



An
Bord
Pleanála

Board Direction
BD-007483-21
ABP-308418-20

The submissions on this file and the Inspector's report were considered at a Board meeting held on 03/02/2021.

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

Having regard to the following:

- (a) the location of the site on lands with a zoning objective for residential development in the Dun Laoghaire Rathdown County Development Plan 2016-2022,
- (b) the nature, scale, height and design of the proposed development and those issues relating to the material contravention of Policy UD6 and Appendix 9 (Building Height Strategy) of the Dun Laoghaire Rathdown County Development Plan 2016-2022,
- (c) the National Planning Framework, Project Ireland 2040,
- (d) the Rebuilding Ireland Action Plan for Housing and Homelessness, (Government of Ireland, 2016),
- (e) the Eastern & Midland Regional Assembly RSES 2019-2031,
- (f) the Design Manual for Urban Roads and Streets (DMURS), 2019,

- (g) the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, 2009,
- (h) the Guidelines for Planning Authorities on Sustainable Urban Housing: Design Standards for New Apartments, 2020,
- (i) the Urban Development and Building Height Guidelines for Planning Authorities, 2018,
- (j) Architectural Heritage Protection, Guidelines for Planning Authorities, 2011,
- (k) the nature, scale, height and design of the proposed development,
- (l) the availability in the area of a wide range of social, community and transport infrastructure,
- (m) the pattern of existing and permitted development in the area,
- (n) the report of the Chief Executive of Dun Laoghaire Rathdown County Council;
- (o) the submissions and observations received, and
- (p) the report of the Inspector.

Appropriate Assessment

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

- Dalkey Island SPA (site code 004172)
- Rockabill to Dalkey Island SAC (site code 003000)

are the only European sites for which there is a likelihood of significant effects.

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;

- the Site Specific Conservation Objectives for these European Sites,
- the current conservation status, threats and pressures of the qualifying interest features and the potential impact of the habitats of the Roseate Tern *Sterna dougallii*, Common Tern *Sterna hirundo*, Arctic Tern *Sterna paradisaea* and the Reefs and Harbour porpoise *Phocoena phocoena*
- the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- the view of the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media,
- the submissions from observers,
- 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 Dalkey Island Special Protection Area (SPA) by way of habitat degradation as a result of hydrological and hydrogeological impacts and the introduction/spread of invasive species. Having regard to the mitigation measures proposed, the Board concluded that the proposed development would not adversely affect any of the species within the relevant European sites.

The Board identified that the main likely impact arising from the proposed development on the Rockabill to Dalkey Island Special Areas of Conservation (site code 003000) would be by way of habitat degradation as a result of hydrological and hydrogeological impacts. Having regard to the mitigation measures proposed, the Board concluded that the proposed development would not adversely affect any of the habitats or species 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 conservation objectives and there is no reasonable scientific doubt as to the absence of such effects.

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).

Having regard to:

- 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 zoned to protect and provide for residential uses in the Dun Laoghaire-Rathdown Development Plan 2016-2022,
- 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),
- g) The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended), and
- h) The features and measures proposed by applicant to ensure no connectivity to any sensitive location.

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 the proposed development is, apart from the building height parameters, broadly compliant with the current Dun Laoghaire Rathdown County Development Plan 2016-2022 and would, therefore, be in accordance with the proper planning and sustainable development of the area.

The Board considers that, while a grant of permission for the proposed Strategic Housing Development would not materially contravene a zoning objective of the Development Plan, it would materially contravene the Policy UD6 and Appendix 9, Building Height Strategy of the Plan with respect to building height limits. The Board considers that, having regard to the provisions of section 37(2)(b) (i) and (iii) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention of the development plan would be justified for the following reasons and considerations:

(a) The proposed development is considered to be of strategic or national importance by reason of its potential to contribute to the achievement of the Government's policy to increase delivery of housing set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016, and to facilitate the achievement of greater density and height in residential development in an urban centre close to public transport and centres of employment.

(b) It is considered that permission for the proposed development should be granted having regard to Government policies as set out in the National Planning Framework (in particular objectives 35) and the Urban Development and Building Height Guidelines for Planning Authorities, in particular SPPR3.

In accordance with section 9(6) of the 2016 Act, the Board considered that the criteria in section 37(2)(b)(i) and (iii) of the 2000 Act were satisfied for the reasons and considerations set out in the decision.

In conclusion, 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 amenity of the area, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of pedestrian and traffic safety or have a negative impact on the character or setting of the protected structures, Abingdon House or Shanganagh Park House. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of 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, the matter(s) in dispute shall be referred to An Bord Pleanala for determination.

Reason: In the interest of clarity

2. Mitigation and monitoring measures outlined in the plans and particulars, including Section 6.0 of the Ecological Impact Assessment and Section 7.0 of the Natura Impact Assessment, submitted with this application shall be carried out in full, except where otherwise required by conditions attached to this permission.

Reason: In the interest of protecting the environment and in the interest of public health.

3. A concierge facility shall be incorporated into the development to the written agreement of the planning authority. 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 interest of residential amenities of future occupants.

4. The Alternative Access Proposal shown in Section 6.3 of the Architects Design Statement is not permitted.

Reason: In the interest of clarity.

5. The proposed cycle access into the site and the basement area shall be designed so as to comply with all necessary standards in the NTA National Cycle Manual.

Details of the layout, marking demarcation and security provisions for the cycle spaces and cycle infrastructure shall be as submitted to An Bord Pleanála with this application, unless otherwise agreed in writing with, 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.

6. The proposed car parking layout shall be modified so that at least 6 no. spaces are provided for persons with impaired mobility. These spaces shall be located as close as possible to the building entrance. The layout, dimensions and markings for these spaces shall be in accordance with the guidance set out in the document "Building for Everyone - a Universal Design Approach" (National Disability Authority). 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: To ensure a satisfactory parking provision for the proposed development that is accessible to all users.

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 Build-to-Rent Management Plan which demonstrates clearly how the proposed Build-to-Rent scheme will operate.

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

8. Prior to the commencement of development, the owner shall submit to and agreed in writing with the planning authority, 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 let or sold separately for that period.

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

9. Prior to expiration of the 15-year period referred to in the covenant, the owner shall be submitted to and agreed in writing with the planning authority, ownership details and management structures proposed for the continued operation of the entire development as a Build-to-Rent scheme. Any proposed amendment or deviation from the Build-to-Rent model as authorised in this permission shall be subject to a separate planning application.

Reason: In the interests of orderly development and clarity.

10. The internal road network serving the proposed development [including turning bays, parking areas, cycle parking areas, footpaths and kerbs shall

comply with the detailed standards of the planning authority for such road works.

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

11. 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.

12. 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.

13. a) The areas of public open space shown on the lodged plans shall be reserved for such use and shall soiled, seeded, and landscaped in accordance with the landscape scheme submitted to An Bord Pleanála with this application, unless otherwise agreed in writing with the planning authority.

b) Tree removal shall be restricted to those indicated for removal on the Tree Protection Plan DWG Ref 20.04.CD.04A, unless otherwise agreed in writing with the planning authority.

c) The design of the children's play areas shall be submitted for the written agreement of the PA and designed in accordance with the relevant standards,

d) the location and condition of the boundary wall along the eastern boundary shall be confirmed with the planning authority. In the absence of a

satisfactory boundary the applicant shall submit proposals for a 2m high block wall for the written agreement of the planning authority. The existing mature trees and hedging, detailed for retention, shall not be adversely affected by any works to the boundary.

This work shall be completed before any of the units are made available for occupation.

Reason: In order to protect the ecological interest on the site and to ensure the satisfactory development of the public open space areas, and their continued use for this purpose

14. (a) A bat conservation plan shall be submitted for the written agreement of the planning authority and shall incorporate bat roosts into the site. The recommendation of the bat conservation plan shall be carried out on the site to the written satisfaction of the planning authority and in accordance with the details submitted to An Bord Pleanála with this application, unless otherwise agreed in writing with the planning authority.

(b) The bat mitigation measures within the Ecological Impact Assessment submitted with the application shall be adhered to at all times during demolition and construction works.

Reason: To ensure the protection of the natural heritage on the site.

15. Public lighting shall be provided in accordance with a scheme, which shall include design details for a bat friendly lighting scheme, 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.

16. 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.

17. Proposals for an estate/street name, house 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.

18. Prior to the opening or 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 and staff employed in the development and to reduce and regulate the extent of parking. Details may include the provision of centralised facilities within the commercial element of 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 Design Manual for Urban Roads. 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.

19. The car parking facilities shall be reserves solely to serve the proposed development and the spaces shall not be used for any other purpose.

Reason: In the interest of the amenities of future occupants.

20. The applicant or 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.

21. 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

22. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours 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

23. 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.

24.

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 prior to commencement of 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.

25. A minimum of 10% of all communal car parking spaces shall be provided with functioning electric vehicle (EV) charging stations/points. Ducting shall be provided for all remaining car parking spaces to facilitate the installation of electric vehicle 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 requirements, such proposals shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development, and the agreed provisions shall be carried out and completed prior to the making available by the developer for occupation of any of the residential units in the proposed development.

Reason: In the interest of sustainable transport.

26. 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.

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

during the construction phase, and off-site disposal of construction/demolition waste and/or by-products.

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

28. 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.

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 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: 03/02/2021

Terry Prendergast

Note: The Board noted the visually verified views submitted by the applicant as part of the application and the concerns raised in the submissions in respect of these views. The Board did not rely on these views in making its decision on the application in this instance.

Please issue Direction with Order.