



An  
Bord  
Pleanála

**Board Direction**  
**BD-005123-20**  
**ABP-305779-19**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 11/02/2020.

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 site's location close to Cork city centre, within an established built-up area on lands with zoning objective Z02 '*City Centre Commercial Core Area*' which seeks to 'support the retention and expansion of a wide range of commercial, cultural, leisure and residential uses in the commercial core area (apart from comparison retail uses)' in the Cork City Development Plan 2015-2021,
- (b) the policies set out in the Cork City Development Plan 2015,
- (c) the National Planning Framework issued by the Department of Housing, Planning and Local Government in February 2018,
- (d) the Rebuilding Ireland Action Plan for Housing and Homelessness, (Government of Ireland, 2016),
- (e) 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,
- (f) 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,

- (g) the Guidelines for Planning Authorities on Sustainable Urban Housing: Design Standards for New Apartments, 2018,
- (h) the Planning System and Flood Risk Management (including the associated Technical Appendices), 2009,
- (i) Urban Development and Building Heights, Guidelines for Planning Authorities, 2018,
- (j) Architectural Heritage Protection, Guidelines for Planning Authorities, 2004,
- (k) the nature, scale and design of the proposed development,
- (l) the availability in the area of a wide range of social, community and transport infrastructure,
- (m) the pattern of existing and permitted development in the area,
- (n) the planning history within the area, and
- (o) the report of the Inspector and the submissions and observations received.

### **Appropriate Assessment Screening**

The Board noted that the proposed development is not directly connected with or necessary to the management of a European Site.

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, the Inspector's report, and submissions on file. In completing the screening exercise, the Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the Cork Harbour SPA (004030) is the European site for which there is a likelihood of significant effects. The Board was satisfied that all other European sites could be screened out of any further assessment because the remaining sites identified have no pathway for significant effects.

## **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 the European Site, Cork Harbour SPA (004030), in view of the site's 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:

- Site Specific Conservation Objectives for this European Sites;
- Current conservation status, threats and pressures of the qualifying interest features;
- Likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects, specifically the potential of surface water contamination that could impact on the benthic fauna and epifauna which function as a prey resource of the wetland species in the Cork Harbour SPA; the construction phase of the project which has the potential to generate high levels of incidental noise during both the demolition and construction works and such noise could result in disturbance to special conservation bird species of the SPA.
- 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 effects of the proposed development on the aforementioned European Sites, having regard to the sites' conservation objectives.

The Board identified that the main likely impact arising from the proposed development would be on the water quality of the Cork Harbour SPA and disturbance to special conservation bird species of the SPA from noise during the construction phase. It is a conservation objective of the Cork Harbour SPA to maintain the favourable conservation condition of qualifying interests.

Having regard to:

- the mitigation measures proposed including detailed measures to protect water quality during the construction phase, particularly dewatering activities as well as mitigation measures during the operational phase relating to surface water management,
- the scientific information set out in the NIS in respect of the displacement of birds as a result of noise disturbance; the fact that noise generated during the construction phase will be within acceptable does levels for wetland bird species within 20m of construction and the suite of noise mitigation measures proposed,

the Board concluded that the proposed development would not adversely affect favourable conservation status of the bird species that are qualifying interests of the SPA.

In the overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of European sites in view of the site's conservation objectives and there is no reasonable scientific doubt as to the absence of such effects.

### **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 Authority, 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 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 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.

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:

### **Population and Human Health**

The development will have positive economic impacts in terms of job creation and spin off benefits. It will have a positive impact on the population of the city, provide additional homes and consolidate the urban area. Potential negative impacts to human beings during the construction phase will be mitigated through the implementation of appropriate mitigation measures including a Construction and Environmental Management Plan.

## **Biodiversity**

During the construction phase, there is potential for negative impacts to the Cork Harbour SPA and Great Island Channel SAC arising from the discharge of contaminated surface water from the project site to the River Lee which may result in perturbations to water quality associated with aquatic fauna. A comprehensive range of mitigation measures are proposed to protect surface water quality. Specific measures are set out regarding proposed dewatering works. Ongoing monitoring is proposed to confirm that only clean water is being discharged from the dewatering wells to the River Lee.

## **Land and Soils**

There will be extensive excavation and soil removal during the construction phase. There is potential for contamination due to the historic land use. The appropriate removal and treatment of such contamination can be addressed in the final Construction Environmental Management Plan.

## **Water**

During the construction phase, there is potential for surface water to be contaminated with hydrocarbons, soil and sediment which could negatively affect water quality. Excess water from dewatering activities which may contain silt/sediment could also enter the River Lee affecting water quality. During the operational phase, there is potential for hydrocarbons from the car parking area to contaminate the surface water drainage system and there is also a potential risk of flooding. Detailed mitigation measures are set out to prevent the contamination of the adjacent watercourses from fuel or other hazardous materials. Dewatering works will be undertaken by a specialist dewatering contractor. To mitigate against the risk of flooding, measures such as minimum finished floor levels and use of demountable defences are proposed. In the event of a significant forecasted flood event, an emergency response plan will be implemented.

## **Air Quality**

During the construction phase there is potential for dust emissions from earthworks and construction activities. There is also potential for impacts from asbestos and other pollutants during the demolition of buildings on the site. A number of mitigation measures are set out to control potential impacts during the construction phase. These include general dust management measures including the installation of dust monitoring gauges, demolition techniques, construction management measures etc. A final Construction Environmental Management Plan will be prepared prior to the construction of the development.

## **Noise and Vibration**

The development will generate noise disturbance during the construction phase. This will arise from site clearance, piling, excavation and substructure works, from the erection of buildings and also from construction traffic accessing and egressing the site. A range of mitigation measures are proposed during the construction phase including limiting hours of construction activities, selection of appropriate plant and noise monitoring during critical periods at sensitive locations. It is also proposed that there be continual monitoring of vibration at the adjacent Navigation Square buildings. During the operational phase a range of mitigation measures are proposed in relation to plan and potential noise sources from the bar/restaurant.

## **Cultural Heritage**

The development will generally have a positive impact on the two protected structures as both will be adapted and re-used. The height and scale of the development will have a slight adverse visual impact on the protected structures. The site context however, is considered to already have a significantly altered. The proposed development will involve the demolition of the Sextant Pub in its entirety which is considered a major adverse impact. The demolition must be considered in the context of the overall conservation strategy for the site. The building is not a protected structure and its heritage value has been significantly compromised by numerous alterations over the years. Furthermore, the context and setting of the building has irrevocably been altered. Notwithstanding the negative impact of the demolition of the Sextant Public House, it is considered that the environmental effects would

not justify a refusal of planning permission having regard to the overall conservation benefits of the proposed development.

### **Visual Impact**

The scale of townscape effects to be imposed by the development is classified as High. The new building will be prominent but not substantially uncharacteristic in the context of recent changes to the receiving environment. The development is considered to be a beneficial change at both macro and micro level. While the development will bring significant change in terms of scale and massing, the nature of the change is compatible with the evolving built environment and thus will complement the setting. The overall visual impact is considered to be positive and the development must be considered as part of an emerging cluster of high buildings at this transitional location between the city centre and the docklands.

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

It is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density in this urban location, would not seriously injure the residential or visual amenities of the area, would not detract from the character and setting of the proposed Architectural Conservation Area, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of pedestrian and traffic safety. 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. 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.

3. 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.

4. The development hereby permitted shall be for build to rent units which shall operate in accordance with the definition of Build-to-Rent developments as set out in the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (March 2018) and be used for long term rentals only. No portion of this development shall be used for short term lettings.

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

5. Prior to the commencement of development, the owner shall submit, for the written consent of the Planning Authority, details of a proposed covenant or legal agreement which confirms that the development hereby permitted shall remain owned and operated by an institutional entity for a minimum period of not less than 15 years and where no individual residential units shall be sold

separately for that period. The period of fifteen years shall be from the date of occupation of the first apartments within the scheme.

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

6. Prior to expiration of the 15-year period referred to in the covenant, the owner shall submit for the written agreement of the Planning Authority, ownership details and management structures proposed for the continued operation of the entire development as a Build-to-Rent scheme. Any proposed amendment or deviation from the Build-to-Rent model as authorised in this permission shall be subject to a separate planning application.

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

7. Prior to commencement of development on site, the developer shall submit, for the written agreement of the Planning Authority, details of the management company, established to manage the operation of the development together with a detailed and comprehensive Build-to-Rent Management Plan which demonstrates clearly how the proposed Build-to-Rent scheme will operate.

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

8. The following requirements in terms of traffic, transportation and mobility shall be incorporated and where required, revised drawings / reports showing compliance with these requirements shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development:

(a) The roads and traffic arrangements serving the site (including footpath connections and 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 including junctions, parking areas, footpaths, cycle paths and kerbs, pedestrian crossings, car parking bay sizes and road access to the development shall comply with the requirements of the Design Manual for Roads and Streets and with any requirements of the Planning Authority for such road works.

(c) The materials used in any roads/footpaths/set down areas provided by the developer shall comply with the detailed standards of the Planning Authority for such road works.

(d) A Mobility Management Plan shall be prepared and submitted to the Planning Authority for approval prior to the commencement of development.

(e) Service vehicles to use proposed entrance on Albert Quay for accessing the development. No set down shall be permitted for any vehicles on Albert Quay or Albert Street (N27).

(f) A final Stage 2 (detailed design) and post construction (Stage 3) independent Quality Audit (which should include a Road Safety Audit, Access Audit, Walking Audit and a Cycle Audit) shall be carried out at the developer's expense for the development in accordance with the Design Manual for Urban Roads & Streets (DMURS) Guidance and TII (Transport Infrastructure Ireland) standards. The Quality Audit team shall be approved by the Planning Authority and all measures recommended by the Auditor should be undertaken unless the Planning Authority approves any departure in writing. A feedback report should also be submitted providing a response to each of the items.

**Reason:** In the interests of traffic, cyclist and pedestrian safety.

9. All of the communal parking areas serving the apartments shall be provided with electric vehicle charging points, to allow for the provision of future electric vehicle charging points. Details of how it is proposed to comply with these requirements, including details of design of, and signage for, the electrical charging points shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development.

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

10. 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 3 years of planting shall be replaced in the first planting season thereafter.

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

11. 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.

12. Details of all external 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.

13. 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.

14. Public 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 provided prior to the making available for occupation of any unit.

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

15. Site development and building works shall be carried only out between the hours of 07.00 to 19.00 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 amenities 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. 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 amenities of the area.

18. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which 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, and

(b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

(i) the nature and location of any archaeological material on the site, and

(ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the Planning Authority and, arising from this assessment, the developer shall agree in writing with the Planning Authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

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 area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

19. 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 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. A Final Site Specific Construction and Environmental Management Plan (CEMP) shall be submitted, for the written agreement of the Planning Authority at least 5 weeks in advance of site clearance and site works commencing.

**Reason:** To protect the environment during the construction phase and also to avoid impacts on water quality, sustainable drainage and flooding.

22. 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.

23. 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 for construction traffic, parking machinery and the location for storage of deliveries to the site.

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

24. The Sextant Pub shall be recorded and documented to a detailed form and level to include a written account and visual record to include: measured plans, sections elevations (scale 1:100), fixtures of significance, construction materials and any earlier interventions. The plans, sections, elevations and architectural details are to be cross referenced to a photographic record and locations of detailed features. Copies of all recording material, condition reports and demolition process relating to the building shall be lodged with the Irish Architectural Archives. Copies of all measured drawings of protected structures, recording material and conservation reports, including a photographic inventory shall be lodged with the Irish Architectural Archives on completion of the works.

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

25. Prior to commencement of development, the developer shall provide for the following:-

(a) The appointment of a conservation expert, who shall manage, monitor and implement works on the site and ensure adequate protection of the historic fabric during those works.

(b) All repair/restoration works shall be carried out in accordance with best conservation practice as detailed in the application and the “Architectural Heritage Protection Guidelines for Planning Authorities” (Department of Arts, Heritage and the Gaeltacht, 2011). The repair/restoration works shall retain the maximum amount possible of surviving historic fabric in-situ including structural elements, plasterwork and joinery and shall be designed to cause minimum interference to the building structure and/or fabric.

**Reason:** To ensure that the integrity of the historic structures is maintained and that the structures are protected from unnecessary damage or loss of fabric.

26. The mitigation measures contained in the Natura Impact Statement shall be implemented in full.

**Reason:** In the interest of clarity and the proper planning and sustainable development of the area and to ensure the protection of the European sites.

27. The mitigation measures and monitoring commitments identified in the Environmental Impact Assessment Report, and other plans and particulars submitted with the planning application shall be implemented in full by the developer, except as may otherwise be required in order to comply with the following conditions. The developer shall appoint a person with an appropriate ecological and construction expertise as an environmental manager to ensure that the mitigation measures identified are implemented in full.

**Reason:** In the interest of clarity and protection of the environment during the construction and operational phases of the proposed development.

28. Prior to the commencement of development, the applicant shall submit the full scope of site investigation works to be carried out on the site to the Planning Authority for written agreement. The scope of investigation works shall make provision for sufficient sampling and testing throughout the site to ensure any



potential areas of contaminated lands are discovered, in advance of work commencing on site. The applicant should also set out a detailed strategy and management plan for the removal of any hazardous/contaminated soil and waste from the site including detail of estimated tonnages, relevant mitigation measures, destination for disposal/treatment and information on the authorised waste collector(s).

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

29. 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.

30. 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.

31. The developer shall pay to the Planning Authority a financial contribution in respect of the Cork Suburban Rail Project 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:** 11/02/2020

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Paul Hyde