



An  
Bord  
Pleanála

Board Direction

BD-006854-20

ABP-307698-20

The submissions on this file and the Inspector's report were considered at a Board meeting held on 03/11/2020.

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 where the majority of the site is zoned for residential development;
- (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;
- (d) 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;



- (e) 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;
- (f) The Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government in March 2018;
- (g) 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 Planning System and Flood Risk Management (including the associated Technical Appendices), 2009;
- (i) 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;
- (j) The pattern of existing and permitted development in the area;
- (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) The submissions and observations received;
- (m) The Chief Executive Report from the Planning Authority; and
- (n) 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 screening of the proposed development and considered that the Environmental 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, and
  - (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 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, specifically Policy H9 Objective 5. 'To restrict general building heights on 'RES-N'



zoned lands south of the N7 to no more than 12 metres where not covered by a current statutory Local Area Plan'.

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 considerations.

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 5. While the objectives contained with Housing Policy 8 generally encourage higher densities and efficient use of lands, at appropriate locations, Policy 9 objective 5 seeks to restrict general building heights on 'RES-N' zoned lands south of the N7 to no more than 12 metres where not covered by a current statutory Local Area Plan. Given that higher densities are generally associated with increased heights, restricting developments to 12 metres on the above sites does not appear to go hand in hand with maximising the most efficient use of these sites, which may also be suitable for higher densities, and therefore be suitable for developments that contain buildings that exceed 12 metres in height.

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 that *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.

### **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 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.

3. No development shall take place under this permission until a detailed phasing programme for the approved development that has been agreed in writing with the Planning Authority. The applicant, owner or developer is advised to consult with the Planning Authority in advance of lodging the required programme.

**Reason:** In the interest of clarity and to provide for the orderly and sustainable development of the site and compliance with South Dublin County Council's Development Plan

4. No occupation of any of the proposed units or of the crèche facility shall take place in advance of the completion of the Tay Lane Pumping Station Upgrade Works. The application shall engage with Irish Water in relation to the upgrade works required and agree with Irish Water an appropriate contribution towards the cost of same.



In the interests of clarity, no temporary on-site storage of foul water is permitted as part of this permission.

**Reason:** In the interest of public health, the residential amenities of the area and in the interest of proper planning and sustainable development of the area.

5. Prior to commencement of development, a revised Flood Risk Assessment shall be submitted to, and agreed in writing with the Planning Authority detailing the following amendments:

- a. In the event of a failure of the surface water management proposals, a detailed appraisal of the residual flood risk to surrounding residential properties and details of appropriate mitigation measures to offset same, including details of flow paths.

**Reason:** To minimise flood risk and in the interest of proper planning and sustainable development of the area.

6. The developer shall comply with the requirements of the planning authority in relation to accessible car parking spaces, street trees and bin storage. In particular:

- (a) A total of 5% of the car parking spaces in the under-croft apartment parking shall be mobility impaired spaces.
- (b) A revised site layout plan shall be submitted, prior to commencement of development, to incorporate street trees in accordance with Section 6.4.3 Road and Street Design (i) Design of Urban Roads and Streets of the South Dublin County Council Development Plan 2016-2022. The revised site plan shall also indicate the relocation of Bin Stores 03 and 04 away from the play area to an area to be agreed with the planning authority.
- (c) 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

7. 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.

8. A minimum of 10% of all car parking spaces to the apartment block shall be provided with functioning electric vehicle charging stations/points, and ducting shall be provided for all remaining car parking spaces within the development 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.

9. 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.

10. 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.



11. 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.

In addition, the following information as part of the landscape proposals should be provided and agreed with the Public Realm Section:

- Playground facilities should be designed around the principles of natural play. Details to be agreed with the Public Realm section of South Dublin County Council.
- Planting and hardscape details for public open space to be detailed and agreed with the Public Realm section of South Dublin County Council.
- Planting should include use of native species and pollinator friendly planting; to be detailed and agreed with the Public Realm Section of South Dublin County Council.
- Details of tree planting pits to include SUDs measures in urban tree pits and use of urban tree soil to be submitted to the Public Realm Section of SDCC for agreement.

The applicant is requested to submit a fully detailed Planting Plan for the entire development. The planting plan should provide the following information:

- Location of species types, schedule of plants noting species, planting sizes and proposed numbers/densities where appropriate
- Implementation timetables.
- Detailed proposals for the future maintenance/management of all landscaped areas



- Planting material where possible should be Irish Grown Nursery Stock and the importation of foreign planting material should be avoided within the proposed planting schemes.

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

12. In order to ensure the protection of trees to be retained within the site, the applicant shall implement all recommendations contained within the Arboricultural Report prepared by prepared by Arborist Associates Ltd.

As per the Arboricultural Report.

"The protection of retained trees on this site during the proposed development works can be achieved by continuing to follow the recommendations detailed within BS 5837:2012 and by complying with the tree protection details, arboricultural method statement and site supervision recommendations that are specified within this report."

"The positioning of tree protective barriers and ground protection should be installed as detailed on the Tree Protection Plan at Appendix B.....The protective fencing measures to be installed must comply with the recommendations outlined within BS5837:2012."

In addition, a post construction report on the condition of trees should be undertaken and all recommendations made within this report should be carried out to BS3998:2010 – Tree Work Recommendations and by a reputable arboricultural contractor.

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

13. All mitigation measures set out in the documentation submitted in support of the application, including in particular those set out in the Ecological Impact Statement, Evaluation of Bat Roost Sites, Aeronautical Assessment Report, Site Specific Flood Risk Assessment and associated documentation, shall be



implemented in full, except as may otherwise be required in order to comply with any other conditions.

**Reason:** In the interest of the protection of the environment and aviation safety.

14. 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.

15. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority, and Inland Fisheries Ireland, 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) There shall be no planting of trees directly over any underground surface water attenuation systems. The design layout shall be revised to ensure this is reflected particularly with regards to the area in the north west of the site.
- (c) The Developer shall ensure that there is complete separation of the foul and surface water drainage systems within the site, both in respect of installation and use. All new precast surface water manholes shall have a minimum thickness surround of 150mm Concrete Class B. All works for this development shall comply with the requirements of the Greater Dublin Regional Code of Practice for Drainage Works.



(d) Drainage from the Podium/Basement car park must discharge to the foul sewer after treatment via a petrol/oil interceptor.

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

16. 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.

17. 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.

18. 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. With the exception of any telecommunications mitigation measure(s) and associated screening required in conjunction with condition 6 of this consent.

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

19. UrbanManage2

20. 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*: measures to prevent and control the introduction of pollutants and deleterious matter to surface water and measures to minimise the generation of sediment and silt;



measures to prevent and control the introduction of pollutants and deleterious matter to groundwater; 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.

21. 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.

22. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006.

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

23. Site development and building works shall be carried out only between the hours of 07:00 to 19:00 Mondays to Fridays inclusive, 08:00 to 14:00 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

24. Archaeological Monitoring - The applicant/developer shall employ a qualified Archaeologist, licensed to carry out Archaeological Monitoring of all subsurface works carried out within the proposed development site. This will include the archaeological monitoring of the removal of topsoil, the excavation of trenches



for foundations, services, access roadway, etc. associated with the proposed development.

**Reason:** To facilitate the recording and protection of any items of archaeological significance that the site may possess.

25. Archaeological Monitoring Reporting - The archaeologist shall prepare and submit a report, describing the result of the Archaeological Monitoring, to the Local Authority and the Development Application Unit of the Department of Environment, Heritage and Local Government within six weeks following completion of Archaeological Monitoring.

**Reason:** To facilitate the recording and protection of any items of archaeological significance that the site may possess.

26. It is noted that a potential archaeological feature was identified in the geophysical survey at the eastern end of the site. The area of the archaeological potential ('C' on Figure 6 of the Archaeological Desk Study, dated March 2020) shall be assessed by the excavation of archaeological test trenches as a condition of planning prior to development works being undertaken in that location. The archaeological test excavation shall be undertaken under license to the National Monuments Service in the Department of the Culture, Heritage and the Gaeltacht (DoCHG). The assessment / test excavation shall be undertaken by a qualified archaeologist as set out in National Monuments Legislation.

The area of potential is located on lands where housing development is proposed by the applicant and accordingly no temporary site works or topsoil storage should be permitted in this area ('C' on Figure 6 of the Archaeological Desk Study, dated March 2020) until the required archaeological assessment or any subsequent archaeological excavation has been completed.

**Reason:** To facilitate the recording and protection of any items of archaeological significance that the site may possess.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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**



**Date:** 03/11/2020

Terry Prendergast



DECISION QUASHED