



## Board Direction

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**Ref: PL06F.246808**

The submissions on this file and the Inspector's report were further considered at a Board meeting held on November 24<sup>th</sup> 2016. The Board also considered related file PL06F.247032 at the same meeting.

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**

Having regard to the nature and scale of the proposed development, to the planning history of the site and associated lands (including planning permission register reference number F15A/0294) and to the pattern of development within the vicinity of the site, and having regard to the provisions of the Fingal County Development Plan 2011 – 2017 and of the Kenure Rush Local Area Plan 2009 – 2019 (within which area the subject site is located), it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or other amenities of the area, would not be prejudicial to public health, and would be acceptable in terms of traffic 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, and the development shall be carried out and completed in accordance with the agreed particulars.

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

2. The proposed development shall be amended as follows:-
  - (a) The design of house number 1 shall be revised to provide a more active southern elevation to the internal road.
  - (b) The one-metre high boundary wall/fence on the eastern site boundary shall be changed to a Type 1 boundary wall (two-metre high wall, rendered and capped).
  - (c) The provision of enclosed bin receptacles for mid-terrace units.
  - (d) All windows serving landings, WCs and bathrooms in the proposed development shall be permanently fitted with opaque glazing.
  - (e) All of the rear gardens of houses shall be bounded by concrete block walls 1.8 metres in height, which shall be capped and rendered on both sides, except where they bound open space areas or footpaths, when the walls shall be 2 metres in height. Concrete post and concrete/timber panel fences shall not be used.

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 visual amenity, public safety and the protection of residential amenities, and of providing durable boundary treatment to rear gardens.

3. The proposed site development works shall not be commenced until the road infrastructure approved under planning permission register reference number F15A/0294, to widen and improve Park Road, has commenced construction. Construction of the proposed houses in this development shall not commence until this road infrastructure is substantially completed to the written satisfaction of the planning authority.

**Reason:** In the interests of traffic and pedestrian safety, and to ensure the timely provision of the necessary roads infrastructure to service the subject site.

4. Construction of the proposed houses in this development shall not commence until the wastewater infrastructure serving the

development is connected to the overall Rush Wastewater Collection Network and is in operation and is discharging to the Portrane/Donabate Waste Water Treatment Plant, and the developer has been informed of this fact in writing by the planning authority,

Wastewater from the proposed development shall not connect to the Rush North Beach pumping station and discharge to the sea at any time without treatment, as proposed, notwithstanding any proposals to remove existing flows from the Seabrook and Brookford estates to the sea outfall.

**Reason:** In the interests of public health and environmental protection, to prevent untreated effluent from this development discharging to the sea, and because it is considered that the construction of any houses in this development would be premature pending the provision of necessary sewerage services to fully cater for the effluent from such houses.

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. Roof colours shall be blue-black or dark grey only, including ridge tiles.

**Reason:** In the interest of protecting the residential amenities of surrounding properties.

6. All roads and footpaths shown on submitted drawings as providing future linkages to adjoining lands and to the future East-West road shall be constructed fully to the edge of the site, and no obstructions or other impediments shall be provided to prevent such linkages, other than the proposed type 6 timber fence, which shall be removed at the time of development of those lands and the construction of this road, as applicable, or when the proposed development is taken in charge (whichever is the sooner). Any future boundary from the public open space to the East-West road, which shall be provided at the developer's expense, shall be agreed in writing with the planning authority, and shall provide for pedestrian linkages from the proposed development to the footpaths along such future road.

**Reason:** In order to facilitate future pedestrian and vehicular linkages to adjoining lands and to the future East-West road, in accordance with the provisions of the Kenure Rush Local Area Plan and national policy to encourage permeability.

7. The access from the development from Park Road shall be closed to vehicular traffic but retained for pedestrian/bicycle traffic, once the East-West road to the north of the development has been constructed. The area thus released shall be landscaped and planted, with the exception of a pedestrian walkway and cycle path, and details of this provision shall be submitted to, and agreed in writing with, the planning authority prior to commence of development.

**Reason:** In the interests of pedestrian safety and permeability.

8. Proposals for a development / estate name, house and unit 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 signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.

**Reason:** In the interests of urban legibility, and to ensure the use of locally appropriate place names for new residential areas.

9. Site development and building works shall be carried only out between 08.00 hrs and 18.00 hrs Mondays to Fridays excluding bank holidays and between 08.00 hrs and 13.00 hrs on Saturdays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In the interest of protecting the residential amenities of adjoining properties.

10. The development hereby permitted, including all roads, footpaths, and public lighting, shall be carried out in accordance with the standards and requirements of the planning authority for taking in charge. The development shall be maintained by the developer until

taken in charge by the authority and shall not be operated or maintained by a private management company.

**Reason:** In order to comply with national policy in relation to the maintenance and management of residential estates, and to ensure that the development, when completed, can be taken in charge by the planning authority.

11. The areas of open space shown on the lodged plans shall be reserved for such use and shall be levelled, contoured, soiled, seeded, and landscaped in accordance with the detailed requirements of the planning authority. This work shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open space by the developer until taken in charge by the local authority. When the estate is taken in charge, the open spaces shall be vested in the planning authority, at no cost to the authority, as public open space.

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

12. 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 noise management measures, measures to prevent pollution to local watercourses, and off-site disposal of construction/demolition waste.

**Reason:** In the interests of clarity, orderly development and amenity.

13. 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 overground cables crossing or bounding the site shall be undergrounded as part of the site development works.

**Reason:** In the interest of visual and residential amenity, and of sustainable development.

14. A construction traffic management plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The plan shall include details of arrangements for routes for construction traffic, parking during the construction phase, the location of the compound for storage of plant and machinery and for storage of deliveries to the site.

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

15. Water supply and 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 interest of public health.

16. Public lighting shall be provided in accordance with a scheme, to include lighting along the footpath access to Park Road, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

17. The landscape scheme accompanying the planning application shall be implemented in full 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. The landscape scheme shall have regard to the planning authority's guidelines for Open Space Development and Taking in Charge. The developer's Landscape Architect shall certify by letter his/her opinion on compliance of the completed landscape scheme with the approved landscape proposal within six months of substantial completion of the development.

**Reason:** In the interests of amenity, ecology and sustainable development.

18. A plan containing details for the management of waste 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 shall be submitted to, and agreed in writing with, the planning authority prior

to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

**Reason:** In the interests of residential amenity and proper waste management.

19. 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.

20. 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 97(7) applies) may be referred by the planning authority or any other prospective party to the agreement to the Board 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.

21. 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 until taking in charge of roads, footpaths, watermains, drains, public open spaces 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 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.

22. 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 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.

Note In imposing condition no. 4 of this order, the Board did not concur with the planning authority, and with the Inspector in his recommended condition 3 (a), that it would be appropriate to limit the occupation of the proposed houses (rather than their construction), pending the provision of necessary foul sewerage services, having regard to the fact that the receiving waters for foul sewage from Rush currently includes European sites - the Rogerstown Estuary Special Area of Conservation (site code 000208), the Rogerstown Estuary Special Protection Area (site code 004015) and the



Rockabill-Dalkey Island Special Area of Conservation (site code 003000). The Board did not consider that such a condition, regulating occupation rather than construction, would be enforceable (since the statutory planning system regulates development and not occupation). In such circumstances, the Board could not be satisfied, beyond reasonable scientific doubt, that the construction of the proposed houses, in the absence of prior provision of the necessary sewerage services, including the connection of the development to the new treatment plant at Portrane/Donabate, would not result in significant effects on these European sites in the light of the conservation objectives of these sites. Furthermore, the Board agreed with the Inspector that it was inappropriate, notwithstanding any proposal to remove existing untreated flows from the Seabrook and Brookford estates, to allow untreated effluent from the subject development to flow into the sea, even on a temporary basis, as was proposed in the application.

*[Please issue a copy of this Direction with the Board Order]*

Board Member: \_\_\_\_\_ Date: 1<sup>st</sup> December 2016  
Philip Jones