



An
Bord
Pleanála

Board Direction
BD-007176-20
ABP-308162-20

The submissions on this file and the Inspector's report were considered at a Board meeting held on 15/12/2020.

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 the established urban area of Dublin City in an area zoned for residential;
- (b) the policies and objectives of the Dublin City Development Plan 2016-2022;
- (c) The Rebuilding Ireland Action Plan for Housing and Homelessness 2016;
- (d) Project Ireland 2040 The National Planning Framework;
- (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) 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 and particularly Specific Planning Policy Requirement 7 and 8;
- (h) 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) Architectural Heritage Protection- Guidelines for Planning Authorities 2011;
- (j) 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;
- (k) The pattern of existing and permitted development in the area;
- (l) The planning history of the site (including extant permission) and within the area;
- (m) The submissions and observations received;
- (n) 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;
- (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 Screening

The Board completed an environmental impact assessment screening of the proposed development and considered that the Environment 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, which is below the threshold in respect of Class 10(iv) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,
- (b) the location of the site on lands Zoning Objective Z4 – District Centre, ‘To provide for and improve mixed-service facilities’ where residential is specified as a permissible use, and Zoning Objective Z10 – Inner Suburban and Inner City Sustainable Mixed-Uses, ‘To consolidate and facilitate the development of inner city and inner suburban sites for mixed-uses, with residential the predominant use in suburban locations, and office / retail / residential the predominant uses in inner city areas’, in the Dublin City Development Plan 2016-2022 and the results of the Strategic Environmental Assessment of the plan,
- (c) The existing use on the site and pattern of development in surrounding area;
- (d) The availability of mains water and wastewater services to serve the proposed development,
- (e) the location of the development outside of any sensitive location specified in article 299(C)(1)(v) of the Planning and Development Regulations 2001 (as amended)
- (f) The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003),
- (f) The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended), and
- (g) The features and measures proposed by the applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Outline Construction Management Plan, The Construction

and Demolition Waste management Plan, the Engineering Assessment Report, the Flood Risk Assessment, and the Operational Waste Management Plan.

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 inner-city 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 proposal would not give rise to flooding in the area and would provide an acceptable form of residential amenity for future occupants. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area. In coming to this conclusion, specific regard was had to the Chief Executive Report from the Planning Authority.

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 Dublin City Development Plan 2016-2022 (DCP) in relation to building height. Specifically, as a result of the DCP height strategy for this area of 24m for residential development, while the proposed development has a maximum height of approximately 25.6m (7 storeys).

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

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

Permission for the development should be granted having regard to the Eastern and Midland Regional Assembly – Regional Spatial and Economic Strategy 2019-2031, which seeks to increase densities on appropriate sites within Dublin City and Suburbs. In addition, permission for the development should be granted having regard to guidelines under section 28 of the Act, specifically SPPR 3 of the Building Height Guidelines which states that where a development complies with the Development Management Criteria in section 3.2, it may be approved, even where specific objectives of the relevant development plan or local area plan may indicate otherwise and national policy in Project Ireland 2040 National Planning Framework (in particular objectives 13 and 35). An assessment of the proposed development was carried out to determine that the proposed development conforms with the development management criteria in section 3.2 of those guidelines.

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

In relation to the pattern of development/permissions granted in the area since the adoption of the Development Plan, of particular relevance, the Planning Authority and Board have previously approved 7 storey (plus) developments in the vicinity of this site. As such precedent for residential buildings higher than the prescribed DCP height strategy of 24m currently exist and have been established in the 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 proposed development shall be amended as follows:
 - (a) The 19 no. bedspaces at basement level (Rooms B1-B19) shall be omitted from the scheme.
 - (b) (i) Additional communal living/kitchen/dining floorspace;
(ii) Additional amenity and service floorspace (including workspaces and leisure space); and
(iii) Additional residential facilities (including cycle parking);
shall be provided at basement level.
 - (c) Cycle parking shall be provided for residents at a ratio of 1 space per bedspace and covered / weatherproof staff and visitor cycle parking shall also be provided.

The total number of bedspaces approved in the development is 378.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of providing a satisfactory standard of residential amenity for occupants of the development.

3. Revised drawings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development which detail the following, and in correlation with condition no.10 under this consent:
 - (a) A landscape masterplan detailing the design and finish of all external ground level areas to be for the sole use of residents, with the minimisation of circulation areas and maximisation of amenity gardens, with provision for furniture and equipment to facilitate the use of these areas by residents.
 - (b) Details of the design and finish of the publicly accessible pedestrian link through the site from Cork Street to John Street South, and any attached public open space, to include security gates and lighting.
 - (c) Details of the operation, security, management and supervision of the pedestrian link through the site from Cork Street to John Street South.
 - (d) A written statement outlining that members of the public have full right and liberty for the free passage and use of the pedestrian walkway which connects Cork Street and John Street South. This public right of way and walkway shall be completed in full and available for public use, prior to the occupation of the development.
 - (e) Details of the roof terrace at 5th floor level, to be increased in size and include appropriate screening, furniture and equipment to facilitate use of the space by residents.
 - (f) Details of the inclusion of green roofs and PV panels. Access to green roof areas shall be strictly restricted for maintenance purposes only.
 - (g) Details of an 'Obviated Window' to bedspaces labelled 1-27, 1-28, 1-29, 2-31, 2-32, 2-33, 3-31, 3-32, 3-33, 4-31, 4-32, 4-33, 5-31, 5-32, 5-33.

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

4. The Shared Accommodation units hereby permitted shall operate in accordance with the definition of Build-to-Rent developments as set out in the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (March 2018).

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

5. Prior to the commencement of development, the developer shall submit details of a proposed covenant or legal agreement which confirms that the development hereby permitted shall remain owned and operated by an institutional entity for a minimum period of not less than 15 years and where no individual residential units shall be sold separately for that period. The period of fifteen years shall be from the date of occupation of the first 'shared living units' within the scheme.

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

6. Prior to expiration of the 15-year period referred to in the covenant, the developer shall submit ownership details and management structures proposed for the continued operation of the entire development as a Shared Accommodation scheme. Any proposed amendment or deviation from the Shared Accommodation model as authorised in this permission shall be subject to a separate planning application.

Reason: In the interests of orderly development and clarity.

7. Prior to commencement of development on site, the developer shall submit, for the written agreement of the planning authority, details of the management company, established to manage the operation of the development together with a detailed and comprehensive Shared Accommodation Management Plan which demonstrates clearly how the proposed Shared Accommodation scheme will operate. This Shared Accommodation Management Plan shall also describe the control of access to the 5th floor roof terrace area, with this area not to be used after 10pm in the evening or before 7am in the morning.

Reason: In the interests of orderly development and the proper planning and sustainable development of the area, and in the interests of residential amenity.

8. The ground floor café shall be open to members of the public between the hours of 7am to 5pm Monday to Friday and 9am to 5pm Saturday and Sunday.

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

9. 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.

10. A comprehensive boundary treatment and landscaping scheme shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. This scheme shall include the following:

- (a) details of all proposed hard surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development;
- (b) proposed locations of trees at appropriate intervals and other landscape planting in the development, including details of proposed species and settings;
- (c) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes; and
- (d) details of a Landscape Management and Maintenance Plan of both communal residential and publicly accessible areas to be implemented during operation of the development.

All planting shall be adequately protected from damage until established and maintained thereafter. Any plants which die, are removed or become seriously damaged or diseased in the first 5 years of planting, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.

Reason: In the interest of visual amenity.

11. Details of any alterations to the road (including QBC network) and pedestrian network serving the proposed development, including loading areas, footpaths, kerbs and access road to the underground car park (with all works to be at the applicant's expense) shall be in accordance with the detailed construction standards of the planning authority for such works and design standards outlined in DMURS. Details of servicing arrangements and fire tender vehicle access arrangements for the development shall also be provided. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

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

12. Prior to the opening/occupation of the development, a Mobility Management Strategy shall be submitted to and agreed in writing with the planning authority. This shall provide for incentives to encourage the use of public transport, cycling and walking by residents/occupants/staff employed in the development and to discourage private car ownership. The mobility strategy shall be prepared and implemented by the management company for all units within the development. Details to be agreed with the planning authority shall include the provision of centralised facilities for staff employed within the development for bicycle parking, shower and changing facilities associated with the policies set out in the strategy.

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

13. Drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Prior to commencement of development the developer shall submit to the Planning Authority for written agreement a Stage 2 - Detailed Design Stage Storm Water Audit.

Upon Completion of the development, a Stage 3 Completion Stormwater

Audit to demonstrate Sustainable Urban Drainage System measures have been installed, and are working as designed and that there has been no misconnections or damage to storm water drainage infrastructure during construction, shall be submitted to the planning authority for written agreement.

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

14. 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.

15. 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.

Reason: In the interest of visual amenity.

16. Construction and demolition waste shall be managed in accordance with a final construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

17. The construction of the development shall be managed in accordance with a final Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:
- a) Works to remove trees and structures from the site shall take place outside of bird nesting season;
 - b) During the removal of structures from the site, the adoption of mitigation measures outlined in the approved Bat Roost Assessment and Survey Report for the application;
 - c) Noise management measures;
 - d) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
 - e) Location of areas for construction site offices and staff facilities;
 - f) Details of site security fencing and hoardings;
 - g) Details of on-site car parking facilities for site workers during the course of construction;
 - h) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
 - i) Measures to obviate queuing of construction traffic on the adjoining road network;
 - j) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
 - k) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
 - l) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
 - m) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;

- n) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- o) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains;
- p) A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

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

18. 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 the interests of residential amenity and public health.

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

Reason: In the interest of visual amenity.

20. 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 bedspace/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.

21. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which 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, and
- (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

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 area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

22. Proposals for an estate name and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and apartment 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 place names for new residential areas.

23. 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.

24. As proposed in the Japanese Knotweed – Preliminary Treatment Programme set out in the 'Invasive Alien Plant Species: Site Assessment Report & Management Plan' supporting this application, a detailed construction stage Japanese knotweed remediation plan and programme be prepared for the development site and submitted for agreement by the planning authority before any demolition or construction work commences on site; this remediation plan and programme to be implemented in full, and to include the removal of all Japanese knotweed infested soils and spoil materials from the development site for disposal at an approved waste facility under licence from the Department, as provided for under Paragraph 7 of Section 50 of the European Communities (Birds and Natural Habitats) Regulations 2011, (Statutory Instrument S.I. No. 477 of 2011, as amended).

Reason: To prevent the spread of an invasive plant species, namely Japanese knotweed, which threatens biodiversity and can potentially damage structures and buildings.

25. 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.

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*** 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: 15/12/2020

Michelle Fagan