

An  
Bord  
Pleanála

**Board Direction**  
**BD-006412-20**  
**ABP-307222-20**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 08/09/2020.

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 location of the site in an established urban area, in an area zoned for residential;
- b) the policies and objectives of the South Dublin County Development Plan 2016-2022;
- c) The Rebuilding Ireland Action Plan for Housing and Homelessness 2016;
- d) the National Planning Framework which identifies the importance of compact growth;
- e) The Guidelines for Sustainable Residential Developments in Urban Areas and the accompanying Urban Design Manual – a Best Practice Guide, issued by the Department of the Environment, Heritage and Local Government in May 2009;
- f) The Urban Development and Building Heights Guidelines for Planning Authorities, prepared by the Department of Housing, Planning and Local Government in December 2018 and particularly Specific Planning Policy Requirement 3;

- g) The Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government in March 2018;
- h) 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;
- i) The Planning System and Flood Risk Management (including the associated Technical Appendices), 2009;
- j) Architectural Heritage Protection- Guidelines for Planning Authorities 2011;
- k) The nature, scale and design of the proposed development and the availability in the area of a wide range of social, transport and water services infrastructure;
- l) The pattern of existing and permitted development in the area;
- m) Section 37(b)(2) of the Planning and Development Act 2000, as amended, whereby the Board is not precluded from granting permission for a development which materially contravenes a Development Plan;
- n) The submissions and observations received;
- o) The Chief Executive Report from the Planning Authority; and
- 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 urban area, the Appropriate Assessment Screening document submitted with the application, the Inspector's report, and submissions on file. In completing the screening exercise, the Board adopted the report of the Inspector and concluded that, by itself or in combination with other development in the vicinity, the proposed development would not be likely to have a significant effect on any European Site in view of the conservation objectives of such sites, and that a Stage 2 Appropriate Assessment is not, therefore, required.

## **Environmental Impact Assessment**

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

- The nature, scale and extent of the proposed development,
- The Environmental Impact Assessment Report and associated documentation submitted in support of the application,
- The submissions from the planning authority, the observers and prescribed bodies in the course of the application,
- The Inspector's report.

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant identifies and describes adequately the direct, indirect and cumulative effects of the proposed development on the environment. The Board is satisfied that the information contained in the Environmental Impact Assessment Report complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU.

The Board agreed with the summary and examination, set out in the Inspector's report, of the information contained in the Environmental Impact Assessment Report and associated documentation submitted by the applicant and submissions made in the course of the application. The Board is satisfied that the Inspector's report sets out how these were addressed in the assessment and recommendation (including environmental conditions) 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 and the results of the examination set out in the Inspector's Report. The Board is satisfied that the information contained in the Environmental Impact Assessment Report is up to date

and complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU. The Board considered that the main significant direct and indirect effects of the proposed development on the environment are those arising from the impacts listed below. A Construction Environmental Management Plan is the overarching general mitigation relevant to the project design and delivery for the construction stage.

The Board considered that the main significant direct and indirect effects of the proposed development on the environment are, and will be mitigated as follows.

**Population and Human Health** – There will be positive impact with regard to population due to the increase in the housing stock that would be available in the area. Furthermore, an increased population will help to support future and existing services. The proposed development is not likely to have adverse effects on population and human health.

**Landscape and Visual Impacts** - The development will present as a new development in the landscape and it will change the character radically from the existing one. There will also be changed views for some, particularly from the housing to the north-west, north and north-east of the site, and to the east of the site, along Taylor's Lane, and along Edmondstown Road, and from views towards the site on Scholarstown Road. However, the lands are zoned for residential development and the proposal is not expected to involve the introduction of new or uncharacteristic features into the local or wider landscape character setting. The potential impact will be mitigated by the setback of the proposed development from Taylor's Lane, the reduction in height at the north-eastern, eastern and south-eastern extent of the development, the existing screening to the east of the site and the provision of open spaces within the site.

**Traffic and transportation Impacts** - These will be mitigated by the reduced level of car parking, the availability of bus services, and by the completion of road, cycle and footpath infrastructure, as well as upgrade of existing roads infrastructure.

**Hydrology and Water Services/Material Assets** - In relation to water, surface water and foul water, impacts are proposed to be mitigated by construction management measures and operational phase measures, including regular maintenance of the SUDS features. These are not mitigation measures for the purposes of Appropriate Assessment and are not designed to avoid likely significant effects on any Natura 2000 sites.

**Noise and Vibration** - Potential effects arising from noise and vibration during construction which will be mitigated by appropriate management measures.

**Biodiversity** - Biodiversity impacts will be mitigated on the subject site by a range of measures identified in the EIAR, including construction management measures, protection of trees to be retained, landscaping including the provision of an ecological corridor to the south of the site, and the provision of bat and bird boxes. These are not mitigation measures for the purposes of Appropriate Assessment and are not designed to avoid likely significant effects on any Natura 2000 sites.

**Cultural Heritage** - Cultural heritage impacts, which will be mitigated by a programme of archaeological investigations undertaken prior to the commencement of the construction phase, and the architectural recording of the existing building on site.

**Air Quality and Climate** - Impacts on air quality and climate which will be mitigated by measures set out in the EIAR.

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

The Board considered that, subject to compliance with the conditions set out below that the proposed development would constitute an acceptable quantum and density of development in this accessible urban 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 safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

The Board considered that, while a grant of permission for the proposed Strategic Housing Development would not materially contravene a zoning objective of the statutory plans for the area, a grant of permission could materially contravene the South Dublin County Development Plan 2016-2022 in relation to building height. The Board considers that, having regard to the provisions of section 37(2) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention of the South Dublin County Development Plan 2016-2022 would be justified for the following reasons and consideration.

In relation to section 37(2)(b)(i) of the Planning and Development Act 2000 (as amended):

The current application has been lodged under the Strategic Housing legislation and the proposal is considered to be strategic in nature. National policy as expressed within Rebuilding Ireland – The Government's Action Plan on Housing and Homelessness and the National Planning Framework – Ireland 2040 fully support the need for urban infill residential development, such as that proposed on this site.

In relation to section 37(2)(b) (ii) of the Planning and Development Act 2000 (as amended):

It is the view of the Board that the objectives of Housing Policy 8, to support higher densities, conflict with the limitations in height contained within Housing Policy 9 Objective 4. While the objectives contained within Housing Policy 8 generally encourage higher densities and efficient use of lands, at appropriate locations, Policy 9 objective 4 seeks to direct tall buildings that exceed five storeys in height to strategic and landmark locations in Town Centres, Mixed Use zones and Strategic Development Zones and subject to an approved Local Area Plan or Planning Scheme. Given that higher densities are generally associated with increased heights, restricting developments that exceed 5 storeys to the limited number of sites that fulfil Policy 9 Objective 4, conflicts with the objective to maximise the most efficient use of remaining sites, which may also be suitable for higher densities.

In relation to section 37(2)(b) (iii) of the Planning and Development Act 2000 (as amended):

The Eastern & Midland Regional Assembly – Regional Spatial & Economic Strategy 2019-2031, seeks to increase densities on appropriate sites within Dublin City and Suburbs. In relation to Section 28 Guidelines, of particular relevance are the Urban Development and Building Height Guidelines (2018) which state, *inter alia*, that building heights must be generally increased in appropriate urban locations, subject to the criteria as set out in Section 3.2 of the Guidelines. The proposal has been assessed against the criteria therein. The Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities (2009), support increased densities in appropriate locations and the proposal has been assessed in relation to same.

In relation to section 37(2)(b) (iv) of the Planning and Development Act 2000 (as amended):

The Board notes the recent approval for an SHD application on the Scholarstown Road ('Beechpark' and 'Maryfield', Scholarstown Road, Dublin 16) for a development of 590 no. residential units, up to 6 storeys in height (ABP Reference 305878-19). This is located approximately 1km to the west of this site. As such, precedent for higher buildings (and higher densities) than currently exist has been established in this 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. In default of agreement, such issues may be referred to An Bord Pleanála for determination.

**Reason:** In the interest of clarity.

2. The mitigation measures and monitoring commitments identified in the Environmental Impact Assessment Report, and other plans and particulars

submitted with the application shall be carried out in full, except as may otherwise be required in order to comply with other conditions.

Prior to the commencement of development, the developer shall submit a schedule of mitigation measures and monitoring commitments identified in the Environmental Impact Assessment Report, and details of a time schedule for implementation of the mitigation measures and associated monitoring, to the planning authority for written agreement.

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

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

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

4. The developer shall comply with all requirements of the planning authority in relation to roads, access, cycling infrastructure and parking arrangements. In particular:

- a) Final layout of works to the Edmondstown Road shall be agreed in advance with the Planning Authority and shall conform to the requirements of the National Cycle Manual regarding cycle lanes. Advanced Stacking Locations (ASLs) shall be provided for at the signalised junction with Scholarstown Road.
- b) Final Layout of cycle infrastructure within the site and on Taylor's Lane shall be agreed with the Planning Authority in advance of commencement of works, and shall include: (i) Additional covered cycle storage at ground level; (ii) Separate bicycle accesses to basement level; (iii) A toucan crossing on Taylor's Lane, opposite the proposed easternmost access to the site; (iv) Adequate cycle route through the site between Scholarstown Road junction and the Toucan crossing on Taylor's Lane, and adequate space/layout for cyclists to use the access alongside pedestrians.
- c) The existing 3 arm junction at Scholarstown Road Edmondstown Road shall be upgraded to a 4-arm signalised junction to allow for the main vehicular access to the development. These junction modifications to be



in accordance with the drawings submitted with the application, except as required by this and other conditions.

- d) An emergency only vehicular access shall be provided onto Taylors Lane between Block A and Block C. This access shall be open to pedestrians when not in use as a vehicular access.
- e) A total of 372 no. vehicle parking spaces shall be provided at the development of 496 units. This equates to a residential parking ratio of 0.7 spaces per unit. These car parking spaces shall include a total of 5 no. car share spaces and 22 no. mobility impaired spaces.
- f) There shall be 1144 no. bicycle spaces provided within the development.
- g) A Mobility Management Plan is to be completed within six months of opening of the proposed development. The Mobility Management Plan shall be agreed with the Planning Authority.

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

5. The car parking facilities hereby permitted shall be reserved solely to serve the proposed development. The 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.

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

6. A minimum of 10% of all car parking spaces shall be provided with functioning electric vehicle charging stations/points, and ducting shall be provided for all remaining car parking 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.

7. Proposals for the development name and dwelling numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all signs, and dwelling numbers, shall be provided in accordance with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

**Reason:** In the interest of urban legibility and to ensure the use of locally appropriate placenames for new residential areas.

8. 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 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.

9. The areas of public open space and communal open spaces, as shown on the lodged plans shall be landscaped in accordance with the landscape scheme submitted to An Bord Pleanála with this application, unless otherwise agreed in writing with the planning authority. The landscape scheme shall be implemented fully in the first planting season following completion of the development, and any trees or shrubs which die or are removed within 3 years of planting shall be replaced in the first planting season thereafter. This work shall be completed before any of the dwellings are made available for occupation. Access to green roof areas shall be strictly prohibited unless for maintenance purposes.

**Reason:** In order to ensure the satisfactory development of the public and communal open space areas, and their continued use for this purpose.

10. To ensure the protection of the existing trees to be retained within the development site, the applicant shall implement the tree protection measures contained within the Tree Survey Report and Tree Protection Drawing 19026\_TPP. In addition prior to the commencement of construction works on site, the appointed arborist/landscape architect is to arrange a site meeting with the Public Realm Section in order to ensure that all tree and hedgerow protection measures as per the Arboricultural Report have been implemented in full on site.

**Reason:** To ensure and give practical effect to the retention, protection and sustainability of trees during and after construction of the permitted development.

11. 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. Such lighting shall be provided prior to the making available for occupation of any dwelling.

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

12. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. In particular:

a) A detailed SuDS scheme for the proposed development which meets the objectives of South Dublin County Council Development Plan 2016-2022 to be agreed with the Planning Authority. The SuDS should be an integrated multidisciplinary approach which locally addresses water quality, water quantity, and provides for amenity and biodiversity enhancement. The SuDS features should include devices such as swales, permeable paving, filter drains, rain gardens, integrated tree pits in hard standing areas and green roofs.

b) Prior to commencement of development the applicant is required to submit SuDS (Sustainable Drainage Systems) Strategy drawings showing plan and cross sectional views of all proposed SuDS features referred to in section 5.2 and 5.3 of the submitted infrastructure design

report i.e. Green roofs, Permeable Paving, green podium slab, bio swales, raised planters, rain gardens, Tree pits, vegetation planters, filter drains and bio retention systems.

- c) The applicant has proposed to locate an underground attenuation system (Tank 1) underneath the main entrance access roadway to the west of the development. It is unclear if this access roadway is to be taken in charge by the Council. If this access roadway is to be taken in charge by the council then prior to commencement of development, the applicant shall obtain agreement from South Dublin County Council Roads Department regarding the location of this attenuation system underneath the access roadway to be taken in charge. If the attenuation system must be relocated, then the applicant shall submit a revised surface water drainage layout drawing showing relocated attenuation system prior to commencement of development. The proposed attenuation volumes must not be adversely affected in this case.
- d) Prior to commencement of development, the applicant shall submit a report for the written agreement of the Planning Authority, outlining the investigation works that took place to determine that there is no 900mm surface water culvert traversing the subject site to the north east.
- e) Prior to commencement of development, the applicant is required to submit a surface water catchment layout drawing in plan view clearly identifying which surface areas are served by each surface water attenuation system, for the written agreement of the Planning Authority.
- f) The proposed surface water outfall to the Owendoher River located to the North West of the subject site should be designed to ensure that there is no erosion and/or sediment build-up at the point of surface water outfall over time. The outfall must be designed to ensure that surface water will be capable of discharging from the subject site at times of high river flood levels.
- g) The applicant shall ensure that all surface water run-off attenuating and conveying features are designed to ensure that surrounding building/structure foundations are not undermined or adversely affected by infiltrating surface water.

- h) All swale and retention basin inlets and outlets should be designed to ensure that there is no erosion/sediment build-up at the point of surface water entry/exit.
- i) There shall be complete separation of the foul and surface water drainage systems, both in respect of installation and use. All new precast surface water manholes shall have a minimum thickness surround of 150mm Concrete Class B.
- j) All drainage works for this development shall comply fully with the Greater Dublin Regional Code of Practice for Drainage Works.

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

13. 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.

14. 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 6 months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.

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

15. 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.

16. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of public open spaces, roads and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to occupation of the development.

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

17. The construction of the development shall be managed in accordance with a Final Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. This plan shall provide inter alia: details of proposals as relates to soil importation and exportation to and from the site; details and location of proposed construction compounds, details of intended construction practice for the development, including noise management measures, details of arrangements for routes for construction traffic, parking during the construction phase, and off-site disposal of construction/demolition waste and/or by-products.

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

18. The site development and construction works shall be carried out in such a manner as to ensure that the adjoining roads are kept clear of debris, soil and other material, and cleaning works shall be carried on the adjoining public roads by the developer and at the developer's expense on a daily basis.

**Reason:** To protect the residential amenities of property in the vicinity.

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.

**Reason:** In the interest of sustainable waste management.

20. Site development and building works shall be carried out only between the hours of 0700 to 1900 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 residential amenities of property in the vicinity.

21. 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 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.

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 of any remains that may exist within the site.

22. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located

underground. Any relocation of utility infrastructure shall be agreed with the relevant utility provider. 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.

23. All items and areas for taking in charge shall be undertaken to a taking in charge standard. Prior to development the applicant shall submit construction details of all items to be taken in charge. No development shall take place until these items have been agreed.

**Reason:** To comply with the Councils taking in charge standards.

24. 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.

25. 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 reinstatement of public roads which may be damaged by the transport of materials to the site, to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The




form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

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

26. 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 for Dublin City Council 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

  
Stephen Bohan

Date: 08/09/2020

**DECISION QUASHED**