



An
Bord
Pleanála

Board Direction
BD-006278-20
ABP-307444-20

The submissions on this file and the Inspector's report were considered at a Board meeting held on 18/08/2020.

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

Having regard to the:

- a) The site's location on lands with a zoning objective which includes residential development being 'open for consideration', its location close to Dublin city centre within an established built-up area and the policies and objectives of the Dublin City Council Development Plan 2016 – 2022 and its various appendices;
- b) the Rebuilding Ireland Action Plan for Housing and Homelessness, (Government of Ireland, 2016),
- c) To the National Planning Framework which identifies the importance of compact growth;
- d) Nature, scale and design of the proposed development and the availability in the area of a wide range of social infrastructure;
- e) Pattern of existing and permitted development in the wider area;

- f) The Urban Development and Building Heights Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in December 2018;
- g) 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;
- h) 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;
- i) The Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government in March 2018;
- j) the Planning System and Flood Risk Management (including the associated Technical Appendices), 2009
- k) 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;
- l) Submissions and observations received including the Chief Executive Report of the Planning Authority; and
- m) The Report of the Inspector.

Appropriate Assessment Screening

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

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

- North Dublin Bay SAC (000206)

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

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

Appropriate Assessment

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

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

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

- submissions from observers including expert submissions,
- mitigation measures which are included as part of the current proposal.

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

The Board identified that the main likely impact arising from the proposed development on the Special Protection Areas (SPA) would be on the loss of ex-situ sites for Specific Species of Interest. It is a conservation objective of the, North Bull Island SPA (004006), South Dublin Bay and River Tolka Estuary SPA (004024), Baldoyle Bay SPA (004016), Malahide Estuary SPA (004025), Rogerstown Estuary SPA (004015) to maintain the favourable conservation condition of these species. Foraging habitats are considered to be significant to this objective. Having regard to the scientific information set out in the NIS in respect of the number of Light Bellied Brent Geese, Oystercatcher, Black-headed Gull and Black tailed Godwit and Curlew using the site and the network of other sites within an acceptable range the Board concluded that the proposed development would not adversely affect the Population or Distribution of the Light Bellied Brent Geese, Oystercatcher, Black-headed Gull and Black tailed Godwit and Curlew because of the species foraging habitats and the capacity of ex-situ sites to accommodate increasing numbers of these species.

The Board identified that the main likely impact arising from the proposed development on the Special Areas of Conservation (SAC) would be on the water quality and impact on coastal habitats. It is a conservation objective of the, North Dublin Bay SAC (000206) and South Dublin Bay SAC (000210) to maintain and/or restore the favourable conservation condition of the habitats. The wetland habitats that comprise the North Bull Island SPA (004006) and South Dublin Bay and River Tolka Estuary SPA (004024) are contiguous with the SACs. Having regard to the mitigation measures to prevent any impact on the Naniken River, c. 100m to the north of the site, the Board concluded that the proposed development would not adversely affect any of the habitats within the relevant European sites.

In the overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of the European sites in view of the site's

conversation objectives and there is no reasonable scientific doubt as to the absence of such effects.

Environmental Impact Assessment

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

- 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 EIAR 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 (CEMP) 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 a slight to moderate nuisance impact during construction which will be mitigated by measures described in the Construction Environmental Management Plan. During operation the development of additional housing will result in a positive impact.
- **Biodiversity:** Impacts on the site will be short term negative and will be mitigated by construction management measures, measures for water protection, the significant provision of active and passive open space, lighting proposed, protection of trees to be retained, landscaping, and measures to avoid disturbance to bats and nesting birds. Impacts on the European sites specified above will be avoided by the proposed mitigation measures.
- **Traffic and Transport:** Potential traffic impacts during both the construction and operational phase will largely be mitigated through the implementation of a Construction Environmental Management Plan as well as a Mobility Management Plan which includes appointment of a Mobility Manager to promote sustainable travel patterns by residents during the operation phase.
- **Visual Impact:** The development will present as a new development in the landscape. There will also be changed views for some viewers in nearby residences and nearby locations. A significant alteration in landscape character will occur at the site. The potential impact will be mitigated by the design and landscape strategy and screening already provided by the existing trees along the boundaries.

- **Cultural Heritage:** There will be no significant impacts on the architectural heritage of either the conservation area of St. Anne's Park or the protected structure of Sybil Hill House. Impacts on archaeological heritage will be mitigated by the pre-construction surveys and site investigations.

Proper Planning and Sustainable Development

It is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density in this location, would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would not detract from the existing character and setting of St. Anne's Park or the nearby Protected Structure Sybil Hill House, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of traffic and pedestrian safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

The Board noted the reference to documentation at footnote 6 of the Inspector's Report but did not have regard to it in its conclusions.

The Board considered that a grant of permission that could materially contravene the maximum building height as set out in Section 16.7.2 of the Dublin City Development Plan 2016-2022 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 -

- objective 13 of the National Planning Framework 2018-2040
- SPPR 1, SPPR 3 and section 3.2 of the Guidelines for Planning Authorities on Urban Development and Building Height 2018 published under Section 28 of the Planning and Development Act 2000,

which state policy in favour of greater density and height at central accessible locations such as the current application site, subject to performance and development management criteria with which the proposed development would comply.

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, or as otherwise stipulated by conditions hereunder, 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. 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 mitigation measures contained in the Natura Impact Statement which was submitted with the application shall be implemented in full.

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

4. 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.

5. Prior to commencement of any works on site, revised details shall be submitted to and agreed in writing with the planning authority with regard to the following:
 - (a) Modify entrance to unit 427 of Block 6 to avoid gym/breakout area.
 - (b) Modify boundary treatment of unit 18 of Block 1 to provide privacy to unit 18.
 - (c) Amend location of bin stores for Blocks 8 and 9.

Reason: In the interests of proper planning and sustainable development and to safeguard the amenities of the occupants.

6.
 - (a) The development shall be carried out on a phased basis as detailed in the application and shall include the development of the crèche building in Phase 1 and those associated works which accompany same. Prior to commencement of any development on the overall site, details of the first phase shall be submitted to and agreed in writing with, the planning authority.
 - (b) Work on any subsequent phases shall not commence until such time as the written agreement of the planning authority is given to commence the next phase. Details of further phases shall be submitted to, and agreed in writing with, the planning authority.

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

7. Prior to commencement of any works on site, revised details shall be submitted to and agreed in writing with the planning authority with regard to the following:
 - (a) Details of four number gates to be erected on accesses between the development site and St. Anne's Park.

- (b) Details regarding the opening hours of the access points between the development site and St. Anne's Park, which reflect the opening hours of St. Anne's Park.
- (c) Details of protection and repair measures for the remaining section of the walled garden along the northern site boundary. This wall shall be retained and repaired where possible, and any demolition deemed necessary shall not be undertaken without the prior agreement of the planning authority.
- (d) Full details of the two-metre high railing along the north of Blocks 1, 2, 4 and 6 adjoining the public open space and integrating the red bricked wall (see above (c)).
- (e) Details of the boundary treatment to be erected to replace the paladin fencing.

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

8. The developer shall comply with all requirements of the planning authority in relation to roads, access, lighting and parking arrangements. In particular:
- (a) The roads and traffic arrangements serving the site (including signage) shall be in accordance with the detailed requirements of the planning authority for such works and shall be carried out at the developer's expense,
- (b) The roads layout shall comply with the requirements of the Design Manual for Urban Roads and Streets, in particular carriageway widths and corner radii,
- (c) Pedestrian crossing facilities shall be provided at all junctions,
- (d) The materials used in any roads / footpaths provided by the developer shall comply with the detailed standards of the planning authority for such road works, and
- (e) A detailed construction traffic management plan, including a mobility

management plan, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The plan shall include details of arrangements for routes for construction traffic, parking during the construction phase, the location of the compound for storage of plant and machinery and the location for storage of deliveries to the site.

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

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

Reason: In the interests of amenity and public safety.

10. 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 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.

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

- (a) The surface water outfall pipe and headwall details to the Naniken River shall be agreed in writing with the planning authority prior to any works commencing on site. Additional details in relation to the scouring of the river channel or river banks shall be submitted for the written agreement of the planning authority.
- (b) Development shall not commence until the finalised alignment and details of surface water pipe are agreed in writing with the planning authority. The design and construction of the pipe will minimise impact on existing tree root zones and will include on-site supervision by a qualified Arboriculturist employed by the developer and reporting to the planning authority. Following construction, the alignment will be landscaped in accordance with the requirements of the planning authority.
- (c) Development shall not commence until requirements for demolition and reconstruction of the bridge with the proposed drainage outfall at the Naniken River are agreed with the planning authority.

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

12. 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.

13. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

14. Details of the materials, colours and textures of all the external finishes to the proposed blocks shall be submitted to and agreed in writing with the planning

authority prior to commencement of development.

Reason: In the interest of visual amenity.

15. Each apartment shall be used as a single dwelling unit only and shall not be sub-divided in any manner or used as two or more separate habitable units.

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

16. All the proposed car parking spaces shall be for occupants of the development and shall be sold off with the relevant units and not sold separately or let independently from the residential development.

Reason: In the interest of orderly development.

17. 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.

18. 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.

19. Site development and building works shall be carried out only between 0700 to 1900 hours 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.

20. A plan containing details for the management of waste within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

21. 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. The site (including the circa 1.6-hectare open space) shall be landscaped in accordance with a landscape scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The developer shall retain the services of a suitably qualified Landscape Architect throughout the life of the site development works. The approved landscaping scheme shall be implemented fully in the first planting season following completion of the development or each phase of the development and any plant materials that die or are removed within three years of planting shall be replaced in the first planting season thereafter.

Reason: In the interest of residential and visual amenity.

23. Prior to commencement of any permitted development, the developer shall engage the services of a qualified arborist as an arboricultural consultant, for the entire period of construction activity. The developer shall inform the planning authority in writing of the appointment and name of the consultant, prior to commencement of development. The consultant shall visit the site at a minimum on a monthly basis, to ensure the implementation of all of the recommendations in the tree reports and plans. To ensure the protection of trees to be retained within the site, the developer shall implement all the recommendations pertaining to tree retention, tree protection and tree works, as detailed in the in the submitted Tree Survey Report. All tree felling, surgery and remedial works shall be completed upon completion of the works. All works on retained trees shall comply with proper arboricultural techniques conforming

to BS 3998: 2010 Tree Work – Recommendations. The clearance of any vegetation including trees and shrub shall be carried out outside the bird-breeding season (1 March–31 August inclusive) or as stipulated under the Wildlife Acts 1976 and 2000. The arborist shall carry out a post construction tree survey and assessment on the condition of the retained trees. A completion certificate is to be signed off by the arborist when all permitted development works are completed and in line with the recommendations of the tree report. The certificate shall be submitted to the planning authority upon completion of the works.

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

24. A security bond to the value of €150,000 (one hundred and fifty thousand euro) shall be lodged with the planning authority, prior to the commencement of development, as security to ensure the appropriate protection and preservation of trees on the development site and St. Anne's Park. The form of the security bond shall be agreed between the planning authority and the developer or, in default of agreement, shall be agreed to An Bord Pleanála for determination.

Reason: In the interest of amenity, ecology and sustainable development.

25. 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 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.

26. 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.

27. 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 (including the circa 1.6-hectare open space). 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.

28. 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.

29. Prior to commencement of development, the developer shall lodge with the

planning authority a cash deposit, a bond of an insurance company, or other security to secure the 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.

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

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

Board Member

Date: 19/08/2020

Michelle Fagan