for the construction phase.
- (d) Locations of the construction compound, use of cranes, parking and storage areas within the construction site.
- (e) Details of all construction site warning signs.
- (f) A final construction waste management plan.

**Reason:** In the interest of the proper planning and sustainable development of the area.

20. 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 residential amenities of properties in the vicinity.

21. Public lighting shall be provided in accordance with a scheme which shall include lighting along pedestrian routes through open spaces. Details in this regard shall be submitted to and agreed in writing with the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any unit.

**Reason:** In the interest of amenity and public safety.

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22. 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 shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the 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.

23. Prior to the commencement of any house or duplex 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 house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, as amended, that restricts all houses and duplex 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.

**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.

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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.

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**By order of the High Court**

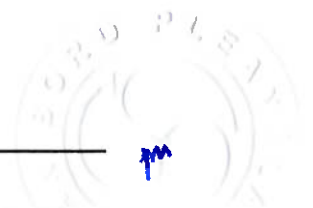
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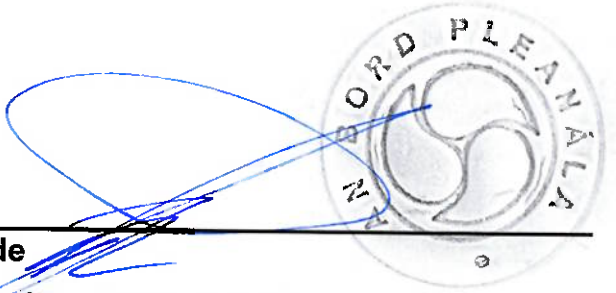
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**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.



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

Dated this 21<sup>st</sup> day of October 2021.

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