

An
Bord
Pleanála

Board Order
ABP-309929-21

Planning and Development Acts 2000 to 2021

Planning Authority: Kildare County Council

Planning Register Reference Number: 20/108

Appeal by Avoca Homes Limited care of Declan Brassil and Company Limited of Lincoln House, Phoenix Street, Smithfield, Dublin against the decision made on the 15th day of March, 2021 by Kildare County Council to refuse permission for the proposed development.

Proposed Development: 50 number apartments arranged in two number buildings and comprises: 14 number one bedroom units, 32 number two bedroom units and four number three bedroom units. Eight apartment types are proposed. Proposed Block A accommodates one number one bed unit (56.4 square metres), one number one bed unit (53.9 square metres), four number one bed units (57.3 square metres), 10 number two bed units (82.6 square metres) and nine number two bed units (83.0 square metres). Proposed Block B accommodates one number one bed unit (56.4 square metres), one number one bed unit (53.9 square metres), four number one bed units (50.8 square metres), 10 number two bed units (82.6 square metres), one number two bed units (83.0 square metres), four number two bed units (77.5 square metres) and four number three bed units (97.0 square metres). The proposed buildings each contain five storeys of residential accommodation over a basement level car park with 50 number car parking

spaces and 126 number bicycle parking spaces. A bin store of 23.4 square metres is provided at the southern boundary of the site adjoining the entrance to the basement level. The proposed development incorporates 1,256 square metres of landscaped open space (32% of the site area) and each apartment is served by a private recessed balcony. The proposed development is accessed from Station Road through the existing Louisa Park development. The proposed development includes necessary surface water, foul water and potable water infrastructural works to connect the scheme to the existing services in Louisa Park, all at site to the north of Louisa Park, Station Road, Leixlip, County Kildare, as amended by the further public notice received by the planning authority on the 23rd day of February, 2021 which consists of the provision of a 92.2 square metres creche at the ground floor of Block B, relocation of the proposed bin store to the central courtyard area, amendment to the red line boundary at the west of the site, minor amendments to the internal layout of unit number 48, updated tree protection and removal plans, and other associated site and infrastructural revisions relating to water services, electric car parking, traffic and transportation, and fire tender services.

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 provisions of the Kildare County Development Plan 2017-2023, and the Leixlip Local Area Plan 2020-2023, the location of the site within Zone B which seeks to “protect and enhance the amenity of established residential communities and promote sustainable intensification”, the form, design and layout of the proposed development, the submissions on the file, including the appendices of the appeal submission and the relevant correspondence from Kildare County Council Roads Transportation and Public Safety Department, it is considered that, subject to compliance with the conditions as set out below, the proposed development would be acceptable in terms of visual amenity, scale and height, would represent an efficient use of the site, would contribute towards compact urban growth, and would be acceptable in terms of traffic and pedestrian safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board noted the correspondence from Kildare County Council Roads Transportation and Public Safety Department, and the bond associated with planning permission 03/829 for the existing Louisa Park development which shall be used to remediate the access road, manholes and gullies, footpaths and surface water infrastructure and were satisfied that the issues raised regarding deficiencies of the Louisa Park access road and footpath infrastructure could be dealt with by way of conditions attached to this permission.

Furthermore, the Board had regard to the separation distance of proposed Block A from the boundary with the Rockingham Avenue development, the location of Block B to the North West of Rockingham Avenue which is to the front of the existing dwellings, the ground floor level of the proposed development which is lower than Rockingham Avenue and the proposed landscaped boundary treatment, and was satisfied that the proposed development would not result in an unacceptable degree of overlooking and would not have an overbearing impact on the established dwellings on Rockingham Avenue.

The proposed development would not seriously injure the established amenities of the area, would be acceptable in terms of traffic and pedestrian safety, and would therefore, be in accordance with the proper planning and sustainable development of the area.

Stage 1 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 sites, in view of the site's conservation objectives other than the Rye Water Valley/Carton Special Area of Conservation (Site Code 001398), the South Dublin Bay Special Area of Conservation (Site Code 000210), the North Dublin Bay Special Area of Conservation (Site Code 000206), the South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code

004024) and the North Bull Island Special Protection Area (Site Code 004006) which are the European sites for which there is a likelihood of significant effects.

Stage 2 Appropriate Assessment

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the Rye Water Valley/Carton Special Area of Conservation (Site Code 001398), the South Dublin Bay Special Area of Conservation (Site Code 000210), the North Dublin Bay Special Area of Conservation (Site Code 000206), the South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code 004024) and the North Bull Island Special Protection Area (Site Code 004006) are 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 for nearby European Sites in view of the site's conservation objectives - the Rye Water Valley/Carton Special Area of Conservation (Site Code 001398), the South Dublin Bay Special Area of Conservation (Site Code 000210), the North Dublin Bay Special Area of Conservation (Site Code 000206), the South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code 004024) and the North Bull Island Special Protection Area (Site Code 004006). 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) the mitigation measures which are included as part of the current proposal,

(iii) the conservation objectives for these European Sites.

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 Sites, 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 European sites 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 10th day of February, 2021 and by the further particulars received by An Bord Pleanála on the 9th day of April 2021, 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 so that the windows on the eastern elevation of Unit 48 on the fourth floor and of Unit 43 on the third floor shall be redesigned to accommodate vertical louvres which shall ensure no direct overlooking of 31 Rockingham Avenue.

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 interests of visual and residential amenity.

3. Details of the materials, colours and textures of all the external finishes to the proposed dwellings/buildings shall be as submitted with the application, unless otherwise agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

4. No unit shall be occupied until the commitments outlined dated 16th October 2020, in Appendix B of the appeal submission have been completed to the written satisfaction of the planning authority.

Reason: In the interests of amenity and public safety.

5. 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.

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

7. Proposals for a building name, 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 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.

8. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development/installation of lighting. Such lighting shall be provided prior to the making available for occupation of any apartment unit.

Reason: In the interests of amenity and public safety.

9. 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.

10. (a) The recommendations of the Stage 1 and 2 Road Safety Audit submitted to the planning authority on the 10th day of February, 2021 shall be implemented in full.
- (b) A Stage 3 Road Safety Audit shall be carried out at the completion of the proposed development and the recommendations therein shall be acted upon.
- (c) A detailed design and layout for the proposed entrance to the site from the public roadway shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. Sightlines and road markings shall be carried out in accordance with the detailed standards of the planning authority for such works prior to the occupation of any dwelling. No vegetation or structure shall exceed one metre in height within the sight distance triangle.

Reason: In the interest of road safety.

11. A minimum of 10% of all communal car parking spaces shall be provided with functioning EV charging stations/points, and ducting shall be provided for all remaining car parking spaces, to facilitate the installation of EV charging points/stations at a later date. Where proposals relating to the installation of EV ducting and charging stations/points has 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 before making available by the developer for occupation of the residential units in the proposed development.

Reason: To provide for and/or future proof the development such as would facilitate the use of Electric Vehicles

12. (a) Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.
- (b) Prior to commencement of development, the developer shall submit to the planning authority for written agreement, a Stage 2 - Detailed Design Stage Storm Water Audit.
- (c) Upon completion of the development, a Stage 3 Completion Stormwater Audit to demonstrate Sustainable Urban Drainage System measures have been installed, and are working as designed and that there has been no misconnections or damage to storm water drainage infrastructure during construction, shall be submitted to the planning authority for written agreement.

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

13. The site shall be landscaped in accordance with the detailed comprehensive scheme of landscaping, which accompanied the application submitted, unless otherwise agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of residential and visual amenity

14. (a) Prior to commencement of development, all trees, groups of trees, hedging and shrubs which are to be retained shall be enclosed within stout fences not less than 1.5 metres in height. This protective fencing shall enclose an area covered by the crown spread of the branches, or at minimum a radius of two metres from the trunk of the tree or the centre of the shrub, and to a distance of two metres on each side of the hedge for its full length, and shall be maintained until the development has been completed.
- (b) No construction equipment, machinery or materials shall be brought onto the site for the purpose of the development until all the trees which are to be retained have been protected by this fencing. No work shall be carried out within the area enclosed by the fencing and, in particular, there shall be no parking of vehicles, placing of site huts, storage compounds or topsoil heaps, storage of oil, chemicals or other substances, and no lighting of fires, over the root spread of any tree to be retained.
- (c) Excavations in preparation for foundations and drainage, and all works above ground level in the immediate vicinity of tree(s) on the Tree Protection Plan drawing number 20052_TPP, as submitted to the planning authority on the 10th day of February, 2021, shall be carried out under the supervision of a specialist arborist, in a

manner that will ensure that all major roots are protected and all branches are retained.

- (d) No trench, embankment or pipe run shall be located within three metres of any trees and hedging which are to be retained on the site.

Reason: To protect trees and planting during the construction period in the interest of visual amenity.

- 15. (a) 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.
- (b) This plan shall provide for screened communal bin stores, the locations and designs of which shall be included in the details to be submitted.

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

16. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of public open spaces, roads and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to occupation of the development.

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

17. The construction of the development shall be managed in accordance with a site-specific detailed Construction Traffic and Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall incorporate all mitigation measures indicated in the Natura Impact Statement, and shall provide details of intended construction practice for the development, including wheel wash facilities, a Mobility Management Plan for the construction phase, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of nature conservation, public safety and residential amenity.

18. 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 amenities of property in the vicinity.

19. 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.

20. 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.

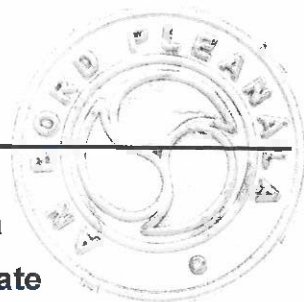
Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

21. 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.


Michelle Fagan

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



Dated this 14th day of April 2022.