



An
Bord
Pleanála

Board Direction
BD-006102-20
ABP-306626-20

The submissions on this file and the Inspector's report were considered at a Board meeting held on 16/07/2020.

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 on lands with a zoning objective for residential development;
- (b) the policies and objectives in the Dun Laoghaire Rathdown County Development Plan 2016 to 2022;
- (c) the Rebuilding Ireland Action Plan for Housing and Homelessness 2016;
- (d) the National Planning Framework issued by the Department of Housing, Planning and Local Government in February 2018;
- (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 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;

- (h) the Urban Development and Building Heights Guidelines for Planning Authorities, prepared by the Department of Housing, Planning and Local Government in December 2018;
- (i) Section 37 (2)(b) of the Planning and Development Act 2000, as amended;
- (j) 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;
- (k) the Architectural Heritage Protection- Guidelines for Planning Authorities 2011;
- (l) the nature, scale and design of the proposed development;
- (m) the pattern of existing and permitted development in the area;
- (n) the submissions and observations received, and
- (o) the planning authority Chief Executive's Report
- (p) 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 suburban area, the Screening Report for Appropriate Assessment prepared by Scott Cawley submitted with the application and the Inspector's report and conclusions and submissions on file. In completing the screening exercise, the Board adopted the report of the Inspector and concluded, on the basis of the available information about the circumstances of the application site and the nature of the proposed development, that the proposed development would not be likely to have a significant effect on any Natura 2000 site, including the SPA at Dalkey Islands site code 004172, the SAC at Rockabill to Dalkey Island site code or the SPA at South Dublin Bay and River Tolka Estuary sitecode 004024, either in itself or in combination with any other plan project, and that a Stage 2 Appropriate Assessment is not, therefore, required.

Environmental Impact Assessment Screening

An Environmental Impact Assessment preliminary examination for Strategic Housing applications was carried out by the Board Inspector and it was concluded that based on the nature, size and location of the proposed development that there is no real likelihood of significant effects on the environment.

The Board agreed with and adopted the Inspectors conclusion and concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment. The Board decided, therefore, that an Environmental Impact Assessment Report for the proposed development was not necessary in this case.

Conclusion on Proper Planning and Sustainable Development

The Board considered that, subject to compliance with the conditions set out below, the proposed development would achieve an acceptable standard of urban design and 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 and would be acceptable in terms of pedestrian, cyclist and traffic safety. Furthermore, the Board was satisfied that any potential issues / concerns relating to archaeology and ecology, (specifically bat roosts) could be adequately mitigated subject to conditions (as recommended by the relevant prescribed bodies). The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board noted the concerns of the Inspector with regard to the potential and perceived injury to the residential amenity of the neighbouring properties solely at No. 24 Church Road and 4 Harbour Crescent by way of overlooking and overbearing and that he considered that the proposed development would not meet all the design safeguards set out in section 5.2 of the 2009 Guidelines on Sustainable Urban Residential Development or find the appropriate balance between increased density and existing residential amenities required under policies RES 3 and RES 4 of the Development Plan.

However, having examined the proposed development against the criteria as set out in Section 5.2 of the 2009 Guidelines and in particular in relation to the detailed advice on the criteria to be considered in the design and assessment of higher density residential development notably

- acceptable building heights ;
- avoidance of overlooking and overshadowing;

the Board concluded that, in respect of Block B, subject to the omission of an intermediate floor, (i.e. floor 3) the resulting 3 storey apartment building with a 4th storey set back and the provision of opaque windows and balcony screens on the southern façade of the revised Block B, the proposed development would be acceptable and in compliance with the Ministerial Guidelines based on the site context and layout and that sufficient effort had been made by way of orientation, window and balcony design and maintenance of boundary trees to the west and south west of Block B (i.e. along it's long façade) to mitigate against an unacceptable level of overlooking or overbearing impact.

Furthermore, the Board was satisfied that the proposed development would not , having regard to the separation distances involved, assuming the figures as stated on the submitted plans, seriously injure the amenities of the adjoining residential properties at No. 4 Harbour Crescent and No. 24 Church Road by way of overlooking or be unduly overbearing and considered that the reduced scale of the proposed Block B was appropriate in relation to its proximity to the boundaries with those properties and that the orientation and design of the windows and balconies, subject to compliance with Condition No 3 below, would take adequate account of the neighbouring properties and succeed in minimising any negative impacts and further succeed in achieving the appropriate balance between increased density and existing residential amenities required under policies RES 3 and RES 4 of the Development Plan.

The Board is satisfied that Condition 3 as set out below is sufficiently precise, unambiguous and implementable in order to adequately mitigate against any undue overlooking or overbearing impacts and would achieve adequate protection of the residential amenities of the adjoining residential properties at No. 4 Harbour

Crescent and No. 24 Church Road and the Board further considered that subject to compliance with Condition 3 that the tree screen retention and augmentation is both achieved and furthered mitigates against overlooking and overbearing impacts

The Board therefore noted but did not accept the submission of the residents of No. 4 Harbour Crescent that their residential amenities would be injured by way of overlooking and overbearing and were satisfied that the mitigation measures as set out in Condition 3 and in particular the reduction on overall height of Block B by one floor along with the provision of opaque glazing along the southern façade of the proposed block would address any undue impact on the residential amenities of their property.

The Board noted, but did not accept in full, the opinion of the planning authority in its Chief Executive's Report, but generally accepted the assessment and conclusions of the Inspector in relation to planning authority's three recommended reasons for refusal, in that reason 1 and 3 were not accepted. The Board, noted and concurred with the Inspector's partial agreement with the planning authority on the second reason, the issue of overlooking and overbearing of No. 4 Harbour Crescent and No. 24 Church Road.). The Board concluded that (subject to conditions):

- a) the proposed development would not injure the visual amenities and character of the area, would not be contrary to policy UD1 of the Development Plan because of the scale, massing height and monolithic form of the proposed apartment blocks and considered, on the contrary, that it is, subject to compliance with the attached conditions, a well-conceived and appropriate design response to the site context and adjoining properties.
- (b) the subject development would not overlook, overshadow and overbear adjacent properties and would not be seriously injurious to their amenities or depreciate their value or be contrary to the residential zoning of the site
- (c) the subject site, by reason of its proximity and accessibility to a public transport corridor, specifically the Dart Station at Dalkey, is considered to be a suburban/accessible site, and as such the proposed development complies with applicable apartment standards in SPPR 4 of the 2018 Apartment Design Guidelines, as they relate to suburban/accessible sites (i.e.. being in excess of

33% dual aspect, and specifically achieving 43.6% dual aspect) and that the development would not be required to achieve 50% of apartments being dual aspect which relates to intermediate suburban sites

The Board further considered that the Chief Executive's Report in respect of height in the context of Development Plan Objectives and SPPRs and subject to compliance with attached conditions is satisfied that the upward modifiers, as provided for in the DLRD Development Plan apply, given the proximity of the development to the railway station. Downward modifiers have also been considered and applied and having regard to the requirement to mitigate adverse effects on residential living conditions, a condition has been attached to reduce the height of the development where so required. The 'Coastal Fringe Zone' has also been considered and is not impacted upon by the proposed development, as is supported by visual assessment, CGIs, and planning drawings submitted with the application. The Board does not consider on the basis of the above, that the proposed development would contravene policy RES 3 or RES4 of the development plan, and are satisfied that subject to the conditions attached, which considers the submissions received, the CE's report and inspector's assessment, that the proposed development represents an appropriate balance between the provision of higher residential densities and the protection of the existing amenities and established character of the area, and provides for the sustainable and efficient use of land within a public transport corridor.

In respect of density, the Board is satisfied, having considered the submissions and the Inspector's Report, that the site is a suburban / accessible site and that those policies and densities are applicable. The Board is satisfied that the design statement submitted with the application adequately demonstrates that the 12 principles in the Urban Design Manual have been considered and addressed in the proposed design, with the exception of the potential impact on the immediate vicinity, and this is dealt with by condition.

In respect of housing mix, while the Planning Authority are of the opinion that there is no material contravention of the Development Plan, the Board consider it to be a material contravention and considered that a grant of permission that would materially contravene Section 8.2.3.3 (iii) of the Dun Laoghaire-Rathdown County

Development Plan 2016-2022, which applies to the site, would be justified in accordance with section 37(2)(b) (iii) of the Planning and Development Act 2000, as amended, having regard to SPPR 1 of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, issued in March 2018. The mix of apartment types complies with SPPR 1 of the 2018 guidelines as more than half of the units would have more than one bedroom. That SPPR restricts the extent to which planning authorities can impose additional restriction on housing mix in their development plans unless they have completed a Housing Needs and Demand Assessment, which the Council has not. Compliance with that SPPR is mandatory under section 28(1C) of the planning act. Permission should not be refused, therefore, on the basis of a material contravention of the section 8.2.3.3 (iii) of the development plan which requires a lesser number of one-bedroom units and a greater number of units over 80m² than that currently proposed. or as permitted by way of condition following the omission of 11 apartments in Block B. A grant of permission in contravention of that provision would therefore be justified under section 37(2)(b)(iii) of the planning act to give effect to guidelines on apartment design issued by the Minister in 2018.

In respect of Electric Vehicle provision, the Board have attached a condition, which although less than that sought by the Planning Authority future proofs the proposed development.

In respect of childcare, the Board agreed with the Inspector that as the proposed development would only have 52 apartments with more than one bedroom , it would therefore not contravene the guidelines on childcare facilities which generally require a facility for every 75 dwellings, having regard to section 2.4 of those guidelines. The imposition of a condition requiring such a facility would not, therefore, be necessary.

Having considered submissions received, the Board is satisfied as outlined in the preceding paragraphs, that the various concerns raised have been adequately addresses with the exception of the protection of the integrity of the boundary wall to the school site to the north and sea scout boathouse which is dealt with by condition below. The Board has accepted and included conditions are required regarding archaeology and ecology as requested by the prescribed bodies and are also included below.

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 proposed development shall be carried out and completed in accordance with the agreed particulars. In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. Details of the materials, colours and textures of all the external finishes to the proposed dwellings/buildings shall be as submitted with the application, unless otherwise agreed in writing with, the planning authority prior to commencement of development. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of visual amenity.

3. The proposed development shall be modified as follows.

i) Floor 3 shall be omitted from Block B with a reduction of one storey comprising omission of 11 no. apartments.

ii) All balcony screens and window facing to the south on Block B shall be opaque to a height of 1.5m.

iii) A detailed landscaping plan to maintain, augment and enhance the existing tree screen along the south-western and western boundary, such that a mature conifer tree belt is maintained in perpetuity of the development,

Revised plans and particulars indicating compliance with this condition shall be submitted to the planning authority prior to commencement of development. In

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

Reason: In the interest of residential amenity of adjoining properties.

- 4 Any alterations to the boundary wall to the north shared with the school site including where it abuts the adjoining sea scout boathouse is hereby not authorised by this permission and requires the prior written agreement of the planning authority to the provision of adequate measures to safeguard the wall during the construction of the approved development.

Reason: In the interest of the protection of the structural integrity of the boundary wall and the sea scout boathouse.

- 5 The developer shall comply in full with the measures set out in the submitted bat mitigation strategy including the installation of three bat boxes on the proposed apartment blocks to mitigate the loss of the identified bat roost of the Common Pipistrelle Bat on site . The measures shall be carried out fully in accordance with any licence granted by the NPWS.

Reason: In the interest of the protection of bats.

- 6 The developer shall carry out pre-development archaeological testing fully in accordance with the requirements of The Department of Arts, Heritage and the Gaeltacht

Reason: In the interest of the protection of Archaeological remains.

- 7 The footpath along the front of the site shall be continued across the entrance to the proposed private development.

Reason : In the interest of pedestrian and traffic safety.

- 8 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.

9. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development/installation of lighting. Such lighting shall be provided prior to the making available for occupation of any house.

Reason: In the interests of amenity and public safety.

10. 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 over ground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

11. (a) The car parking facilities hereby permitted shall be reserved solely to serve the proposed development. Clearly identified car parking space shall be assigned permanently for the residential development and shall be reserved solely for that purpose. These residential spaces shall not be utilised for any other purpose, including for use in association with any other uses of the development hereby permitted, unless the subject of a separate grant of planning permission.
- (b) Prior to the occupation of the development, a Parking Management Plan shall be prepared for the development and shall be submitted to and agreed in writing with the planning authority. This plan shall provide for the permanent retention of the designated residential parking spaces and shall indicate how these and other spaces within the development shall be assigned, segregated by use and how the car park shall be continually managed.

(c) Appropriate bike storage details shall be submitted to and agreed in writing with the Planning Authority prior to commencement of development.

Reason: To ensure that adequate parking and bike storage facilities are permanently available to serve the proposed residential units.

12. Prior to the opening/occupation of the development, a Mobility Management Strategy shall be submitted to and agreed in writing with the planning authority. This shall provide for incentives to encourage the use of public transport, cycling, walking and carpooling by residents/occupants in the development and to reduce and regulate the extent of parking. The mobility strategy shall be prepared and implemented by the management company for all units within the development.

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

13. A minimum of 10% of all communal car parking spaces shall be provided with functioning electric vehicle charging stations/points, and ducting shall be provided for all remaining car parking spaces, including in-curtilage spaces, facilitating the installation of electric vehicle charging points/stations at a later date. Where proposals relating to the installation of electric vehicle ducting and charging stations/points has not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted and agreed in writing with the planning authority prior to the occupation of the development.

Reason: To provide for and/or future proof the development such as would facilitate the use of electric vehicles

14. Drainage arrangements including the attenuation and disposal of surface water, shall comply with the general principles and requirements of Sustainable Urban Drainage Systems Guidelines 2009, and the specific requirements of the planning authority for such works and services.

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

15. The site shall be landscaped in accordance with the submitted scheme of landscaping and as amended by Condition 3(iii) above. 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.

16. (a) A plan containing details for the management of waste (and, in particular, recyclable materials) 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 for each apartment unit shall be submitted to, and agreed in writing with, the planning authority not later than six months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.
- (b) This plan shall provide for screened communal bin stores, the locations and designs of which shall be included in the details to be submitted.
- (c) This plan shall provide for screened bin stores, which shall accommodate not less than three standard sized wheeled bins within the curtilage of each house plot.

Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

17. (a) The communal open spaces, including hard and soft landscaping, car parking areas and access ways, communal refuse/bin storage and all areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company.
- (b) Details of the management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.

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

18. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company, or by the local authority in the event of the development being taken in charge. Detailed proposals in this regard shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Reason: To ensure the satisfactory completion and maintenance of this development.

19. 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. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the

site is situated, in particular the plan should demonstrate proposals to maximise reuse of granite and rock soil excavated from site.

Reason: In the interest of sustainable waste management.

20. 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:
- a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
 - b) Location of areas for construction site offices and staff facilities;
 - c) Details of site security fencing and hoardings;
 - d) Details of on-site car parking facilities for site workers during the course of construction;
 - e) Details of 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;
 - f) Measures to obviate queuing of construction traffic on the adjoining road network;
 - g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
 - h) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works; with all measures and arrangements designed and implemented to ensure the safety and well being of all pedestrians and cyclists, in particular children and mobility impaired.

- i) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- j) 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;
- k) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- l) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.
- m) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.
- n) Details and methodology for the rock extraction and excavation works. This shall include timeframes and proposals to deal with vibration and noise.
- o) A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

Reason: In the interests of amenities, public health and safety.

21. Site development and building works shall be carried out only between 0700 to 1900 hours Mondays to Fridays inclusive, 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.

22. The developer shall enter into water and/or wastewater connection agreements with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

23. Prior to commencement of development, the developer or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

24. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the

development until taken in charge.

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

Date: 16/07/2020

Paul Hyde