

**An
Bord
Pleanála**

**Board Direction
BD-009304-21
ABP-310782-21**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 21/10/2021.

The Board decided to grant permission generally in accordance with the Inspector's recommendation, for the following reasons and considerations, and subject to the following conditions.

Reasons and Considerations

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

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

- a) The site's location on lands with a zoning objective for residential development;
- b) The policies and objectives in the Waterford Development Plan 2011-2017 (as extended) and the Dungarvan Town Development Plan 2012 -2018 (as extended);
- c) Nature, scale and design of the proposed development;
- d) Pattern of existing development in the area;
- e) The Rebuilding Ireland Action Plan for Housing and Homelessness 2016;
- f) The National Planning Framework issued by the Department of Housing, Planning and Local Government in February 2018;

- g) Regional Spatial and Economic Strategy for the Southern Region;
- h) The Guidelines for Sustainable Residential Developments in Urban Areas and the accompanying Urban Design Manual – a Best Practice Guide, issued by the Department of the Environment, Heritage and Local Government in May 2009;
- i) The Design Manual for Urban Roads and Streets (DMURS) issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government in March 2013;
- j) Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government in December 2020 ;
- k) The Urban Development and Building Heights Guidelines for Planning Authorities 2018;
- l) The Planning System and Flood Risk Management (including the associated 'Technical Appendices') 2009; and
- m) Chief Executive's Report; and
- n) Submissions and observations received.
- o) The report of the Planning Inspector

Appropriate Assessment

The Board completed an Appropriate Assessment in relation to the potential effects of the proposed development on designated European sites, taking into account the nature, scale and location of the proposed development within an zoned and adequately serviced urban site, the information in the Natura Impact Assessment, the Screening Statement for Appropriate Assessment and the Ecological Assessment submitted with the application, the Inspector's Report, and submissions on file. In completing the Appropriate Assessment, the Board adopted the report of the Inspector and concluded that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the Dungarvan Harbour Special Protection Area (Site Code: 004032) or any other European site, in view of the site's Conservation Objectives. This conclusion is based on a complete

assessment of all aspects of the proposed project and there is no reasonable doubt as to the absence of adverse effects.

Environmental Impact Assessment

The Board completed a screening determination of the proposed development and considered that the Environmental Impact Assessment Screening Report submitted by the applicant, identifies, and describes adequately the direct, indirect, secondary, and cumulative effects of the proposed development on the environment.

Having regard to:

- nature and scale of the proposed development, which is below the threshold in respect Class 10(b)(i) and Class 10(b)(iv) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,
- the location of the site on lands zoned for residential development in the Dungarvan Town Development Plan 2012 – 2018. The Waterford County Development Plan 2011-2017 (as extended) and Dungarvan Town Development Plan 2012-2018 (as extended) were subject to a strategic environmental assessment in accordance with the SEA Directive (2001/42/EEC).
- The location of the site contiguous to the existing built up urban area of Dungarvan, which is served by public infrastructure, and the existing pattern of development in the vicinity
- the location of the development outside of any sensitive location specified in article 299(3)(a)(v) of the Planning and Development Regulations 2001 (as amended)
- The guidance as set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003),
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended), and
- The features and measures proposed by the applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including

measures identified in the Operational Waste Management Plan, Construction and Demolition Waste Management Plan, Construction and Environmental Management Plan, Site Specific Flood Risk Assessment, Appropriate Assessment Screening and Natura Impact Statement, Ecological Impact Assessment.

In conclusion, having regard to the absence of any significant environmental sensitivity in the vicinity and the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development and that the preparation and submission of an environmental impact assessment report would not therefore be required.

Conclusions on Proper Planning and Sustainable Development:

The Board considered that the proposed development is, apart from the parameters of Section 3.3.4 (density) of Variation 1 of the Waterford County Development Plan 2011-2017 (as extended) and the Dungarvan Town Development Plan 2012 – 2018 (as extended) is broadly compliant with the provisions of the Waterford County Development Plan 2011-2017, as extended, Dungarvan Town Development Plan 2011-2018 (as extended), and would therefore be in accordance with the proper planning and sustainable development of the area.

The Board considers that, while a grant of permission for the proposed Strategic Housing Development would not materially contravene a zoning objective of the Development Plan, it would materially contravene the Section 3.3.4 of Variation 1 of the Waterford County Development Plan 2011-2017 (as extended) and the Dungarvan Town Development Plan 2012 – 2018 (as extended) which sets a density of 10 units per ha.

The Board considers that, having regard to the provisions of section 37(2)(b)(i) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention of the Section 3.3.4 of Variation 1 of the Waterford County Development Plan 2011-2017 (as extended) and the Dungarvan Town Development Plan 2012 – 2018 (as extended) would be justified for the following reasons and considerations:

- The proposed development falls within the definition of strategic housing set as out in the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended.

- Government's policy to provide more housing set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016

The Board considers that, having regard to the provisions of section 37(2)(b)(iii) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention of the Waterford County Development Plan 2011-2017 (as extended), would be justified for the following reasons and considerations:

The Board considers that, having regard to the provisions of section 37(2)(b)(iii) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention would be justified by SPPR4 of the Building Height Guidelines which supported increased density at appropriate locations.

In accordance with section 9(6) of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended, the Board considered that the criteria in section 37(2)(b)(i) and (iii) of the Planning and Development Act 2000, as amended, were satisfied for the reasons and considerations set out in the decision.

Furthermore, the Board considered that, subject to compliance with the conditions set out below that the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of traffic and pedestrian safety and convenience. The proposed development 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 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 hereunder, 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 proposed development shall be amended as follows: -

- a. The internal road serving residential units 01-09, 23-38 and 175-184 and which runs parallel to the L3168 shall be redesigned as a homezone, in accordance with DMURS. Any residual land be allocated as private open space for residential units.
- b. the design of house no. 206 be amended to allow for overlooking of Open Space 7.
- c. 9 no. spaces car parking spaces shall be permanently omitted from the scheme as follows: -
 - 4 no. car parking spaces, in this regard 2 no. spaces on either side of the main vehicular access from the L3168 shall be permanently omitted.
 - 3 no. car parking spaces shall be permanently omitted from Open Space 1; and
 - 2 no. car parking spaces shall be permanently omitted from Open Space 2.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of residential and visual amenity

3. Prior to commencement of development a final details of the phasing of the development including details of areas of open space and infrastructure to be provided at each phase, shall be submitted to and agreed in writing with the planning authority.

Reason: In the interest of clarity

4. Prior to commencement of development the applicant shall submit for the written agreement of the planning authority revised documentation and plans and particulars indicating the number of mature trees to be removed from the southern portion of the site to allow for passive overlooking of the proposed link to Tournore Estate. The documentation shall include details of compensatory planting proposed within the scheme.

Reason: In the interest of residential amenity and safety.

5. Prior to commencement of development final details of the proposed new pedestrian and cycle connection / bridge over the existing drainage ditch and towards the adjacent Tournore Estate shall be submitted to and agreed in writing with the planning authority.

Reason: In the interest of permeability and safety.

6. Prior to commencement of development final details of the internal layout of the creche shall be submitted to and agreed in writing with the planning authority to ensure it complies with all relevant standards.

Reason: To ensure a satisfactory standard of development.

7. Prior to commencement of development a details of the operation and maintenance of Open Space 7, including details of an appropriate high quality boundary treatment shall be submitted to and agreed in writing with the planning authority to ensure Open Space 7 is retained as an ecological buffer.

Reason: In the interest of biodiversity

8. Mitigation and monitoring measures outlined in the plans and particulars, including the Natura Impact Statement and Ecological Impact Assessment submitted with this application shall be carried out in full, except where otherwise required by conditions attached to this permission.

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

9. A schedule of all materials to be used in the external treatment of the development to include a variety of brick finishes, shopfront materials, roofing materials, windows and doors shall be submitted to and agreed in writing with, the planning authority prior to commencement of development. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of visual amenity and to ensure an appropriate high standard of development.

10. Prior to the commencement of 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 housing unit, pursuant to Section 47 of the Planning and Development Act 2000, 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.

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.

11. Details of signage relating to the creche unit shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

12. The boundary planting and public open spaces shall be landscaped in accordance with the landscape scheme submitted to An Bord Pleanála with this application, unless otherwise agreed in writing with the planning authority. The landscape scheme shall be implemented fully in the first planting season following completion of the development, and any trees or shrubs which die or are removed within three years of planting shall be replaced in the first planting season thereafter. This work shall be completed before any of the dwellings are

made available for occupation. Access to green roof areas shall be strictly prohibited unless for maintenance purposes.

Reason: In order to ensure the satisfactory development of the public open space areas, and their continued use for this purpose.

13. Bat and bird boxes shall be installed in the proposed development, prior to the occupation of the residential units. The number, type and location of the boxes shall be submitted to and agreed in writing with the planning authority.

Reason: To promote biodiversity.

14. Prior to the occupation of the residential units, a Mobility Management Strategy shall be submitted to and agreed in writing with the planning authority. This shall provide for incentives to encourage the use of public transport, cycling, walking. The mobility strategy shall be prepared and implemented by the management company for all units within the development.

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

15. A minimum of 10% of all car parking spaces shall be provided with functioning electric vehicle charging stations/points, and ducting shall be provided for all remaining car parking spaces, facilitating the installation of electric vehicle charging points/stations at a later date. Where proposals relating to the installation of electric vehicle ducting and charging stations/points have not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted 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

16. Public lighting shall be provided in accordance with a final scheme to reflect the indicative details in the submitted Outdoor Public Lighting Report, details of which shall be submitted to, and 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 house.

Reason: In the interests of amenity and public safety.

17. 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 hydrological and 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.

18. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

19. Proposals for a naming 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 signs, and apartment numbers, shall be provided in accordance with the agreed scheme. The proposed names 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 place names for new residential areas.

20. 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.

21. The internal road network serving the proposed development, turning bays, junctions, parking areas, footpaths and kerbs, shall be in accordance with the detailed construction standards of the planning authority for such works and design standards outlined in DMURS. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

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

22. Prior to commencement of development details of the new junctions with the L3168 / works to the public road, shall be submitted to, and agreed in writing with the planning authority.

Reason: In the interest of road safety

23. Drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Prior to commencement of development the developer shall submit to the Planning Authority for written agreement a Stage 2 - Detailed Design Stage Storm Water Audit.

Upon Completion of the development, a Stage 3 Completion Stormwater Audit to demonstrate Sustainable Urban Drainage System measures have been installed, and are working as designed and that there has been no misconnections or damage to storm water drainage infrastructure during construction, shall be submitted to the planning authority for written agreement.

Reason: In the interest of public health and surface water management

24. Prior to commencement of development, the developer shall enter into water and/or wastewater connection agreement(s) with Irish Water.

Reason: In the interest of public health.

25. Site development and building works shall be carried out only between the hours of 0700 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

26. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

27. 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 hours of working, noise management measures and off-site disposal of construction/demolition waste.

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

28. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of public open spaces and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to occupation of the development.

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

29. 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 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.

30. 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

31. 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

32. The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2) (c) of the Planning and Development Act 2000 in respect of requirement improvements to surface water management in the area by the enlargement of fluvial water storage. The amount of the contribution 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. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may

facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme, and which will benefit the proposed development.

33. The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2) (c) of the Planning and Development Act 2000 in respect of required improvements to road infrastructure, in particular the provision of a roundabout on the N25 required to serve the development. The amount of the contribution 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. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme, and which will benefit the proposed development.

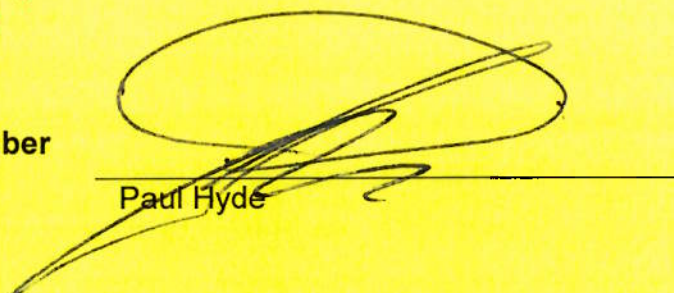
Note: In deciding not to accept the recommendation of the Inspector to omit Houses 111 – 119 and to relocate Blocks 29 and 30 by 15m south of Open Space 5, in place of houses 111-119, the Board considered that the layout as proposed represented a high-quality design response to the Public Open Space requirements for the overall site. The Board also had concerns that the omission of the units would lead to a loss of passive surveillance of public open space and would result in a sub optimal design outcome.

Furthermore, that Board considers that the omission Houses 217 and 218 would be unwarranted having regard to existing provision and distribution of high quality Public Open Space within the overall site and would not injure the visual amenity of the scheme.

Note 2: In deciding not to accept the recommendation of the inspector to omit 17 no. spaces car parking spaces from the scheme, the Board was satisfied that the omission of 9 no parking spaces would be more appropriate having regard to the quality of the open space as referred to below, the Board was satisfied that the reduction of parking would not materially contravene the parking standards in the Development Plan.

Note 3: Finally, the Board had regard to the analysis of the inspector in respect of the distribution and layout of public open space and in deciding not to accept all the recommendation as outlined in detail above, the Board considered that subject to the modified conditions attached (including the delivery of home zones), the proposed public open space would satisfy not only the quantitative but also the qualitative requirements as set out in the Development Plan. In particular the Board was of the opinion that Open Space 1 and Open Space 2 formed part of a footpath circuit which facilitated a high degree of pedestrian accessibility/permeability and amenity surrounding the site which also includes Open Spaces 6, the open space to the southern perimeter and Open space 4.

Board Member



Paul Hyde

Date: 21/10/2021