



An  
Bord  
Pleanála

**Board Direction**  
**BD-005560-20**  
**ABP-305219-19**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 24/03/2020.

The Board decided to grant permission, for the following reasons and considerations, and subject to the following conditions.

### **Reasons and Considerations**

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

- (a) the site's location close to Dublin City centre, within an established built up area on lands with a zoning objective Z14, which is to 'seek the social, economic and physical development and/or rejuvenation of an area with mixed use, of which residential and Z6 would be the predominant uses, in the Dublin City Council Development Plan 2016-2022;
- (b) the policies and objectives in the Dublin City Council Development Plan 2016-2022;
- (c) The site's location within a Strategic Development Area (SDRA-6 Spencer Dock, Poolbeg and Grand Canal Dock)
- (d) the site's location within the North Lotts and Grand Canal Dock Strategic Development Zone;
- (e) the planning history of the North Lotts and Grand Canal Dock Strategic Development Zone Planning Scheme, and of the area;
- (f) the pattern of existing and permitted development in the area; including but not restricted to 1-4 East Road, Dublin 3. (ABP 304710-19) and the EXO Building DCC Ref: DSDZ3632/15

- (g) objectives 3a, 3b, 11, 13 and 35 of the National Planning Framework
- (h) the Rebuilding Ireland Action Plan for Housing and Homelessness 2016;
- (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) 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;
- (k) the Sustainable Urban Housing: Design Standards for New Apartments guidelines issued by the Department of Housing, Planning and Local Government in March 2018;
- (l) the Planning System and Flood Risk Management guidelines (including the associated Technical Appendices) issued by the Department of the Environment, Heritage and Local Government in November 2009;
- (m) Urban Development and Building Heights Guidelines for Planning Authorities, prepared by the Department of Housing, Planning and Local Government in December 2018, insofar as those guidelines confirm at sections 1.20 and 1.21 that a key objective of the NPF is to see that significant increases in building heights and overall density of development in urban centres is facilitated through the planning process.
- (n) the nature, scale and design of the proposed development;
- (o) the availability in the area of a wide range of social, community and transport infrastructure;
- (p) the submissions and observations received, and
- (q) 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 designated European Sites, taking into account the nature, scale and location of the proposed development within a zoned and serviced urban site, the Information for Screening for Appropriate Assessment document submitted with the application, the Inspector's report, and

submissions on file. In completing the screening exercise, the Board adopted the report of the Inspector and concluded that, by itself or in combination with other development 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**

The Board completed an environmental impact assessment of the proposed development, taking into account:

- (a) The nature, scale and extent of the proposed development;
- (b) The environmental impact assessment report and associated documentation submitted in support of the planning application;
- (c) The submissions from the planning authority, the observers and the prescribed bodies in the course of the application; and
- (d) The Inspector's report.

The Board considered that the environmental impact assessment report, supported by the documentation submitted by the applicant, adequately identifies and describes the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

The Board agreed with the examination, set out in the Inspector's report, of the information contained in the environmental impact assessment report and associated documentation submitted by the applicant and submissions made in the course of the planning application.

The Board considered and agreed with the Inspector's reasoned conclusions, that the main significant direct and indirect effects of the proposed development on the environment are, and would be mitigated, as follows:

- Significant direct positive effects with regard to population and material assets due to the increase in the housing stock that it would make available in the city.
- A significant direct effect on land by the change in the use and appearance of a relatively large brownfield site to residential. Given the location of the site within

the built up area of the city and the public need for housing in the region, this effect would not have a significant negative impact on the environment.

- Potential significant effects on soil during construction due to the excavation and filling required to carry out the development, which will be mitigated by the re-use of excavated material on the site and the implementation of measures to control emissions of sediment to water and dust to air during construction.
- Potential effects arising from noise and vibration during construction which will be mitigated by appropriate management measures.
- Potential effects on air during construction which will be mitigated by a dust management plan including a monitoring programme.
- Potential indirect effects on water which will be mitigated during the occupation of the development by the proposed system for surface water management and attenuation with respect to stormwater runoff and the drainage of foul effluent to the public foul sewerage system, and which will be mitigated during construction by appropriate management measures to control the emissions of sediment to water.
- A positive effect on the cityscape because the proposed development would improve the amenity of the land through the provision of dedicated public open spaces and improved public realm.

The Board completed an environmental impact assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures set out in Chapter 15 the environmental impact assessment report, and subject to compliance with the conditions set out below, the effects on the environment of the proposed development, by itself and in combination with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the Inspector.

## **Conclusions on Proper Planning and Sustainable Development**

The Board considered that the proposed development is, apart from the building height parameters, broadly compliant with the current Dublin City Development Plan 2016-2022 and the current North Lotts and Grand Canal Dock Strategic Development Zone Planning Scheme (which is deemed to form part of the Development Plan), 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 (incorporating the Planning Scheme), it would materially contravene the Plan with respect to building height limits set out for the site concerned. The Board considers that, having regard to the provisions of section 37(2)(b)(i),(iii) and (iv) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention of the development plan would be justified for the following reasons and considerations:

- The proposed development is considered to be of strategic or national importance by reason of its location within an area designated as a Strategic Development and Regeneration Area (SDRA 6 – Spencer Dock, Poolbeg and Grand Canal Dock), its potential to contribute to the achievement of the Government’s policy to increase delivery of housing from its current under supply set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016, and to facilitate the achievement of greater density and height in residential development in an urban centre close to public transport and centres of employment.
- It is considered that permission for the proposed development should be granted having regard to Government policies as set out in the National Planning Framework (in particular objectives 3a, 3b, 11, 13 and 35) and the Guidelines for Sustainable Residential Developments in Urban Areas issued 2009 (in particular section 5.8)

- Having regard to the pattern of existing and permitted development in the vicinity of the proposed development site (not limited to the Planning Scheme area) since the Development Plan and Planning Scheme were adopted.

In deciding not to accept the Inspector's recommendation to refuse permission on the basis that the proposed development would be premature pending the determination of the concurrent application to the Board by the planning authority for amendments to the North Lotts and Grand Canal Dock Strategic Development Zone Planning Scheme, the Board considered that it is obliged to determine the application by reference to the development plan currently in force, and that it is not entitled under the 2000 or 2016 Acts to determine the application based on previous or proposed future iterations of the plan. The Board was satisfied that it was not precluded from determining the application under section 9(4) of the 2016 Act on the basis of prematurity, and that the Board has the requisite jurisdiction under section 9(6) of the 2016 Act to grant permission for a strategic housing development which would materially contravene a development plan or which would be inconsistent with a planning scheme which is deemed to form part of the development plan. In accordance with section 9(6) of the 2016 Act, the Board considered that the criteria in section 37(2)(b)(i), (iii) and (iv) of the 2000 Act were satisfied for the reasons and considerations set out in the decision.

Furthermore, the Board noted the inspector's analysis of the design of the proposed development and agreed with the inspector's ultimate assessment in terms of the scale, massing and site context.

## Conditions

1. The proposed 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 comply with all objectives of the Dublin City Council Development Plan 2016-2022 and the North Lotts and Grand Canal Dock Strategic Development Zone Planning Scheme, save as may be authorised by this grant of permission.

**Reason:** In the interests of clarity and proper planning and sustainable development of the area.

3. Mitigation and monitoring measures outlined in the plans and particulars, including Chapter 15 the environmental impact assessment report 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.

4. The developer shall enter into water and/or wastewater connection agreement(s) with Irish Water, prior to commencement of development.

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

5. 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 and to ensure a satisfactory standard of development.

6. The developer shall comply with all requirements of the planning authority in relation to roads, access, lighting and parking arrangements. In particular:
  - (a) The roads and traffic arrangements serving the site (including signage) shall be in accordance with the detailed requirements of the planning authority for such works and shall be carried out at the developer's expense.
  - (b) The roads layout shall comply with the requirements of the Design Manual for Urban Roads and Streets, in particular carriageway widths and corner radii;
  - (c) Pedestrian crossing facilities shall be provided at all junctions;
  - (d) The materials used in any roads / footpaths provided by the developer shall comply with the detailed standards of the planning authority for such road works,
  - (e) A detailed 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 the location for storage of deliveries to the site.

**Reason:** In the interests of traffic, cyclist and pedestrian safety and to protect residential amenity.

7. All of the communal parking areas serving the apartments shall be provided with ducting for future electric vehicle charging points. Details of how it is proposed to comply with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development

**Reason:** In the interest of sustainable transportation.

8. The site shall be landscaped in accordance with the submitted scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The developer shall retain the services of a suitably qualified Landscape Architect throughout the life of the site development works. The approved landscaping scheme shall be implemented fully in the first planting season following completion of the development or each phase of the development and any plant materials that die or are removed within three years of planting shall be replaced in the first planting season thereafter.

**Reason:** In the interests of residential and visual amenity.

9. Security roller shutters, if installed, shall be recessed behind the perimeter glazing and shall be factory finished in a single colour to match the colour scheme of the building. Such shutters shall be of the 'open lattice' type and shall not be used for any form of advertising, unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenity.

10. Details of all external shopfronts and signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of the amenities of the area/visual amenity.

11. Details of the upper level bridging 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. 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 amenity of property in the vicinity and the visual amenity of the area

13. Pedestrian access to the public open space areas shall be permanent, open 24 hours a day, with no gates, security barrier or security hut at the entrance to the development or within the development in a manner which would prevent pedestrian access between the areas identified above

**Reason:** In the interest of social inclusion.

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

**Reason:** In the interest of visual amenity.

15. Site development and building works shall be carried only out between 07.00 to 19.00 hours Mondays to Fridays inclusive, between 08.00 to 14.00 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 amenity of property in the vicinity.

16. Prior to commencement of development, proposals for an apartment numbering scheme and associated signage shall be submitted to the planning authority for agreement.

**Reason:** In the interest of orderly development.

17. Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority a properly constituted Owners' Management Company. This shall include a layout map of the permitted development showing the areas to be taken in charge and those areas to be maintained by the Owner's Management Company. Membership of this company shall be compulsory for all purchasers of property in the development. Confirmation that this company has been set up shall be submitted to the planning authority prior to the occupation of the first residential unit.

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

18. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site. In this regard, ducting shall be provided to facilitate the provision of broadband infrastructure within the proposed development.

**Reason:** In the interest of orderly development and the visual amenity of the area.

19. 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 social and affordable housing in accordance with the requirements of section 96 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 (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 of the area.

20. 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 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:** To provide for the appropriate management of waste, and in particular recyclable materials, in the interest of protecting the environment.

21. 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 a demolition management plan, together with 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.

22. 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 planning authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the planning 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 the Board for determination.

**Reason:** To ensure the satisfactory completion of the development.

23. 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.

24. The developer shall pay to the planning authority a financial contribution in respect of extension of Luas Line C1 – Red Line Docklands Extension in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 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 Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

**Board Member**

**Date:** 02/04/2020

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Paul Hyde