



An
Bord
Pleanála

Board Order ABP-311751-21

Planning and Development Acts 2000 to 2021

Planning Authority: Kildare County Council

Planning Register Reference Number: 21/1121

Appeal by Dermot Kelly Limited care of Tom Phillips and Associates of 80 Harcourt Street, Dublin against the decision made on the 24th day of September, 2021 by Kildare County Council to refuse permission for the proposed development.

Proposed Development: Demolition of a car showroom and associated shed and the construction of 10 number terraced houses (eight number three-bed and two number four-bed) and 65 number apartments (21 number one-bed, 40 number two-bed and four number three-bed) within three number apartment blocks ranging from three to four storeys in height. Additional works include the provision of a single vehicular access, two number external bin stores, car and bicycle parking, ESB substation, relocation of electricity poles and undergrounding of electricity wire, telecoms infrastructure and solar panels at roof level of apartment blocks, all landscaping, boundary treatment works and all associated works above and below ground. A concurrent planning application is being made to Meath County Council which relates to a portion of lands to the north-west corner of the site which includes the demolition of a shed and the provision of three number terraced houses and associated landscaping, boundary treatment works and all associated works above and below ground, all on a site of circa 1.19 hectares at Kelly's Garage, The Harbour, Kilcock, County Kildare, as revised by the further public notices received by

An Bord Pleanála on the 9th day of December, 2021 which provided notice of the submission of a Natura Impact Statement with the first party appeal.

Decision

GRANT permission for the above proposed development based on the reasons and considerations under and subject to the conditions set out below.

Reasons and Considerations

Having regard to the zoning of the site for town centre uses in the current Kilcock Local Area Plan, which provides, inter alia, for residential development, the location of the site close to town centre facilities and community services, the availability of public services to serve the proposed development, and the availability of vehicular and pedestrian access from the R148 Regional Road, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual or residential amenities of the area, would not give rise to water pollution or to traffic hazard, and would otherwise be in accordance with the provisions of the Kildare County Development Plan 2017-2023 and the Sustainable Residential Development in Urban Areas Guidelines (Cities, Towns & Villages) for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in May, 2009. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment: Stage 1:

The Board considered the Natura Impact Statement submitted with the first party appeal, and all the other relevant submissions on file, and carried out an appropriate assessment in relation to the potential effects of the proposed development on the Rye Water Valley/Carnton Special Area of Conservation (Site Code: 001398). The Board agreed with the screening assessment and conclusion carried out in the Inspector's Report that the Rye Water Valley/Carnton Special Area of Conservation (Site Code: 001398) is the only European Site in respect of which the proposed development has the potential to have a significant effect in view of the Conservation Objectives for the site and that Stage 2 Appropriate Assessment is, therefore, required.

Appropriate Assessment: Stage 2:

The Board considered the Natura Impact Statement, and all the other relevant submissions on file, and carried out an appropriate assessment of the implications of the proposed development on the Rye Water Valley/Carnton Special Area of Conservation (Site Code: 001398) in view of the site's Conservation Objectives. The Board considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the site's Conservation Objectives using the best scientific knowledge in the field. In completing the assessment, the Board considered, in particular, the following:

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

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.

In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of the European Site in view of the site's Conservation Objectives and that there is no reasonable scientific doubt as to the absence of such effects.

Conditions

1. The proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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, or as otherwise stipulated by conditions attached to this Order, and the proposed development shall be carried out and completed in accordance with the agreed particulars. In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:

The proposed houses numbered 8, 9 and 10 in Row 2 shall be omitted in their entirety and the lands associated with these shall be incorporated into the adjacent area of public open space. Revised drawings incorporating this requirement shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of amenity, and proper planning and sustainable development.

3. The mitigation measures set out in the Natura Impact Statement lodged with the appeal shall be carried out in full, except where otherwise required by conditions attached to this Order.

Reason: To protect the integrity of the Rye Water Valley/Carton Special Area of Conservation (Site Code: 001398).

4. Details of the materials, colours and textures of the hard landscaping, along with details of the tree and/or other planting of the 2.5-metre buffer to be provided along the Rye River within the site shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. In default of agreement, the matter shall be referred to An Bord Pleanála for determination.

Reason: In the interest of residential amenity, and to protect the ecology of the Rye River.

5. (a) The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs and access road shall be in accordance with the detailed standards of the planning authority for such works.
(b) Details of the layout of the junction of the access road with the R148 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.

6. (a) All rear gardens shall be bounded by block walls, 1.8 metres in height, capped and rendered on both sides, to the written satisfaction of the planning authority.
- (b) Details of all other boundaries within the site, including the boundary with the R148, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of residential and visual amenity.

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

Reason: In the interest of clarity and public health.

8. 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 and surface water management.

9. Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted for the written agreement of the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

10. The site shall be landscaped in accordance with a detailed scheme of landscaping, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The scheme shall include provision for hard and soft landscaping within the site, boundary treatments and shall include measures for the protection of trees within and adjoining the site.

Reason: In order to ensure the satisfactory completion of the development.

11. 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 employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works.

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.

12. 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. 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.

13. 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 the installation of lighting. Such lighting shall be provided prior to the making available for occupation of any residential unit.

Reason: In the interest of amenity and public safety.

14. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. The cables shall avoid roots of trees and hedgerows to be retained in the site. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interest of visual and residential amenity.

15. A plan containing details for the management of waste within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials 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.

16. Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority a properly constituted Owners' Management Company. This shall include a layout map of the permitted development showing the areas to be taken in charge and those areas to be maintained by the Owner's Management Company. Membership of this company shall be compulsory for all purchasers of property in the apartment blocks. Confirmation that this company has been set up shall be submitted to the planning authority prior to the occupation of the first residential unit.

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

17. Prior to commencement of development, the developer shall prepare a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021), including demonstration of proposals to adhere to best practice and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness; these details shall be placed on file and retained as part of the public record. The RWMP shall be submitted to the planning authority for written agreement prior to commencement of development. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

Reason: In the interest of sustainable waste management.

18. 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:
- (a) location of the site and materials compounds, including areas identified for the storage of construction refuse, areas for construction site offices and staff facilities, site security fencing and hoardings, and car parking facilities for site workers during the course of construction,
 - (b) the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site, measures to obviate queuing of construction traffic on the adjoining road network, and measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network,
 - (c) details of the implementation of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels, and
 - (d) means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains. The measures detailed in the construction management plan shall have regard to guidance on the protection of fisheries during construction works prepared by Inland Fisheries Ireland.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

Reason: In the interest of amenities, public health and safety.

19. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Saturdays, inclusive, between 0800 to 1400 hours on Saturdays, and not at all on Sundays or 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.

20. 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.

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

22. 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 planning authority of roads, footpaths, watermains, drains, public open space 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 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.

23. 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.



Stephen Brophy

Member of An Bord Pleanála

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

Dated this ^{17th} day of ^{April} 2023.