



An
Bord
Pleanála

Board Direction
BD-007244-21
ABP-308227-20

The submissions on this file and the Inspector's report were considered at a Board meeting held on 12/01/2021.

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 policies and objectives set out in the Dun Laoghaire Rathdown County Development Plan 2016-2022 and Ballyogan and Environs Local Area Plan 2019-2025,
- (b) The Rebuilding Ireland Action Plan for Housing and Homelessness, 2016
- (c) Urban Development and Building Heights, Guidelines for Planning Authorities, prepared by the Department of Housing, Planning and Local Government in December 2018,
- (d) The Design Manual for Urban Roads and Streets (DMURS), issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government 2013, as amended, the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, 2009
- (e) The Guidelines for Sustainable Residential Development in Urban Areas and the accompanying Urban Design Manual, A Best Practice Guide,

issued by the Department of the Environment, Heritage and Local Government in May 2009,

- (f) The Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities issued by the Department of the Environment, Community and Local Government in March 2018,
- (g) Architectural Heritage Protection – Guidelines for Planning Authorities, issued by the Department of Arts, Heritage and the Gaeltacht in October 2011,
- (h) The Planning System and Flood Risk Management for Planning Authorities (including the associated Technical Appendices), issued by the Department of the Environment, Heritage and Local Government in 2009,
- (i) The nature, scale and design of the proposed development,
- (j) The availability in the area of a range of social, community and transport infrastructure,
- (k) The pattern of existing and permitted development in the area,
- (l) The planning history of the site and within the area,
- (m) The submissions and observations received,
- (n) The report of the Chief Executive of Dun Laoghaire Rathdown County Council, and
- (o) 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 site, the Screening for Appropriate Assessment submitted with the application, the Inspector's Report, and submissions on file. In completing the screening exercise, the Board adopted the report of the Inspector and concluded that, by itself or in combination with other development in the vicinity, the proposed development would not be likely to have a significant effect on any European site in view of the conservation objectives of such sites, and that a Stage 2 Appropriate Assessment is not, therefore, required.

Environmental Impact Assessment Screening

The Board completed an environmental impact assessment screening of the proposed development and considered the Environmental Impact Assessment Screening Report submitted by the applicant which contains the information set out Schedule 7A to the Planning and Development Regulations 2001 (as amended).

- a) the nature and scale of the proposed development, which is below the threshold in respect of Class 10(b)(iv) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,
- b) the location of the site on lands governed by zoning objective A 'to protect and/or improve residential amenity' and zoning objective F 'to preserve and provide for open space with ancillary active recreational amenities' in the Dun Laoghaire Rathdown County Development Plan 2016-2022
- c) The existing use on the site and pattern of development in surrounding area;
- d) The planning history relating to the site,
- e) The availability of mains water and wastewater services to serve the proposed development,
- f) 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),
- g) 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),
- h) The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended), and
- i) The features and measures proposed by applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the proposed Construction & Demolition Waste Management Plan (CDWMP) and Construction and Environmental Management Plan.

It is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an environmental impact assessment report would not therefore be required.

Conclusions on Proper Planning and Sustainable Development:

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

In relation to unit mix, the Board considers the proposed development would be a material contravention of Section 8.2.3.3 (iii) of the Dun Laoghaire-Rathdown County Development Plan 2016-2022, which applies to the site. In accordance with section 37(2)(b) (iii) of the Planning and Development Act 2000, as amended, having regard to SPPR 1 of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, issued in March 2018, the proposed mix of apartment types complies with SPPR 1 of the 2018 guidelines as more than half of the units would have more than one bedroom. That SPPR restricts the extent to which planning authorities can impose additional restrictions on housing mix in their development plans unless they have completed a Housing Needs and Demand Assessment, which the Council has not. Compliance with SPPR 1 is mandatory under section 28(1C) of the planning act. Permission should not be refused, therefore, on the basis of a material contravention of the section 8.2.3.3 (iii) of the development plan which requires a lesser number of one-bedroom units and a greater number of units over 80m² than that currently proposed. A grant of permission in contravention of that provision would therefore be justified under section 37(2)(b)(iii) of the planning act to give effect to guidelines on Design Standards for New Apartments, issued by the Minister in 2018.

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 or as otherwise stipulated by conditions hereunder, and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:

(a) An alternative access arrangement to accommodate universal access to the woodland area shall be provided for.

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

Reason: In the interests of residential amenity.

3. All recommended measures outlined in the submitted Ecological (Biodiversity) Appraisal and Arboricultural Assessment shall be implemented in full.

Reason: In the interests of biodiversity and protection of trees.

4. 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.

5. 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.

6. Proposals for an estate name, numbering scheme 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 house 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.

7. Comprehensive details of the proposed public lighting system to serve the development shall be submitted to and agreed in writing with the planning authority, prior to commencement of development/installation of the lighting. The agreed lighting system shall be fully implemented and operational, before the proposed development is made available for occupation.

Reason: In the interest of public safety and visual amenity.

8. 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.

9. (a) The car parking facilities hereby permitted shall be reserved solely to serve the proposed development. These residential 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.

(b) Prior to the occupation of the development, a Parking Management Plan shall be prepared for the development and shall be submitted to and agreed in writing with the planning authority. This plan shall provide for the permanent retention of the designated residential parking spaces and shall indicate how these and other spaces within the development shall be assigned, segregated by use and how the car park shall be continually managed.

Reason: To ensure that adequate parking facilities are permanently available to serve the proposed residential units (and the remaining development)

10. Details of the bicycle parking space location, layout, storage arrangement, marking demarcation, and security provisions for bicycle spaces shall be submitted for the written agreement of the planning authority prior to commencement of development.

Reason: To ensure that adequate bicycle parking provision is available to serve the proposed development, in the interest of sustainable transportation.

11. Prior to the opening/occupation of the development, a Mobility Management Strategy (including an interim or temporary strategy reflecting any requirements or

adjustments relating to Covid-19 movement and travel patterns) 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, walking and carpooling by residents/occupants/staff employed in the development and to reduce and regulate the extent of parking. Details may include the provision of centralised facilities within the development for bicycle parking, shower and changing facilities associated with the policies set out in the strategy. The interim or temporary strategy, where applicable, should reflect the requirements of DMURS Interim Advice Note – Covid Pandemic Response (May, 2020). The mobility strategy shall be prepared and implemented by the management company for all units within the development.

Reason: In the interest of encouraging the use of sustainable modes of transport and reflecting the needs of pedestrians and cyclists during Covid-19 pandemic.

12. A Quality Audit (which shall include a Road Safety Audit, Access Audit, Cycle Audit and a Walking Audit) shall be carried out at Stage 2 for the detailed design stage and at Stage 3 for the post construction stage. All audits shall be carried out at the Developers expense in accordance with the Design Manual for Urban Roads & Streets (DMURS) guidance and TII (Transport Infrastructure Ireland) standards. The independent audit team(s) shall be approved in writing by the Planning Authority and all measures recommended by the Auditor shall be undertaken unless the Planning Authority approves a departure in writing. The Stage 2 Audit reports shall be submitted for the written agreement of the Planning Authority prior to the commencement of development.

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

13. All works to be carried out on the public road/footpath, including alterations and improvements to Murphystown Way, construction of a new signalised junction with the proposed new Link Road, and realignment of existing footpaths and new

cycleway connections, shall comply with the requirements of the planning authority. Provision for cyclists shall comply with latest National Cycle Manual and DMURS guidance.

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

14. A minimum of 10% of all car parking spaces shall be provided with functioning EV charging stations/points, and ducting shall be provided for all remaining car parking spaces, facilitating the installation of EV charging points/stations at a later date. Where proposals relating to the installation of EV ducting and charging stations/points have 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.

15. The developer shall contact Transport Infrastructure Ireland (TII) in respect of works proposed in the vicinity of the Luas line and TII requirements in that regard shall be submitted to the Planning Authority for agreement prior to the commencement of development.

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

16. Prior to the commencement of the development the applicant shall contact the Irish Aviation Authority in relation to all crane operations, with a minimum of 30 days prior notification of their erection. Details of a suitable marking and lighting scheme

as agreed with the Irish Aviation Authority shall be submitted to the planning authority prior to the commencement of construction.

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

17. 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.

18. The site shall be landscaped (and earthworks carried out) in accordance with the detailed comprehensive scheme of landscaping, which accompanied the application submitted, unless otherwise agreed in writing with, the planning authority prior to commencement of development.

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

Reason: In the interest of residential and visual amenity.

19. (a) Prior to commencement of development, all trees, groups of trees, hedging and shrubs which are to be retained shall be enclosed within stout fences not less than 1.5 metres in height. This protective fencing shall enclose an area covered by the crown spread of the branches, or at minimum a radius of two metres from the trunk of the tree or the centre of the shrub, and to a distance of two metres on each side of the hedge for its full length, and shall be maintained until the development has been completed.

(b) No construction equipment, machinery or materials shall be brought onto the site for the purpose of the development until all the trees which are to be retained have been protected by this fencing. No work is shall be carried out within the area enclosed by the fencing and, in particular, there shall be no parking of vehicles, placing of site huts, storage compounds or topsoil heaps, storage of oil, chemicals or other substances, and no lighting of fires, over the root spread of any tree to be retained.

(c) Excavations in preparation for foundations and drainage, and all works above ground level in the immediate vicinity of trees to be retained shall be carried out under the supervision of a specialist arborist, in a manner that will ensure that all major roots are protected and all branches are retained.

Reason: To protect trees and planting during the construction period in the interest of visual amenity.

20. A schedule of landscape maintenance shall be submitted to, and agreed in writing with, the planning authority prior to occupation of the development. This schedule shall cover a period of at least three years and shall include details of the arrangements for its implementation.

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

21. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company or such other security as may be accepted in writing by the planning authority, to secure the protection of the trees on site to be retained and to make good any damage caused during the construction period, coupled with an agreement empowering the planning authority to apply such security, or part thereof, to the satisfactory protection of any tree or trees on the site or the replacement of any such trees which die, are removed or become seriously damaged or diseased within a period of three years from the substantial completion of the development with others of similar size and species. 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 secure the protection of the trees on the site.

22. (a) 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.

(b) This plan shall provide for screened communal bin stores, the locations and designs of which shall be included in the details to be submitted.

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

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

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

24. 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. 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.

25. Standard Model Construction Management Plan

26. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Saturdays inclusive, and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

27. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the

date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

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

Reason: In the interest of public health.

29. 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, including inter alia any ground disturbance and earth movement in the areas of the river valley.

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.

30. a) The development shall be carried out on a revised phased basis, which outlines that the open space in the wooded northern area shall be publicly assessable and linkages proposed between the open space to the northern end of the site and adjacent lands to the east, now named Woodward Square, shall be delivered prior to the occupation of any apartment unit in Phase 2.

b) Work on any subsequent phases shall not commence until completion of Phase 1, or such time as the written agreement of the planning authority is given to commence the next phase. Details of further phases shall be as agreed in writing with the planning authority.

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

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 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.

32. The developer shall pay to the planning authority a financial contribution in respect of the extension of Luas Line B1 – Sandyford to Cherrywood in accordance with the terms of the Supplementary Development Contribution Scheme, made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

Note 1: In deciding not to accept the inspector’s recommendation to omit the proposed gate to the pedestrian entrance between Block 2 and Block 3 the Board was satisfied that the proposed development provided an acceptable level of permeability and the removal of the gate was not warranted.

Note 2 In deciding not to accept the inspector’s recommendation to amend the layout of apartment type A2Z to incorporate the study area into the combined kitchen/dining/living area, as per the design of unit type 2AY, the Board was satisfied that a separate study area was acceptable.

Note 3 In deciding not to accept the inspector’s recommendation to redesign the internal layout of apartment type A2AA to comply with the minimum standards for a three-bed unit, the Board accepted that the proposed 2 bed units are in compliance with the Apartment Standards as proposed.

Note 4 In deciding not to accept the inspector’s recommendation to relocate the childcare facility and associated play space from the upper and lower basement levels of Block 3 the Board was satisfied that the proposed location fronting on to the large public open space provided a high quality and well considered design response to the childcare requirements for the proposed development Furthermore, the Board was satisfied that the area of play space with tin F zoning was not a material contravention of the zoning objectives of the Development Plan.

Board Member

Date: 12/01/2021

Paul Hyde