



An
Bord
Pleanála

Board Direction
BD-005116-20
ABP-305680-19

The submissions on this file and the Inspector's report were considered at a Board meeting held on 10/02/2020.

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

- a) the Z15 zoning on the site and the policies and objectives in the Dublin City Development Plan 2016-2022
- b) the Rebuilding Ireland Action Plan for Housing and Homelessness 2016;
- c) the National Planning Framework issued by the Department of Housing, Planning and Local Government in February 2018
- d) 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
- e) 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
- f) the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued by the Department of the Housing, Planning and Local Government in March 2018

- g) the Urban Development and Building Heights Guidelines for Planning Authorities, prepared by the Department of Housing, Planning and Local Government in December 2018
- h) the Planning System and Flood Risk Management for Planning Authorities (including the associated Technical Appendices), issued by the Department of the Environment, Heritage and Local Government in 2009
- i) the Architectural Heritage Protection- Guidelines for Planning Authorities, issued by the Department of Arts, Heritage and the Gaeltacht in 2011
- j) the impact on any Protected Structure and conservation area in the vicinity
- k) the nature, scale and design of the proposed development
- l) the availability in the area of a wide range of social and transport infrastructure
- m) the pattern of existing and permitted development in the area
- n) the submissions and observations received
- o) the report of the Inspector.

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 respect the existing character of the area, would not detract from the character or setting of the adjacent Protected Structure or conservation area and would not endanger public safety by reason of traffic hazard. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment Screening

The Board considered the Screening Report for Appropriate Assessment, the Natura Impact Statement and all the other relevant submissions and carried out both an appropriate assessment screening exercise and an appropriate assessment in relation to the potential effects of the proposed development on designated European Sites.

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the

- North Dublin Bay SAC (000206)
- South Dublin Bay SAC (000210)
- North Bull Island SPA (004006)
- South Dublin Bay and River Tolka Estuary SPA (004024)
- Baldoyle Bay SPA (004016)
- Malahide Estuary SPA (004025)
- Rogerstown Estuary SPA (004015),

are the only European Sites in respect of which the proposed development has the potential to have a significant effect in view of the Conservation Objectives for these sites and for which Appropriate Assessment is required.

Appropriate Assessment

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment of the implications of the proposed development for European Sites in view of the above sites' Conservation Objectives. The Board considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the sites' conservation objectives using the best available scientific knowledge in the field.

In completing the assessment the Board considered, in particular, the following;

- the Site Specific Conservation Objectives for these European Sites,
- the current conservation status, threats and pressures of the qualifying interest features and the potential displacement of Light Bellied Brent Geese, Oystercatcher, Black-headed Gull and Black-tailed Godwit and Curlew,
- the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,

- the views of the Department of Arts, Heritage and the Gaeltacht, Dublin City Council and Birdwatch Ireland,
- the mitigation measures which are included as part of the current proposal.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential adverse effects of the proposed development on the aforementioned European Sites.

The Board identified that the main likely impact arising from the proposed development on the conservation objectives of the Special Protection Areas (SPAs) would be the displacement of Species of Special Conservation Interest that utilise ex-situ sites for foraging due to habitat modification.

It is a conservation objective of the North Bull Island SPA (004006), South Dublin Bay and River Tolka Estuary SPA (004024), Baldoyle Bay SPA (004016), Malahide Estuary SPA (004025), Rogerstown Estuary SPA (004015) to maintain the favourable conservation condition of the non-breeding waterbird Special Conservation Interest species listed for these sites. Foraging habitat range and extent are attributes that support this objective. There is a demonstrated reliance on ex-situ habitats throughout the wider Dublin Bay for a number of Species of Special Conservation Interest. Having regard to the quantitative and qualitative scientific information set out in the Natura Impact Statement in respect of the number of Light Bellied Brent Geese, Oystercatcher, Black-headed Gull, Black tailed Godwit and Curlew that use the site of the proposed development and the network of other ex-situ sites, the Board concluded that the proposed development, alone and in combination with other plans and projects, would not adversely affect the Population or dynamic Distribution of the Light Bellied Brent Geese, Oystercatcher, Black-headed Gull and Black tailed Godwit and Curlew within the Dublin Bay complex of SPA sites. This conclusion is reached based on the unsuitability of the site for foraging and the demonstrated capacity of other ex-situ sites to accommodate these species.

The Board identified that the main likely impact arising from the proposed development on the Special Areas of Conservation (SACs) would be on the water quality and impact on coastal habitats. It is a conservation objective of the, North

Dublin Bay SAC (000206) and South Dublin Bay SAC (000210) to maintain and/or restore the favourable conservation condition of the habitats. Having regard to the mitigation measures to prevent any adverse impact on the Naniken River, c. 100m to the north of the site, the Board concluded that the proposed development would not adversely affect any of the Qualifying Interests or supporting habitats within either European site.

In the overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of the following European sites

- North Dublin Bay SAC (000206)
- South Dublin Bay SAC (000210)
- North Bull Island SPA (004006)
- South Dublin Bay and River Tolka Estuary SPA (004024)
- Baldoyle Bay SPA (004016)
- Malahide Estuary SPA (004025)
- Rogerstown Estuary SPA (004015).

in view of the sites' conservation objectives and was satisfied that there is no reasonable scientific doubt as to the effects of the proposed development works on the protected areas concerned.

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 application.
- (c) The submissions from the planning authorities, the observers and prescribed bodies in the course of the application,
- (e) The Inspector's report.

The Board agreed with the summary of the results of consultations and information gathered in the course of the EIA, and the examination of the information contained in the Environmental Impact Assessment Report and the associated documentation submitted by the applicant and the submissions made in the course of the application as set out in the Inspector's report. The Board is satisfied that the Inspector's report sets out how these various environmental issues were addressed in the examination and recommendation and are incorporated into the Board's decision.

Reasoned Conclusions on the Significant Effects:

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, provided information which is reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account current knowledge and methods of assessment. The Board is satisfied that the information contained in the Environmental Impact Assessment Report is up to date and complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU. The Board considered that the main significant direct and indirect effects of the proposed development on the environment are those arising from the impacts listed below.

The main significant effects, both positive and negative are:

- A long term positive impact with regard to population due to the increase in the housing stock in the area.
- Biodiversity impacts on the site will be short term negative and will be mitigated by construction management measures, measures for water protection, the provision of active and passive open space, protection of trees to be retained, landscaping, measures to avoid disturbance to bats and the provision of bat boxes.
- Land and soil impacts will be short term direct and indirect and any negative impacts will be mitigated by appropriate excavation on the site, measures to control sediment in surface runoff and use of construction management measures.

- Water impact will be short term and neutral and the potential for impact on the water quality of Naniken River will be mitigated by the use of specialised construction management measures during construction, servicing of the site to the public system and mitigation measures to prevent water pollution.
- Impacts on air quality and climate during construction and operation will be short term and mitigated by a dust management plan and the provision of good quality design and energy efficient buildings.
- Noise and vibration impacts during construction will be short term and will be mitigated by environmental management measures including management of vehicles and plant, sound reduction measures and monitoring of typical noise levels.
- Landscape and visual impacts will be moderate and negative at certain locations and will be mitigated by the location of the public and communal open space, landscape features and additional planting, and the setting of the higher apartment blocks centrally in the site.
- Traffic and transportation impacts will be mitigated by the phasing of the development, the delivery of an access through an existing entrance and provision of enhanced connectivity and a package of local road improvement measures.
- Culture, Archaeological and Architectural Heritage impacts are short to long term and both positive and negative and will be mitigated by design and landscaping, pre-construction surveys, archaeological monitoring, site investigations and monitoring of ground works.
- The main impact on material assets, transport, water and utilities will be negative and short-term during construction phase and will be mitigated by a construction environmental management plan.

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. In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanala for determination.

Reason: In the interest of clarity

2. The period during which the development hereby permitted may be carried out shall be 5 years from the date of this Order.

Reason: In the interests of proper planning and sustainable development

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

Reason: In the interest of visual amenity

4. Prior to commencement of any works on site, revised details shall be submitted to and agreed in writing with the planning authority with regard to the following:

(a) Details regarding the opening hours of the access points between the development site and St. Anne's Park, which shall reflect the opening hours of St. Anne's Park.

(b) Omission of the proposed pedestrian link to St Anne's Park in the north west corner of the site adjacent to the remaining section of walled garden adjacent to the northern site boundary.

(c) Details regarding availability/opening hours of the proposed community uses within Block 1 and Block 6 to the wider public.

(d) Details of protection and repair measures for the remaining section of the walled garden adjacent to the northern site boundary. This wall shall be retained and repaired where possible and any demolition deemed necessary shall not be undertaken without the prior agreement of the planning authority.

(e) Full details of the 2m high boundary railing along the north of Blocks 1, 2, 4 & 6 and its integration with the remaining section of walled garden.

Reason: In the interests of proper planning and sustainable development, to safeguard the amenities of the area and to enhance permeability

5. Mitigation and monitoring measures outlined in the plans and particulars, including the Environmental Impact Assessment Report submitted with this application as set out in Chapter 15 of the EIA 'Mitigation and Monitoring Measures', 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.

6. 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. In particular:

(a) The finalised alignment and details of the surface water outfall pipe and headwall details shall be agreed in writing with the planning authority prior to the commencement of development. Additional details in relation to the scouring of the river channel or river banks shall also be submitted to and agreed in writing with the planning authority.

The design and construction of the pipe shall minimise impact on existing tree root zones and shall include on-site supervision by a qualified arboriculturist employed by the developer and reporting to the

planning authority. Following construction, the alignment shall be landscaped in accordance with the requirements of the planning authority

(b) Development shall not commence until requirements for demolition and reconstruction of the bridge with the proposed drainage outfall at the Naniken River are submitted to and agreed in writing with the planning authority.

Reason: In the interest of public health and to ensure a satisfactory standard of development.

7. (a) The development shall be carried out on a phased basis as detailed in the application and shall include the inclusion of the crèche building in Phase 1 and those associated works which accompany same. Prior to commencement of any development on the overall site, details of the first phase shall be submitted to, and agreed in writing with, the planning authority.

(b) Work on any subsequent phases shall not commence until such time as the written agreement of the planning authority is given to commence the next phase. Details of further phases shall be as agreed in writing with the planning authority.

Reason: To ensure the timely provision of services, for the benefit of the occupants of the proposed dwellings.

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

Reason: In the interest of public health.

9. 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.

10. 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.

11. The construction of the development shall be managed in accordance with a Construction Environmental Management Plan, consistent with the Construction Environmental Management Plan submitted with the application, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:

(a) The location of the site and materials compounds including areas identified for the storage of construction refuse; areas for construction site offices and staff facilities; site security fencing and hoardings; car parking facilities for site workers during the course of construction and the prohibition of parking on neighbouring residential streets;

(b) 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; measures to obviate queuing of construction traffic on the adjoining road network and measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;

(c) Details of the implementation of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;

(d) 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;

(e) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

A record of daily checks that the works are being undertaken in accordance with the Construction Environmental Management Plan shall be kept for inspection by the planning authority. The developer shall provide contact details for the public to make complaints during construction and provide a record of any such complaints and its response to them, which may also be inspected by the planning authority.

Reason: In the interest of amenities, public health and safety

12. All of the communal parking areas serving the residential units shall be provided with functional 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 interests of sustainable transportation.

13. The developer shall comply with all requirements of the planning authority in relation to roads, access 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) 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, and

(d) 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

14. External lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be designed and arranged so as to minimise impacts on bat foraging areas.

Reason: In the interest of orderly development and biodiversity

15. Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority, details of 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 Owners' Management Company. Membership of this company shall be compulsory for all purchasers of property in the proposed 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.

16. The landscaping scheme shown on the Landscape Masterplan Drawing No. 302, as submitted to An Bord Pleanála on the 16th day of October, 2019 shall be carried out within a phasing scheme to be submitted to and agreed in writing with the planning authority.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development or until the development is taken in charge by the local authority, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority. Retained trees shall be protected from damage during construction works to the satisfaction of the planning authority.

Reason: In the interest of residential and visual amenity.

17. PA c 11- substitute 'planning authority' for 'Dublin City Council's Parks and Landscape Services'

18. PA c 12- substitute 'planning authority' for 'Dublin City Council's Parks and Landscape Services'

19. (a) Prior to the occupation of the proposed development, a Mobility Management Strategy shall be submitted to the planning authority for written agreement. The strategy shall address the mobility requirements of future residents and shall promote the use of public transport, cycling and walking and the use of car club spaces. A mobility manager shall be appointed to oversee and co-ordinate the roll out of the strategy.

(b) The Mobility Management Strategy shall incorporate a Car Parking Management Strategy for the overall development. Car Parking Management Strategy shall address the management and assignment of car spaces to

residents and uses over time and shall include a strategy for the creche and visitor parking. Car parking spaces shall not be sold with units but shall be assigned and managed in a separate capacity via leasing or permit arrangements.

20. 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

21. 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.

22. 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 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

23. 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 of roads, footpaths, watermains, drains, 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 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 of the development

24. Standard Security Condition 4- €150,000 to ensure the appropriate protection and preservation of trees on the development site and in St Anne's Park.

25. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to

An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Board Member

Terry Prendergast

Date: 11/02/2020

Decision Quashed