

Planning and Development Acts 2000 to 2021

Planning Authority: Louth County Council

Planning Register Reference Number: 20661

Appeal by The County Louth Archaeological and Historical Society care of Seamus Bellew of 27 Stamanaran, Blackrock, Dundalk, County Louth and by Lorraine Scully care of Downey Planning of 1 Westland Square, Pearse Street, Dublin and by Independent Trustee Company Limited care of KPMG Future Analytics Consulting Limited of 23 Fitzwilliam Square (South), Dublin against the decision made on the 6th day of August, 2021 by Louth County Council to grant subject to conditions a permission to Independent Trustee Company Limited in accordance with plans and particulars lodged with the said Council:

Proposed Development: Permission for development on site which has an area on 0.6149 hectares and is bound to the north by vacant land and the rear of properties at Castle Road, to the east by Scoil Naisiunta Realt na Mara, to the south by the rear of residences at Mill Street and to the west by the rear of residences at Castle Road. Permission is sought for the demolition of the existing vacant cash and carry warehouses building, clearance of hardstanding and the construction of a managed, independent living residential development for the elderly. The development will comprise: a part three- and part six-storey, 78 unit residential property (30 number one-bed, 24

number 1.5-bed and 24 number two-bed), with private open space (terraces and balconies) visible on all elevations, bin store, laundry room, community room, visitor meeting room, office, reception area and ancillary/operational rooms, 45 number car parking spaces; 26 number cycle parking spaces; landscaping, including one number primary communal open space area; ESB substation and bin collection compound; public lighting; access upgrades; and all other ancillary site development works including water infrastructure services, site surfaces, boundary treatments and above and below ground services, all at site of Value Centre Cash and Carry, Castle Road, Dundalk, County Louth, as amended by the revised public notice received by the planning authority on the 12th day of July, 2021.

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.

Reasons and Considerations

Having regard to the nature, scale and extent of the proposed development, to the pattern of development in the area and to the zoning objective for the site, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of property in the vicinity, would not detract from the architectural character of the area, would not prejudice public health by reason of construction or operation of the proposed development, would be acceptable in terms of pedestrian and traffic safety and would, otherwise, constitute an acceptable form of development at this location. 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 considered the totality of the documentation on file, including the revised plans and particulars, as received by the planning authority as further information on the 12th day of July, 2021 and subject to condition number 3 of planning authority's decision to grant permission by Order dated the 6th day of August, 2021, and to the amended details, as received by An Bord Pleanála on the 11th day of July, 2022. Specifically, the Board shared the opinion of the planning authority that the proposed scheme, as revised at further information stage, and with a further change by condition, would not detract from the character and visual amenities of the area, including the character of the Saint Mary's Architectural Conservation Area and the Seatown Castle landmark. Furthermore, the Board determined that the information received from the applicant by An Bord Pleanála on the 11th day of July, 2022, satisfactorily addressed the concerns expressed by the Inspector in recommended reasons for refusal two and three of the Inspector's report dated 2nd December, 2021 (which concerns were shared by the Board), on the matters of the nature of the construction of the proposed development and a lack of information in relation to daylight, sunlight and ventilation.



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 12th day of July, 2021 and by the further plans and particulars received by An Bord Pleanála on the 11th day of July, 2022, 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 used solely as an independent living residential development of 59 apartments for the elderly.

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

3. (a) Revised floor plan and elevations omitting the fifth floor (sixth storey) of the proposed development and apartment numbers 4 F03, 4 F04, 4 F05, 4 F06, 4 F07, 4 F08 and 4 F12 on the fourth floor (fifth storey) shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
- (b) All balconies shall be fitted with obscure glazing enclosures.

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: To provide a development of appropriate scale and finishes for this location in accordance with the current Development Plan for the area and with national policy, in the interests of the residential amenities of both existing and future residents and of the proper planning and sustainable development of the area.

4. (a) Details of a proposed covenant or legal agreement confirming that the development hereby permitted shall remain owned and operated by an institutional entity for a minimum period of 15 years and where no individual residential units shall be sold separately for that period shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The period of 15 years shall be from the date of occupation of the first apartment(s) within the scheme.
- (b) Prior to the expiration of the 15-year period, as referred to in the covenant, the developer shall submit ownership details and management structures proposed for the continued operation of the entire development as an Independent Living Unit. Any amendment or deviation from the Independent Living Unit model, as authorised in this permission shall be subject to a separate planning application.
- (c) The proposed scheme shall be managed in single ownership and units shall not be sold or leased individually.

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

5. The management and maintenance of the proposed development, following completion, shall be the responsibility of a legally constituted management company, which shall be established by the developer. A management scheme, providing adequate measures for the future maintenance of the development; including the external fabric of the buildings, internal common areas, landscaping, roads, paths, parking areas, lighting, waste storage facilities and sanitary services, shall be submitted to, and agreed in writing with, the planning authority, before any of the residential units are made available for occupation.

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

6. All mitigation and monitoring measures outlined in the plans and particulars included in the Bat Fauna Survey shall be carried out in full, except where otherwise required by condition attached to this permission.

Reason: In the interests of protecting the environment and/or public health.

7. Site development and building works shall be carried out only between the hours of 0800 and 1900 from Mondays to Fridays inclusive, between 0800 and 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times shall 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.

8. (a) Prior to occupation of the first apartment(s) on site, the developer shall submit details of the proposed name for the apartment scheme and roads and the type and specifications of the proposed positioning of any roadway nameplate/plates or similar structures, which are to be erected in suitably prominent locations.
- (b) Apartments shall be numbered, and these numbers shall be affixed to the building in a prominent position.

Reason: In the interests of orderly development and ease of identification of roads.

9. 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.



10. (a) All landscaping shall be carried out in accordance with the plans and particulars submitted to the planning authority on the 12th day of July, 2021.
- (b) Planting shall be carried out in the first planting season following commencement of building operations within the sector and permanently retained thereafter. Any plant which fails in the first planting season shall be replaced with a similar species in the following planting season.
- (c) All trees specified for retention shall be enclosed with a stout fence, which shall enclose at least the area covered by the spread of the branches and shall be erected before any site works begin and maintained during the construction period.
- (d) Prior to commencement of development, the developer shall submit details of a root barrier system or root cell system to be implemented to prevent any root damage to adjacent footpaths and roads. The developer shall ensure that no sightlines are adversely affected by any trees or vegetation planted as part of the development.
- (e) Details of the specification, number and location of the play equipment to be erected on Council lands at Saint Helena's Park, (or contribution in lieu) shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To protect the amenities of the area and in the interest of traffic safety.

11. Comprehensive details of the proposed public lighting system to serve the development shall be submitted to, and agreed in writing with, the planning authority, prior to commencement of development. The agreed lighting system shall be fully implemented and operational before any of the apartment units are made available for occupation.

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

12. (a) Bicycle parking provision and covered accessible storage shall be in accordance with the "Sustainable Urban Housing: Design Standards for New Apartment Guidelines for Planning Authorities" issued by the Department of Housing, Local Government and Heritage in December 2020.
- (b) The applicant shall provide a sufficient number of bicycle stands in the open space area in the vicinity of the sports pitch and play area. Details in this regard shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any work on site.

Reason: In the interests of sustainable transport and orderly development.

13. A minimum of 10% of the proposed car parking spaces shall be provided with electrical connection points, to allow for functional electric vehicle charging. The remaining car parking spaces shall be fitted with ducting for electric connection points to allow for future fit out of 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 transport.

14. Details of the materials, colours and textures of all the 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.

15. 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.

16. Design calculations with regard to the required capacity of the attenuation storage structure shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of public health and orderly development.

17. The final design details for the construction of a footpath from the Castle Road to the development entrance shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of traffic safety and orderly development.



18. 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 the 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.

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.

19. 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 services.

Reason: In the interest of public health.

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

Reason: In the interest of public health.

21. Prior to commencement of development, the developer shall lodge with the planning authority a bond of an insurance company, a cash deposit, or other security to secure the provision and satisfactory completion of roads, sewers, watermains, drains, car parks, open spaces and other services required in connection with the development, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion of any part of the development. The security to be lodged shall be as follows:

- (a) an approved insurance company bond, or
- (b) a cash sum to be applied by the planning authority at its absolute discretion if such services are not provided to its satisfaction, or
- (c) such other security as may be accepted in writing by the planning authority.

The form and amount of the security shall be agreed in writing with the planning authority prior to commencement of development.

Reason: To ensure the satisfactory completion of the development.

22. (a) The construction and foundation methods, as detailed by DCE Irl report dated 6th day of July, 2022, which include the construction of the foundations using bored or Continuous Flight Auger piles, shall be adhered to.
- (b) The transmitted ground vibration arising from any piling carried out on the site, when measured on the foundations of the house nearest the location of the piling and not owned by the developer or on a part of the house in close contact with the foundations, shall not exceed a peak particle velocity of five millimetres per second in any one of three mutually orthogonal planes.

Reason: To safeguard the amenities of adjacent property.

23. The developer shall adhere to the requirements of BS 5228 part 1 1997 (Noise and vibration control on construction and open sites).
- (a) The developer shall, if directed by the planning authority, monitor and record noise levels during construction of the development – Leq’s and any other levels which may be requested by the planning authority (L max etc.).
- (b) The developer shall, if directed by the planning authority, monitor and record the total dust emissions arising from all on site operation associated with the proposed development during construction.
- (c) The number and locations of the monitoring and recording stations for sound and dust deposition, necessary to comply with the requirements of Part (a) and (b) of this condition, shall be in accordance with the requirements of the planning authority for such monitoring of sound and deposition.

- (d) The planning authority shall be afforded access at all reasonable times in order to inspect, examine and check, or to have inspected, examined and checked all apparatus and equipment used or required to carry out monitoring or noise.

Reason: In the interest of the proper planning and development of the area and in the interest of residential amenity.

24. 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 public safety and residential amenity.

25. 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. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

26. 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.

Chris McGarry

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

Dated this 21st day of September 2022.