



An
Bord
Pleanála

Board Direction
BD-006333-20
ABP-307067-20

The submissions on this file and the Inspector's report were considered at a Board meeting held on 26/08/2020.

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 within Dublin Inner city, within an established built-up area and in the Liberties Newmarket Strategic Development and Regeneration Area (SDRA 16),
- b) the policies and objective set out in the Dublin City Development Plan 2016,
- c) the Rebuilding Ireland Action Plan for Housing and Homelessness, (Government of Ireland, 2016),
- 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 (Interim Advice Note Covid 19, May 2020),
- e) the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, 2009,
- f) the Guidelines for Planning Authorities on Sustainable Urban Housing: Design Standards for New Apartments, 2018,
- g) the Planning System and Flood Risk Management (including the associated Technical Appendices), 2009,

- h) Urban Development and Building Heights, Guidelines for Planning Authorities, 2018,
- i) Chief Executive Report received by An Bord Pleanála on the 17th July 2020 and associated appendices,
- j) the nature, scale and design of the proposed development,
- k) the availability in the area of a wide range of social, community and transport infrastructure,
- l) the pattern of existing and permitted development in the area,
- m) the planning history within the area, and
- n) the Inspectors Report,
- o) the submissions and observations received,

Appropriate Assessment

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on designated European sites, taking into account the nature, scale and location of the proposed development within a zoned and serviced urban site, the information for the Screening for Appropriate Assessment submitted with the application, the Inspector's Report, and submissions on file. In completing the screening exercise, the Board adopted the report of the Inspector and concluded that, by itself or in combination with other development in the vicinity, the proposed development would not be likely to have a significant effect on any European site in view of the conservation objectives of such sites, and that a Stage 2 Appropriate Assessment is not, therefore, required.

Environmental Impact Assessment

The Board completed an environmental impact assessment screening of the proposed development and considered that the Environmental Impact Assessment Screening Report submitted by the applicant, identifies and describes adequately the direct, indirect, secondary, and cumulative effects of the proposed development on the environment.

Having regard to:

- (a) the nature and scale of the proposed development on an urban site served by public infrastructure,

(b) the absence of any significant environmental sensitivities in the area,
(c) the location of the development outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),
the Board 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.

Conclusions on Proper Planning and Sustainable Development

The Board considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density in this suburban location, would not seriously injure the residential or visual amenities of the 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.

Height

The Board considered that a grant of permission that could materially contravene section 16.7.2 of the Dublin City Development Plan 2016-2022 in terms of height (24m) would be justified in accordance with sections 37(2)(b)(i) and (iii) of the Planning and Development Act 2000, as amended, having regard to:

(a) The Government's policy to ramp up delivery of housing from its current under-supply set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016;

(b) SPPR3 of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued in March 2018;

all of which support denser residential development consisting of apartments on public transport corridors within the built-up area of Dublin City and its suburbs, as is proposed in this case.

The Board considered that a grant of permission that would materially contravene section 16.7.2 of the Dublin City Development Plan 2016-2022 which apply to the site, would be justified in accordance with sections 37(2)(b)(i) and (iii) of the Planning and Development Act 2000, as amended, having regard to:

The proposed development is considered to be of strategic and national importance having regard to the definition of 'strategic housing development' pursuant to section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended) and its potential to contribute to the achievement of the Government's policy to increase delivery of housing from its current under supply set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016.

SPPR 3 of the Building Height Guidelines which states that where a development complies with the Development Management Criteria in section 3.2, it may be approved, even where specific objectives of the relevant development plan or local area plan may indicate otherwise and national policy in Project Ireland 2040 National Planning Framework (in particular objectives 13 and 35). An assessment of the proposed development was carried out to determine that the proposed development conforms with the development management criteria in section 3.2 of those guidelines.

It is considered that permission for the proposed development should be granted having regard to Government policies as set out in the National Planning Framework, the 'Urban Development and Building Height Guidelines' (in particular section 3.2, SPPR 3), 'Sustainable Urban Housing: Design Standards for New Apartments' and the Dublin City Development Plan 2016-2022.

Unit Mix

The Board considered that a grant of permission that could materially contravene section 16.10.1 of the Dublin City Development Plan 2016-2022 in terms of unit mix would be justified in accordance with sections 37(2)(b)(i) and (iii) of the Planning and Development Act 2000, as amended, having regard to:

- (a) The Government's policy to ramp up delivery of housing from its current under-supply set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016;
- (b) SPPR8 of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued in March 2018;
- (c) SPPR3 of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued in March 2018;
- (d) Appendix 1 of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued in March 2018;
- (e) Section 16.10.1 of the city development plan,

all of which support denser residential development consisting of apartments on public transport corridors within the built-up area of Dublin City and its suburbs, as is proposed in this case.

The Board considered that a grant of permission that would materially contravene section 16.10.1 of the Dublin City Development Plan 2016-2022, which applies to the site, would be justified in accordance with sections 37(2)(b)(i) and (iii) of the Planning and Development Act 2000, as amended, having regard to:

SPPR 8 of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, issued in March 2018 which states no restriction on dwelling mix and all other requirements of these Guidelines shall apply, unless specified otherwise and that the requirement that the majority of all apartments in a proposed scheme exceed the minimum floor area standards by a minimum of 10%

shall not apply to BTR schemes; with which the proposed development would comply.

It is considered that permission for the proposed development should be granted having regard to Government policies as set out in the National Planning Framework and 'Sustainable Urban Housing: Design Standards for New Apartments' and the Dublin City Development Plan 2016-2022 (in particular SPPR8).

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the, 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, or as otherwise stipulated by conditions hereunder, 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 Pleanála for determination.

Reason: In the interest of clarity.

2. 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 not be used for short term rentals. 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 interest of clarity.

3. 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 15 years shall be from the date of occupation of the first residential unit within the scheme.

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

4. 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.

5. Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be as submitted with the application, unless otherwise agreed in writing with, the planning authority/An Bord Pleanála prior to commencement of development. In addition, details of a maintenance strategy for materials within the proposal shall also be submitted for the written agreement of the planning authority, prior to the commencement of any works on site. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination. Render shall not be used as an external finish.

Reason: In the interests of visual amenity and durability.

6. Standard EV Condition
7. The gym shall be for the use of residents of the proposed development only and shall not be open to the public on a commercial basis, unless otherwise authorised by a prior grant of permission. The gym shall be maintained and managed by the Owner's Management Company.

Reason: To ensure the appropriate provision of communal facilities to serve the needs of the residents of the proposed development.

8. a) The precise detail of the retail/café use/restaurant proposed, together with opening hours shall be agreed in writing with the Planning Authority prior to opening of this premises.

b) Before any café use commences, a scheme shall be submitted to, and approved in writing by the planning authority for the effective control of fumes and odours from the café. The scheme shall be implemented before the use commences and thereafter permanently maintained.

c) Prior to the erection on site, the applicant shall submit detailed drawings of the proposed signage for the café for the written agreement of the planning authority.

Reason: In the interests of residential amenity, orderly development and visual amenity.

9. a). Retail units shall not be amalgamated or subdivided, unless authorised by a further grant of planning permission.

b) No external security shutters shall be erected for any of the commercial premises (other than at services access points) unless authorised by a further grant of planning permission. Details of all internal shutters shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In the interest of clarity.

10. No 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. All plant including extract ventilation systems and refrigerator condenser units shall be sited in a manner so as not to cause nuisance at sensitive locations due to odour or noise. All mechanical plant and ventilation inlets and outlets shall be sound insulated and/or fitted with sound attenuators to ensure that noise levels do not pose a nuisance at noise sensitive locations.

Reason: In the interest of residential amenity.

12. The applicant shall provide a detailed management plan for access through the “semi-public courtyard” together with specific opening hours for this access. This management plan shall be submitted for the written agreement of the planning authority prior to commencement of development.

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

13. No advertisement or advertisement structure (other than those shown on the drawings submitted with the application) shall be erected or displayed on the building (or within the curtilage of the site) in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

14. Standard ABP Naming Condition.

Reason: In the interest of urban legibility.

15. Prior to the commencement of the development, the applicant/developer shall agree in writing with the planning authority works to the road and footpath on St. Luke’s Avenue, Brabazon Place, and Newmarket Street, and all works shall be provided at the applicant/developer’s expense, as follows:

a) Revised drawings shall be submitted for agreement showing the width of the

public footpath on St. Luke's Avenue being retained except where the new footpath is proposed to accommodate the loading bay, this section of new footpath shall be at least 2.4 m in width. A revised taken in charge drawing shall be submitted.

b) At the vehicular access/exit point to the development on Newmarket Street, the public footpath shall be continued at a raised level across the site entrance and exit, but shall be ramped and dropped as necessary (e.g. 32mm kerb over carriageway) to facilitate car entry/exit. Measures shall be implemented, including contrasting materials, signing, and road marking, etc. to ensure that vehicles entering/leaving the development are aware that pedestrians/cyclists have priority across the site entrance and that vehicles must yield right of-way.

c) A revised taken in charge drawing shall be submitted

d) Details of the materials proposed in public areas, including areas to be taken in charge, is required and should be in accordance with the document Construction Standards for Roads and Street Works in Dublin City Council and agreed in detail with the Road Maintenance Division.

Reason: In the interest of orderly development.

16. Drainage arrangements including the 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 surface water management.

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

Reason: In the interest of public health.

18. A Mobility Management Plan / Residential Travel Plan shall be submitted for the development for written agreement with the planning authority prior to occupation of the development. The travel plan shall address the mobility requirements of future residents and should promote the use of public transport, cycling and walking. The

residential travel plan shall, aside from the onsite car club facility, identify car club spaces outside of the development and in the vicinity of the site.

Reason: In the interest of orderly development.

19. a) An improved delineated internal cycle access route between the cycle access ramp and the bike store shall be provided. The potential for providing a secondary cycle entry/egress point via the vehicle basement ramp through incorporating delineated cycle route should be reviewed. Revised drawings shall be submitted to the planning authority for written agreement prior to commencement of development.

b) 540 no. cycle parking spaces shall be provided for the development and shall include 10 no. staff spaces at basement level and 20 no. Sheffield stands at surface level. Revised drawings showing required cycle parking provision and demonstrating operational dimensions shall be submitted prior to commencement of the development to the planning authority for written agreement.

c) Cycle parking shall be secure, conveniently located, sheltered and well lit. Shower and changing facilities shall also be provided as part of the development. Key/fob access should be required to bicycle compounds. Cycle parking design shall allow both wheel and frame to be locked.

Reason: In the interest of orderly development.

20. A Parking Management Plan shall be prepared for the site and submitted for the written agreement of the planning authority. This shall indicate how spaces will be assigned and how use of the car parking will be continually managed. 10% of spaces shall be fitted with electric charging point. The car parking spaces on site shall be solely reserved for the use of residents and shall not be available to the commercial uses as long term commuter parking.

Reason: In the interest of orderly development.

21. Car parking spaces shall not be sold, rented or otherwise sub-let or leased to other parties. A minimum of 4 no. car parking spaces within the development shall be permanently allocated to Car Club use.

Reason: In the interest of amenity and of traffic and pedestrian safety.

22. The public open spaces will operate as public realm in perpetuity, with public access and use operated strictly in accordance with the management regime, rules and regulations including any byelaws for public open space of the Planning Authority at all times.

Reason: In the interest of residential amenity and to secure the integrity of the proposed development including open spaces.

23. The landscaping scheme as submitted to An Bord Pleanála shall be carried out within the first planting season following substantial completion of external construction works.

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 shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

The developer shall retain the services of a suitably qualified Landscape Architect throughout the duration of the site development works. The developer's Landscape Architect shall certify to the planning authority by letter his/her opinion on compliance of the completed landscape scheme with the approved landscape proposal within six months of substantial completion of the development hereby permitted.

Reason: In the interests of residential and visual amenity.

24. Prior to the commencement of the development the applicant shall contact the Irish Aviation Authority in relation to all crane operations, with a minimum of 30 days prior notification of their erection. Details of a suitable marking and lighting scheme as agreed with the Irish Aviation Authority shall be submitted to the planning authority prior to the commencement of construction. Additional information regarding crane type (tower, mobile), elevation of the highest point of crane, dimensions of crane, ground elevation and location co-ordinate shall also be required by the Authority to allow for an aviation safety assessment.

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

25. 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.

Reason: In the interests of visual and residential amenity.

26. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall –

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
- (b) employ a suitably qualified archaeologist who shall carry out site testing and monitor all site investigations and other excavation works, and
- (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.
- (d) Agree in writing the archaeological method statements for mitigation with the Department of Culture, Heritage and the Gaeltacht, prior to commencement of any works on site

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection (in situ or by record) of any remains that may exist within the site

27. 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.

28. Site development and building works shall be carried only out between the hours of 07.00 to 18.00 Mondays to Saturdays inclusive, 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.

29. 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.

30. 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 hours

of working, noise management measures and off-site disposal of construction/demolition waste.

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

31. 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.

32. 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.

33. 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.

34. The developer shall pay to the Planning Authority a financial contribution in respect of the Luas Cross City (St. Stephens Green to Broombridge Line) 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: 26/08/2020

Paul Hyde