



An  
Bord  
Pleanála

Board Order  
ABP-312283-21

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## Planning and Development Acts 2000 to 2022

Planning Authority: Wicklow County Council

**Application for Substitute Consent** by Vartry Developments Limited care of Cunnane Stratton Reynolds of 3 Molesworth Place, Dublin in accordance with section 177E of the Planning and Development Act, 2000, as amended by the insertion on section 57 of the Planning and Development (Amendment) Act, 2010, as amended with regard to the retention and completion of mixed use development (residential and retail) in five three-storey blocks at Mount Usher View, Ashford, County Wicklow.

## Decision

The Board, in accordance with section 177K of the Planning and Development Act, 2000, as amended, and based on the Reasons and Considerations set out below, decided to **GRANT** substitute consent in accordance with the following conditions.

## Reasons and Considerations

In coming to its decision, the Board had regard to the following:

- (a) the Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora, as amended,
- (b) the European Union (Birds and Natural Habitats) Regulations 2011-2015,
- (c) the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on a European site,
- (d) the conservation objectives and qualifying interests for The Murrough Special Protection Area (site code: 004186) and The Murrough Wetlands Special Area of Conservation (site code: 002249),
- (e) the policies and objectives of the Wicklow County Development Plan 2022-2028 and the Ashford Town Plan 2022-2028,
- (f) the nature and extent of the proposed works as set out in the application for approval,
- (g) the information submitted in relation to the potential impacts on habitats, flora and fauna, including the remedial Natura Impact Statement,
- (h) the submissions received in relation to the proposed development, and
- (i) the report of the recommendation of the Inspector.

## **Appropriate Assessment Screening**

The Board agreed with and adopted the screening assessment and conclusion of the Inspector's report that The Murrough Special Protection Area (site code: 004186) and The Murrough Wetlands Special Area of Conservation (site code: 002249) are the only European sites in respect of which the proposed development has the potential to have a significant effect.

## **Appropriate Assessment**

The Board considered the remedial Natura Impact Statement and associated documentation submitted with the application for approval, the submissions and observations on file, and the Inspector's assessment. The Board completed an Appropriate Assessment of the implications of the proposed development for the affected European sites, namely The Murrough Special Protection Area (site code: 004186) and The Murrough Wetlands Special Area of Conservation (site code: 002249), in the views of the sites' conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment. In completing the Appropriate Assessment, the Board considered, in particular, the following:

- (a) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans and projects,
- (b) the conservation objectives for the 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 subject development on the integrity of the aforementioned European sites, having regard to the sites' conservation objectives.

In overall conclusion, the Board was satisfied that the subject development, by itself or in combination with other plans or projects, would not adversely affect the integrity of these European sites, in view of the sites' conservation objectives.

### **Proper Planning and Sustainable Development / Likely Effects on the Environment:**

It is considered that in terms of Environmental Impact Assessment, having regard to the scale and nature of the development, the likelihood of significant effects on the environment can be excluded for the purposes of EIA.

It is considered that, subject to compliance with the conditions set out below, the subject development would not have significant negative effects on the environment or the community in the vicinity, would not give rise to a risk of pollution, would not be detrimental to the visual or landscape amenities of the area, would not seriously injure the amenities of property in the vicinity, would not adversely impact on the cultural, archaeological and built heritage of the area and would not interfere with the existing land uses in the area. The subject development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## Conditions

1. (a) This grant of substitute consent shall be in accordance with the plans and particulars submitted to An Bord Pleanála with the application on the 16<sup>th</sup> day of December 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 and the development shall be carried out in accordance with the agreed particulars.
- (b) This grant of substitute consent relates only to development undertaken, as described in the application, and does not authorise any future development on the subject site.

**Reason:** In the interest of clarity.

2. The mitigation measures identified in the plans and particulars, including the Remedial Natura Impact Statement and the Construction Management Plan submitted with this application, shall be carried out in full.

**Reason:** In the interest of protecting the environment and in the interest of public health.

3. 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.

4. (a) 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, 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.

- (b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each specified house or duplex unit for use by individual purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.
- (c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified housing units, in which case the planning authority shall confirm in writing to the applicant or any person with an interest in the land that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.

**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.

5. The construction of the development shall be managed in accordance with a Construction 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 provide details of intended construction practice for the development, noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interests of public safety and residential amenity.

6. Prior to the commencement of development, the developer shall submit full design details and construction method statements for the proposed surface water sewer and outfall to serve the development, for the written agreement of the planning authority.

**Reason:** To ensure an appropriate standard of development and in the interest of public health.

7. The construction of the proposed outfall adjacent to the River Vartry shall be carried out in consultation with Inland Fisheries Ireland and in accordance with an agreed method statement. Any instream works that may be required to facilitate the construction of the proposed outfall shall be completed within the open period between July and September of any given year.

**Reason:** In order to protect water quality.

8. Prior to the commencement of development, the developer shall submit for the written agreement of the planning authority, drawings showing all development works to be taken in charge designed to meet the standards of the planning authority.

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



9. Prior to the commencement of development, the developer shall submit the following for the written agreement of the planning authority:

- (a) A detailed method statement in relation to onsite rock testing, rock excavation and soil nailing (if required), and
- (b) Full details of all ground works and retaining structures required to facilitate the development.

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

10. Prior to the commencement of development, the developer shall submit revised drawings to the planning authority demonstrating the provision of secure bicycle parking facilities for the residents of Block A and site visitors in accordance with the relevant standards of the Wicklow County Development Plan 2022-2028 and the Sustainable Residential Development and Compact Settlements, Guidelines for Planning Authorities, 2024.

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

11. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company, or by the local authority in the event of the development being taken in charge. Detailed proposals for this shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To ensure the satisfactory completion and maintenance of this development.

12. Public lighting shall be provided in accordance with a scheme, details of which 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 house.

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

13. Proposals for an estate name, house 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 numbers, shall be provided in accordance with the agreed scheme. The proposed name 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 of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.

**Reason:** In the interest of urban legibility.

14. Proposals for a unit identification and numbering scheme and associated signage for the retail units shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

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

15. (a) No external security shutters shall be erected on any of the retail units unless authorised by a further grant of planning permission. Details of all internal shutters shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

- (b) No awnings, canopies, projecting signs or other signs shall be erected on the premises without a prior grant of planning permission.

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

16. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. The scheme shall include a plan to scale of not less than 1:500 showing:

- (a) The species, variety, number, size and locations of all proposed trees, shrubs and soft landscaping treatments, including proposed tree planting within the public realm,
- (b) Hard landscaping and boundary treatments, including details of play equipment, safety mesh to rock face, retaining walls/structures and proposed street furniture/seating within the public realm.

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, 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.

17. (a) The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs and the basement car park shall be in accordance with the detailed standards of the planning authority for such works.
- (b) Prior to the occupation of the development, final design details of all works on or adjacent to the public road, including the upgrade works to the junction of the L1096 and R772, public footpaths, site entrances, safety fencing and crash barriers, road markings and signage, shall be submitted for the written agreement of the planning authority.
- (c) A Stage 3 Road Safety Audit, including a Final Audit Report, for the proposed estate roads/entrance to the development from the public road/road improvement works, prepared in accordance with the National Roads Authority's "Design Manual for Roads and Bridges" shall be submitted. Where the audit identifies the need for design changes, revised design details should be submitted to and agreed in writing with the planning authority. The developer shall carry out all necessary works in accordance with the agreed revised design.

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

18. The external finishes and material to Blocks A, B and E shall match those used on Blocks C and D. Any changes shall require the written agreement of the planning authority.

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

19. The dormer windows of Blocks A and B shall be flat dormer windows as illustrated on Drawing Numbers 2018\_013\_3.1.102 and 2018\_013\_3.1.104 submitted to An Bord Pleanála on the 16<sup>th</sup> day of December, 2021.

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

20. All service cables associated with the proposed development shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure with the proposed development.

**Reason:** In the interests of public safety and residential amenity.

21. Prior to the commencement of development, the developer shall enter into water and wastewater connection agreements with Uisce Éireann.

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

22. Drainage arrangements, including the 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.

23. Site development and building works shall be carried out only between the hours of 0800 to 1800 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 property in the vicinity.

24. Within six months from the date of this Order, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the satisfactory reinstatement of the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to such reinstatement. 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 restoration of the site in the interest of visual and residential amenity.

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 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 within three months of the date of this order 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 for determination.

**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 substitute consent.

  
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Stewart Logan

Member of An Bord Pleanála

duly authorised to authenticate  
the seal of the Board

Dated this 16<sup>th</sup> day of August . 2024