

An  
Bord  
Pleanála

Board Order  
ABP-317785-23

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**Planning and Development Acts 2000 to 2022**

**Planning Authority: Wicklow County Council**

**Planning Register Reference Number: 23175**

**Appeal** by Riverview Residential Association care of Martin White of 4 Riverview, Main Street, Newtownmountkennedy, County Wicklow and by Patrick T. O'Brien of The Mill Cottage, Woodstock Road, Newtownmountkennedy, County Wicklow against the decision made on the 17<sup>th</sup> day of July 2023 by Wicklow County Council to grant, subject to conditions, a permission to Papaver Limited care of Architects Workshop Limited of Suite 1, 20 Harcourt Street, Dublin in accordance with plans and particulars lodged with the said Council:

**Proposed Development:** The construction of 27 dwellings (3,042 square metres) in five number blocks with ground floor retail unit of 157 square metres with lower ground floor bin and bicycle store with new access road to service subject lands and existing pumping station and adjoining lands to East, North and South of applicant's lands, with realignment and widening of existing bus stop, with new pedestrian linkage to Main Street with central courtyard space, with 39 number surface car spaces with associated public open space, landscaping, street lighting, services and associated site works to facilitate this development, at Killmacullagh, Main Street, Newtownmountkennedy, County Wicklow. The proposed development was

revised by further public notices received by the planning authority on the 21<sup>st</sup> day of June 2023.

## **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 relevant objectives of the Wicklow County Development Plan 2022-2028 and Newtownmountkennedy Town Plan 2022-2028, including the TC (Town Centre) zoning objective for the site, the Sustainable Residential Development and Compact Settlements Guidelines issued by the Department of Housing (January 2024), the nature of the proposed development, and the pattern of development in the surrounding area, it is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with relevant policies and objectives in the development plan, would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would provide an acceptable standard of amenity for future occupants, would not be prejudicial to public health and would 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.

## **Appropriate Assessment Screening**

The Board considered the information on the file, including the Inspectors Report, and agreed with the assessment of the Inspector that the proposed development, individually or in combination with other plans or projects would

not be likely to have a significant effect on any European site, and a stage 2 Appropriate Assessment is not therefore required.

## Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the planning application on the 23<sup>rd</sup> day of February 2023 and as amended by Further Information received on the 31<sup>st</sup> day of May 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. 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 development shall be carried out on a phased basis, in accordance with a phasing scheme which shall be submitted to, and agreed in writing with the planning authority, prior to commencement of any development.
  - (a) Prior to commencement of any development on the overall site, details of the first phase shall be submitted to, and agreed in writing with the planning authority.
  - (b) Work on any subsequent phases shall not commence until such time as the written agreement of the planning authority is given to commence the next phase. Details of further phases shall be as agreed, in writing, with the planning authority.

**Reason:** To ensure that road, car parking and pedestrian/cycle infrastructure is provided in accordance with the plans of the Local Authority, and the timely provision of services, for the benefit of the occupants of the proposed dwellings, and in the interest of proper planning and sustainable development.

3. Prior to commencement of development, the developer shall submit revised plans and elevations to the planning authority for written agreement, to specify the height and construction details of all boundary treatments, including the site perimeter and dividing boundaries between residential dwelling units.

**Reason:** In the interest of the protection of residential amenity.

4. The proposed development shall be amended as follows:
  - (a) An obscure privacy screen shall be provided at the northwestern end of the balcony terrace serving the sitting room of Apartment Unit 6, Block 5 at first floor level, positioned on the southwest facing elevation.
  - (b) The bay window provided to Apartment Unit 2, Block 1 at first floor level on the northwest facing elevation, shall not have side panel windows.

Revised plans and elevations incorporating the above amendments shall be submitted to the planning authority for written agreement, prior to commencement of development.

**Reason:** In the interest of the protection of residential amenity.



5. (a) Refuse storage shall be provided for each unit as details on drawings received by the planning authority on the 31<sup>st</sup> day of May 2023, unless otherwise agreed in writing with the planning authority, prior to commencement of development.
- (b) Prior to commencement of development, drawings which detail the design and finish of the proposed bin stores relating to Block 2 and Block 3 along Main Street shall be submitted to the planning authority for approval and agreement.

**Reason:** In the interest of visual amenity, and to prevent littering.

6. (a) The use of the retail unit herein permitted shall be restricted to uses specified in Article 5 of the Planning and Development Regulations 2001, (as amended) or Class 2 – Office/Professional Services (excluding use as a betting office) as set out in Schedule 2, Part 4 of the Planning and Development Regulations 2001 (as amended).
- (b) Any change of use, subdivision, or amalgamation of the unit, whether or not such change, subdivision or amalgamation would otherwise constitute exempted development, under the Planning and Development Regulations 2001 (as amended) shall not be undertaken without the prior approval of the planning authority.
- (c) The hours of operation of the retail units and commercial element of the live/work units shall be within the hours of 0800 to 2100 Monday to Saturday and 0900 to 2000 hours on Sundays and Bank Holidays.
- (d) No music or amplified sound shall be broadcast externally from any of the retail or live work units.

**Reason:** In order to clarify and regulate the use of the development hereby permitted in the interests of proper planning and development.

7. The proposed shopfront shall conform to the following requirements:
- (a) Signage shall be restricted to a single fascia sign using writing or comprising either hand-painted lettering or individual mounted lettering.
  - (b) Internally illuminated or plastic signs shall not be used.
  - (c) No roller shutters, awnings, canopies or projecting signs or other additions shall be erected on the premises without a prior grant of planning permission.

**Reason:** In the interest of visual amenity and to protect the character of the area.

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


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

9. Drainage arrangements including the attenuation of 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.

10. Details of the materials, colours and textures of all the external finishes to the proposed 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 and to ensure an appropriate high standard of development.



11. The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths, kerbs and access road to the adjoining public wastewater pumping station shall comply with the detailed construction standards of the planning authority for such works and design standards outlined in Design Manual for Urban Roads and Streets (DMURS), 2019.

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

12. Parking for the development shall be provided in accordance with a detailed parking layout which shall be submitted to, and agreed in writing with the planning authority, prior to commencement of development.

**Reason:** To ensure a satisfactory parking layout in the interest of pedestrian and traffic safety and of visual amenity.

13. Safe and secure bicycle parking spaces shall be provided within the site. Provision should be made for a mix of bicycle types including cargo bicycles and individual lockers. Details of the layout and marking demarcation of these spaces shall be submitted to, and agreed in writing with the planning authority, prior to commencement of development.

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



14. Public lighting shall be provided in accordance with a scheme which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. The scheme shall include lighting along pedestrian routes through open spaces and shall take account of trees within the drawing 221166-LP\_B. 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.

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 interest of visual and amenity.

16. Proposals for a development name and numbering scheme and associated signage shall be submitted to, and agreed in writing with the planning authority, prior to commencement of development. Thereafter, all such names and numbering shall be provided in accordance with the agreed scheme.

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



17. The developer shall implement the recommendations set out in the Arboricultural Report (including Tree Protection Plan) and associated drawings submitted with the application. Prior to the commencement of development, an Arborist shall be retained by the developer for the duration of the construction and shall commence a program for implementation of the recommendations contained in the submitted report. Such works shall be commenced as soon as possible and shall be completed within one year of the completion of development works.

The Arborist shall carry out a post construction tree survey/assessment on the condition of the retained trees. A completion certificate shall be signed off by the arborist when all works are completed and in line with the submitted original tree report and landscape drawings. The certificate shall be submitted to the planning authority for written agreement prior to taking in charge.

**Reason:** To protect trees and hedgerows during construction.

18. The developer shall engage a suitably qualified (license eligible) archaeologist to carry out an Archaeological Impact Assessment (AIA) in advance of any site preparation works and groundworks, including site investigation works/topsoil stripping/site clearance/dredging and/or construction works. The AIA shall involve an examination of all development layout/design drawings, completion of documentary/cartographic/photographic research and fieldwork, the latter to include, where applicable - geophysical survey, metal detection survey and archaeological testing (consent/licensed as required under the National Monuments Acts), building survey/ analysis, visual impact assessment. The archaeologist shall prepare a comprehensive report, including an archaeological impact statement and mitigation strategy, to be submitted for the written agreement of the planning authority in

advance of any site preparation works, groundworks and/or construction works.

Where archaeological remains are shown to be present, preservation in-situ, establishment of 'buffer zones', preservation by record (archaeological excavation) or archaeological monitoring may be required and mitigatory measures to ensure the preservation and/or recording of archaeological remains shall be included in the AIA. Any further archaeological mitigation requirements specified by the planning authority Archaeologist, following consultation with the National Monuments Service, shall be complied with by the developer.

The planning authority and the National Monuments Service shall be furnished with a final archaeological report describing the results of any subsequent archaeological investigative works and/or monitoring following the completion of all archaeological work on site and the completion of any necessary post-excavation work. All resulting and associated archaeological costs shall be borne by the developer.

**Reason:** To ensure the continued preservation (either in situ or by record) of places, sites, features or other objects of archaeological interest.

19. 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) the location of the site and materials compound(s) including area(s) 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 the course of 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) the details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (k) 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;
- (l) the off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (m) the means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

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

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

20. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Friday 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.

21. (a) The areas of the development for taking in charge shall be agreed in writing with the planning authority, prior to the commencement of development on site.
- (b) All areas not taken in charge by the local authority, shall be maintained by a legally constituted management company.
- (c) Details of the management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed with writing with the planning authority before any of the residential units are made available for occupation.

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



22. (a) Unless otherwise agreed in writing with the planning authority, prior to the commencement of any residential 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 residential unit), pursuant to Section 47 of the Planning and Development Act 2000 (as amended), that restricts all residential 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 such specified residential unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each specified residential 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 under (b) shall be subject to receipt by the planning authority and housing authority of satisfactory documentary evidence from the application or any person with an interest in the land regarding the sales and marketing of the specified residential 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 condition has been discharged in respect of each residential unit.

**Reason:** To restrict new housing development to use by persons of a particular class or description in order to ensure and adequate choice and supply of housing, including affordable housing, in the common good.

23. Prior to commencement of development, the developer 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 transfer of a percentage of the land, to be agreed with the planning authority, in accordance with the requirements of section 94(4) and section 96(2) and 96(3)(a), (Part V) of the Planning and Development Act 2000, as amended, and/or the provision of housing on lands in accordance with the requirements of section 94(4) and section 96(2) and 96(3) (b), (Part V) of the Planning and Development Act 2000, as amended], unless an exemption certificate has been granted under section 97 of the Act, as amended. Where such an agreement cannot be reached between the parties, the matter in dispute (other than a matter to which section 96(7) applies) shall 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 for the area.

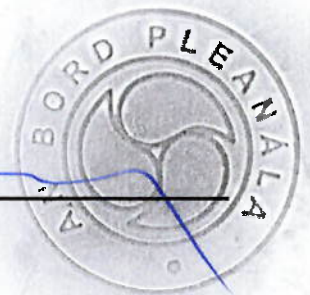
24. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the satisfactory reinstatement of the site upon cessation of the project coupled 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 satisfactory reinstatement of the site.

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 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.

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



Dated this 26<sup>th</sup> day of October 2024.