



An
Bord
Pleanála

Board Order
ABP-317722-23

Planning and Development Acts 2000 to 2022

Planning Authority: Kildare County Council

Planning Register Reference Number: 221378

Appeal by Cavan Developments Holdings Limited care of Armstrong Fenton Associates of 13 The Seapoint Building, 44-45 Clontarf Road, Clontarf, Dublin against the decision made on the 12th day of July, 2023 by Kildare County Council to refuse permission for the proposed development.

Proposed Development: The development of 10 number three, four and five bed detached houses. The proposed development is comprised of seven number one/two storey four-bed houses, one number one/three storey five-bed house, one number two-storey three-bed house and one number one/two storey three-bed house. Vehicular access to the development will be from the north via three number new access points from the existing Newtown Manor Estate (that is, from The View, The Court and The Avenue), with six number pedestrian access points also provided to the south. The proposed development includes for alterations to the existing road and car parking layout at the Newtown Manor Estate to provide for a total of 30 number car parking spaces. The proposed development includes for all associated site development works, private amenity spaces, drainage, car parking, landscaping, boundary treatments et cetera, all on a site measuring circa 0.4

hectares located to the west of Oldtown Lawns Road and south of the existing Newtown Manor Estate, Kill, County Kildare. The proposed development was revised by further public notices received by the planning authority on the 15th day of 15th day of June 2023, containing significant further information revisions to the proposed house types, with the development now consisting of 10 number detached houses comprised one number one/three storey five-bed house, six number one/two storey four-bed houses and three number one/two storey houses; revisions to the proposed car parking arrangements, including for the provision of 21 number new car parking spaces comprised of six number, on curtilage spaces at The View and The Court and 15 number on-street spaces at The Court and The Avenue (including for one number disabled parking space) and the relocation of nine number existing car parking spaces at The Court; revisions to the proposed roads and layout; revisions to the proposed drainage arrangements. The significant further information submitted also includes for an Acoustic Design Statement, Road Safety Audit and a Sunlight/Shadow Analysis.

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 provisions of the Kildare County Development Plan 2023-2029, the land use zoning objective pertaining to the application site, the existing pattern of development in the vicinity of the site and the design and layout of the proposed development that took due cognisance of the existing pattern of development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not

seriously injure the residential amenities of properties in the vicinity, would not adversely impact on local ecology, would not be detrimental to the character and amenity of the area, and would be acceptable in terms of pedestrian and traffic 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 agreed with the Inspector's concerns in relation to potential impacts on '26-29 The Court' but considered that this could be addressed by way of condition (see condition number 3 hereunder) and a refusal was unwarranted. The Board disagreed with the Inspector's assessment in relation to '1-4 The View' and considered that the location and design of the proposed dwelling to the south of this existing apartment block did take account and due regard of the location of the existing windows to habitable rooms in this block. In relation to matters raised by the Inspector in relation to potential impacts on badgers, the Board noted that the Inspector did not recommend refusal in relation to this matter. Furthermore, the Board noted that there was no evidence submitted by any party or observer to the appeal that there were any badger setts on the application site and the Board was satisfied with the mitigation measures in relation ecological protection as contained within the 'Ecological Impact Assessment' received by the planning authority on the 18th day of November 2022.

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 8th day of June 2023 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 site layout plan, including the car parking provision, shall be as indicated on the drawing titled 'Proposed Site Layout Plan' (Layout ID P-02) received by the planning authority on the 18th day of November 2022 except as may otherwise be required in order to comply with the following condition.

Reason: In the interest of clarity, and pedestrian and traffic safety.

3. The dwelling (type HT-A1) immediately to the south of the existing apartment block '26-29 The Court' shall be located on site as indicated on drawing titled 'Proposed Site Layout Plan' (Layout ID P-02) received by the planning authority on the 18th day of November 2022 (and not as indicated on the amended plans and particulars received by the planning authority on the 8th day of June 2023).

Reason: To protect the aspect from the existing south-facing windows to the habitable rooms in the adjacent residential development '26-29 The Court'.

4. The three number dwellings proposed at the eastern end of the application site, to the south of the existing apartment block '1-3 The Avenue' shall be omitted. This area shall be maintained as open space unless permission is granted at some future stage for development at this location.

Reason: It is considered that the amenity value of the private open space provision for these dwellings would be significantly compromised by reason of overlooking from the existing windows in the apartment block '1-3 The Avenue', given, inter alia, the limited separation distance between the existing apartment block and the private open spaces to the proposed dwellings, and the specific configuration/siting of the three proposed dwellings relative to the said existing apartment block.

5. Details of the materials, colours and textures of all the external finishes to the proposed dwellings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

6. 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.

7. The developer shall enter into water and wastewater connection agreements with Uisce Éireann, prior to commencement of development.

Reason: In the interest of public health.

8. Subject to condition number 2 above, the internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths and kerbs shall comply with the detailed standards of the planning authority for such road works.

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

9. 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, facilitating the installation of EV charging points/stations at a later date. Where proposals relating to the installation of EV ducting and charging stations/points have not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted to, and agreed in writing with, the planning authority prior to the occupation of the development.

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

10. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes, 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.

11. 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.

12. Proposals for an estate/street 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(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 placenames for new residential areas.

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

14. 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, including:
- (a) the location of the site and materials compounds including areas identified for the storage of construction refuse,
 - (b) the location of areas for construction site offices and staff facilities,
 - (c) the details of site security fencing and hoardings,
 - (d) the details of on-site car parking facilities for site workers during construction,
 - (e) the details of 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,
 - (f) measures to obviate queuing of construction traffic on the adjoining road network,
 - (g) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network,
 - (h) alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works,

- (i) the details of appropriate mitigation measures for noise, dust and vibration, and the location and frequency of monitoring of such levels,
- (j) the containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater.
- (k) the means to ensure that surface water run-off is controlled such that no silt or other pollutants/contaminants enter local surface water sewers or drains,
- (l) 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,
- (m) measures to fully remediate the site in accordance with a Construction Stage Invasive Plant Species Management plan, in advance of the commencement of construction activities.

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

15. Prior to the commencement of development, the developer or any agent acting on its behalf, shall prepare a Resource Waste Management Plan (RWMP) as set out in the Environmental Protection Agency'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 the file and retained as part of the public record. The

RWMP must be submitted to the planning authority for written agreement prior to the 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.

16. 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 own-door unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts such 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.

17. 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.

18. 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.

19. 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.



Tom Rabbette

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

Dated this ^{9th} day of ^{MAY} 2024.