

Planning and Development Acts 2000 to 2022

Planning Authority: Kildare County Council

Planning Register Reference Number: 23/656

Appeal by Kevin Carton of 37 Tonlegee Lawns, Athy, County Kildare and by others against the decision made on the 12th day of October, 2023 by Kildare County Council to grant subject to conditions a permission to ESJ Blackparks Limited care of McGill Planning of 22 Wicklow Street, Dublin in accordance with plans and particulars lodged with the said Council:

Proposed Development: A large scale residential development at a site of circa 4.21 hectares. The development lands are located to the north of the Athy Distributor Road (under construction), east of Branswood residential estate and south of Tonlegee Lawns and Holm Croft residential estates and west of Fortbarrington Road. The proposed development will comprise of 132 number residential units along with a two-storey creche (circa 188.5 square metres floor area). The residential units will comprise: 102 number two-storey, semi-detached/terraced houses (two number two-beds, 77 number three beds, 23 number four-beds), 30 number three-storey duplexes/apartments (15 number one-bed, 15 number two-bed) within two number blocks. All residential units will be provided with associated private gardens/balconies/terraces facing to the north/south/east/west. New vehicular

(and pedestrian/cyclist) accesses via Fortbarrington Road and Tonlegee Lawns, with additional pedestrian access via Tonlegee Lawns, Branswood and the Athy Distributor Road (under construction) and including associated upgrade works. The application includes an amendment to the Athy Distributor Road permission (planning register reference number HA09.HA0050) as a result, to facilitate the new pedestrian accesses. All associated site development works, including cycle and car parking spaces, open spaces, landscaping, SuDs features, boundary treatments, waste management areas/bin stores, and services provision (including ESB substations) are also proposed; all within the townland of Blackparks, Athy, County Kildare.

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

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

- (a) the nature, scale, and extent of the proposed development and the pattern of existing development in the area,
- (b) the provisions of the Project Ireland 2040 National Planning Framework,
- (c) the provisions of the Sustainable Residential Development and Compact Settlement Guidelines for Planning Authorities issued by the Department of Housing, Local Government and Heritage in January, 2024,

- (d) the provisions of the Eastern and Midland Regional Assembly Regional Spatial and Economic Strategy (RSES) 2019-2031,
- (e) the provisions of the Kildare County Development Plan 2023-2029,
- (f) the provisions of the Athy Local Area Plan 2021-2027 including the 'C: New Residential' zoning for the site,
- (g) the documentation submitted with the planning application, such as the Appropriate Assessment Screening Report, plus the applicant's response to the grounds of appeal,
- (h) the submissions and observations received on file including from the planning authority and third parties,
- (i) 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 on European sites, and
- (j) the report of the Inspector.

Appropriate Assessment Screening

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on European sites, taking into account the nature and scale of the proposed development on serviced lands, the nature of the receiving environment which comprises a greenfield site in an urban area, the distances to the nearest European sites, the hydrological pathway considerations, the information submitted as part of the applicant's Appropriate Assessment Screening Report, and the Inspector's report.

In completing the screening exercise, the Board agreed with and adopted the report of the Inspector and that, by itself or in combination with other development, plans and projects in the vicinity, the proposed development

would not be likely to have a significant effect on any European site in view of the conservation objectives of such sites, and that a Stage 2 Appropriate Assessment is not, therefore, required.

Environmental Impact Assessment Screening

The Board completed an environmental impact assessment screening of the proposed development and considered that the Environment Impact Assessment Screening Report submitted by the applicant, which contains information set out in Schedule 7A to the Planning and Development Regulations, 2001, as amended, identifies and describes adequately the effects of the proposed development on the environment. Having regard to:

- (a) the nature and scale of the proposed development, which is substantially below the thresholds in respect of Paragraphs 10 (b) (i) and (iv) of Part 2 of Schedule 5 of the Planning & Development Regulations, 2001, as amended,
- (b) the existing use of the site and the pattern of development in the vicinity,
- (c) the availability of public water and foul services to serve the proposed development,
- (d) the criteria set out in Schedule 7 of the Planning & Development Regulations, 2001, as amended, and the content of the applicant's Environment Impact Assessment Screening Report, and,
- (e) the measures proposed by the applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Construction Environmental Management Plan,

it is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an Environmental Impact Assessment Report would not, therefore, be required.

Proper Planning and Sustainable Development

The Board considered that, having regard to the zoning of the site and the other provisions of the Kildare County Development Plan 2023-2029 and the Athy Local Area Plan 2021-2027, and to the established pattern of development in the area, the proposed residential development, subject to compliance with the conditions set out below, would make efficient use of an appropriately zoned greenfield site within the boundary of Athy immediately adjacent to the built-up urban area, would positively contribute to compact growth and an increase in housing stock in this urban area, would be acceptable in terms of urban design including filtered permeability links with existing housing developments and the public roads, would be acceptable in terms of pedestrian and traffic safety, and would provide an acceptable form of residential amenity for future occupants. The proposed development would not seriously injure the residential or visual amenities of the area and would, therefore, be in accordance with the proper planning and sustainable development of the area.

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 to the planning authority on the 15th day of September, 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 or as otherwise indicated and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The mitigation measures identified and contained within the Construction Environmental Management Plan, the Ecological Impact Assessment and other plans and particulars submitted with the application shall be implemented in full, except where otherwise required by conditions attached to this permission.

Reason: In the interests of clarity, and of protecting the environment and public health.

3. (a) Filtered pedestrian and cycle permeability shall be provided at the locations illustrated on the drawings submitted on appeal or as otherwise agreed in writing with the planning authority.
- (b) The filtered pedestrian and cycle access at Branswood South West shall be omitted.
- (c) The detailed design of these links shall be agreed in writing with the planning authority prior to the commencement of development on site and delivered in line with the agreed phasing plan.

Reason: In the interest of encouraging and facilitating the use of sustainable modes of transport.

4. Prior to the commencement of development, the developer shall submit for the written agreement of the planning authority a detailed design for the proposed upgrading works along Fortbarrington Road which shall be generally as indicated on the documentation received by the planning authority. These works shall be completed prior to the first occupation of the proposed development at the developer's expense.

Reason: In the interests of pedestrian, cyclist, and vehicular safety and the proper planning and sustainable development of the area.



5. The development shall be carried out in accordance with the phasing programme shown on drawing number PL05, as submitted with the application.

Reason: In the interest of orderly development.

6. Details of the materials, colours, and textures of all the external finishes to the proposed development shall be as submitted with the application, unless otherwise agreed in writing with the planning authority prior to commencement of development. Roof tiles or slate shall be blue/black.

Reason: In the interest of visual amenity.

7. 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.

8. (a) Prior to the completion of Phase 1 of the residential units hereby permitted, the permitted creche shall be fully fitted out and suitable for immediate occupation and operation.

- (b) Details of all creche signage shall be submitted to, and agreed in writing with, the planning authority prior to operation of the creche.

Reason: In the interests of orderly development of the site and the visual amenities of the area.



9. Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority details of the noise mitigation measures to be incorporated into the fabric of the buildings in order to comply with noise insulation requirements.

Reason: In the interest of residential amenity.

10. A two metres high concrete block wall with brick and render shall be provided along the northern site boundary with Tonlegee Lawns and Holmcroft, except at the proposed permeability links.

Reason: In the interests of clarity and residential amenity.

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 interest of visual and residential amenity.

12. Public lighting shall be provided in accordance with the Public Lighting Report unless otherwise agreed in writing with the planning authority prior to commencement of development/installation of lighting. Such lighting shall be provided prior to the making available for occupation of any residential unit.

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

13. 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 interests of public health and surface water management.

14. The developer shall enter into water and wastewater connection agreement(s) with Uisce Éireann prior to commencement of development.

Reason: In the interest of public health.

15. The road network serving the proposed development, including turning bays, junction with the public road, parking areas, footpaths and kerbs, homezones, raised tables, signage, shall be in accordance with the detailed construction standards and requirements of the planning authority for such works and with the relevant provisions of the Design Manual for Urban Roads and Streets (DMURS). In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interests of amenity and of traffic and pedestrian safety.

16. (a) The car parking facilities hereby permitted shall be reserved solely to serve the proposed development. All car parking spaces shall be assigned permanently for the residential development and creche and shall be reserved solely for that purpose.

- (b) A minimum of 10% of communal car parking spaces shall be provided with functioning electric vehicle charging stations or points, and ducting shall be provided for all remaining car parking spaces, facilitating the installation of electric vehicle charging points or stations at a later date.
- (c) Revised plans for cycle parking shall be prepared for the development and shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. The bicycle parking quantity shall be provided as per the bicycle parking standards of the Kildare County Development Plan 2023-2029 and shall comply with the Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities issued by the Department of Housing, Local Government and Heritage in January, 2024. Resident cycle parking spaces shall be secure, conveniently located, sheltered, and well lit. Key/fob access shall be required to resident bicycle compounds. All cycle parking design including visitor parking shall allow both wheel and frame to be locked. Electric bike charging facilities within the resident cycle parking areas shall be provided. All cycle parking shall be in situ prior to the occupation of the development.
- (d) A Parking Management Plan shall be prepared for the development and shall be submitted to, and agreed in writing with, the planning authority prior to the occupation of the development.

Reason: To ensure that adequate car and bicycle parking facilities are available to serve the proposed development.

17. Prior to occupation of the development or as otherwise agreed in writing with the planning authority, a Stage 3 Road Safety Audit shall be carried out by the developer, details of which shall be submitted to, and agreed in writing with, the planning authority.

Reason: In the interests of the safety of vulnerable road users and motorists.

18. The site shall be landscaped in accordance with the detailed comprehensive scheme of landscaping submitted with the application, unless otherwise agreed in writing with the planning authority prior to commencement of development.

Reason: In the interests of residential and visual amenity.

19. (a) The communal open spaces, including hard and soft landscaping, car parking areas and access ways, communal refuse/bin storage, and all areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company.

- (b) - 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 in 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 this development in the interest of residential amenity.

20. (a) A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities for each duplex unit shall be submitted to, and agreed in writing with, the planning authority not later than six months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.
- (b) This plan shall provide for screened communal bin stores, the locations, and designs of which shall be included in the details to be submitted.

Reason: In the interest of residential amenity and to ensure the provision of adequate refuse storage.

21. 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 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.

22. 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 compound(s) including area(s) identified for the storage of construction refuse,
 - (b) location of access points to the site for any construction related activity,
 - (c) location of areas for construction site offices and staff facilities,
 - (d) details of site security fencing and hoardings. Hoardings shall include a one square metre area on each frontage detailing site management contact details,
 - (e) details of on-site car parking facilities for site workers during the course of construction,
 - (f) 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,
 - (g) measures to obviate queuing of construction traffic on the adjoining road network,
 - (h) measures to prevent the spillage or deposit of clay, rubble or other debris on the road network,

- (i) alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any road or footpath during the course of site development works,
- (j) details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels,
- (k) 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) off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil,
- (m) means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains,
- (n) 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, and
- (o) a community liaison officer shall be appointed for the duration of the construction works.

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

23. Site development and building works shall be carried out only between the hours of 0700 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. A Construction and Environmental Management Plan (CEMP) shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. The CEMP shall include, but not be limited to, construction phase controls for dust, noise and vibration, waste management, protection of soils, groundwaters, and surface waters, site housekeeping, emergency response planning, site environmental policy, and project roles and responsibilities.

Reason: In the interests of environmental protection and orderly development.

25. 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:

(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including any hydrological or geotechnical investigations) relating to the proposed development,

- (b) employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works, and,
- (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

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 site and to secure the preservation and protection of any remains that may exist within the site.

26. 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 & 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 & Development Act, 2000 (as amended), and of the housing strategy in the development plan of the area.

27. 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 & Development Act, 2000, as amended, 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.

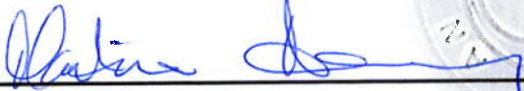
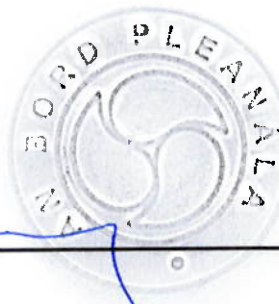
Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

28. 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 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.

29. 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 & 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.

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

Dated this 9th day of February 2024.