

An
Bord
Pleanála

Board Direction
BD-007470-21
ABP-308533-20

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

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 December 2020;

- (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 advanced construction works on the site) and within the area;
- (m) The submission and observations received in response to consultation on the application;
- (n) The oral and written submissions to the Oral Hearing on 20th January 2021 and further written submissions received up to the 22nd January 2021 from observers;
- (o) 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;
- (p) The Chief Executive Report from the Planning Authority; and
- (q) 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 with a zoning on the northern half of the subject site zoned Z12 and the southern portion of the lands zoned Z1, with the objective for Z12 lands "to ensure existing environmental amenities are protected in the predominantly residential future use of these lands", and the objective for Z1 lands "to protect, provide and improve residential amenities", with Residential being a permitted in principle use in Z12 and Z1 lands 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 Construction Waste Management Plan, Construction Traffic Management Plan, Environmental Management Plan, the Engineering Services Report with appended 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 16m for residential development, while the proposed development has a maximum height of approximately 19.6m (6 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):

Under section 37(2)(b)(iii) 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.

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 comply with the terms and conditions governing the overall site under Reg. Ref. 2186/15 / PL29S.245164, unless modified or otherwise required by this grant of planning permission or any conditions contained in this schedule.

Reason: In the interest of orderly development and clarity.

3. The proposed development shall be amended as follows:

(a) Removal of the eastern extent of the 5th storey (4th floor) in Block F so that the

maximum height of the development on the eastern edge is 4 storeys, and reinstatement of approved 5th storey (4th floor) plan (under Reg. Ref. 2186/15 / PL29S.245164) to create a consistent 4 storey height along the eastern edge of Block F. Block F becomes a 4 and 6 storey building as a result of this amendment.

(b) Photovoltaics and green roofs shall be provided on roof areas.

As a consequence of the above amendments the total number of units permitted is 245 no. residential units. Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development above 4th storey level.

Reason: In the interests of visual and residential amenity.

4. (a) The site shall be landscaped 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 occupation of the development. The developer shall retain the services of a suitably qualified Landscape Architect throughout the life of the site development works. The approved landscaping scheme shall be implemented fully in the first planting season following completion of the development or each phase of the development and any plant materials that die or are removed within 3 years of planting shall be replaced in the first planting season thereafter.

(b) Where feasible the planting of native pollinator friendly species of plants and trees shall be incorporated into the landscape plan.

(c) Prior to construction above 5th storey level of the proposed development, the route of pedestrian access from Harold's Cross Road to the scheme's public open space shall be submitted for the written agreement of the planning authority.

Reason: In the interest of conservation, residential and visual amenity.

5. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

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

6. Prior to commencement of development above 5th storey, the developer shall enter into water and/or waste water connection agreement(s) with Irish Water.

Reason: In the interest of public health.

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

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

8. The following revised details shall be submitted to and agreed in writing with the planning authority:

- (i) Prior to the commencement of the development above 5th storey level, an updated Construction Management Plan prepared by the main contractor. This plan shall outline any updates and amendments to construction practice for the development, construction phasing and programme, the site traffic management plan including off-site traffic routing, hours of working, noise and dust management measures and off-site disposal of construction/demolition waste.
- (ii) Prior to the commencement of the development above 5th storey level, the applicant shall liaise with National Transport Authority and the relevant bodies for the relocation of the existing bus stop/shelter adjacent to the application site. A separate planning application shall be submitted for the proposed relocation of the bus stop/shelter. All costs associated with works shall be at the applicant's expense.
- (iii) Within six months of the date of the decision, any alterations to the public road including the provision of the proposed new entrance shall be agreed in writing with the planning authority. Details of the materials proposed in public areas shall be in accordance with the document Construction Standards for Roads and Streets Works in Dublin City Council. All works on the public road shall be carried out at the expense of the applicant.

- (iv) Pedestrian priority design measures shall be provided at the basement access and the access road to the creche drop off area in order to facilitate pedestrian movement within the proposed development.
- (v) Road markings or signage etc. shall be provided at the proposed basement access ramp to communicate the 'shared surface' nature of the ramp to all users, specifically the drivers.
- (vi) Car parking spaces shall be permanently allocated to the proposed use and shall not be sold, rented or otherwise sub-let or leased to other parties. 4 no. car parking spaces within the development shall be permanently allocated to Car Club use.
- (vii) Cycle parking shall be secure, conveniently located, sheltered and well lit. Key / fob access shall be required to bicycle compounds. Cycle parking design shall allow both wheel and frame to be locked. 2 no. of sheltered and secure cycle spaces shall be allocated to creche staff and shower and changing facilities shall also be provided as part of the development.
- (viii) Prior to occupation of the development a full mobility management framework / plan shall be carried out for written agreement of the planning authority. Commitments made in the mobility management plan shall be fully adhered to.
- (ix) All costs incurred by the City Council, including any repairs to the public road and services necessary as a result of the development, shall be at the expense of the developer.
- (x) The developer shall be obliged to comply with the requirements set out in the Code of Practice.

Reason: In the interest of traffic and public safety.

9. Site development and building works shall be carried out only between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 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 amenities of property in the vicinity.

10. 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.

11. Prior to the commencement of the development above 5th storey level, proposals for a development name, apartment numbering scheme, creche signage and all other associated signage for the development, shall be submitted to the planning authority for agreement.

Reason: In the interest of orderly development.

12. (a) The communal open spaces, including hard and soft landscaping, car parking areas and access ways, and all areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company.

(b) Details of the management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.

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

13. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site. In this regard, ducting shall be provided to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interest of orderly development and the visual amenities of the area.

14. Prior to commencement of development above 5th storey level, 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

social and affordable housing in accordance with the requirements of section 96 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 (other than a matter to which section 97(7) applies) may be referred by the planning authority or any other prospective party to the agreement to the Board 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.

15. 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 above 5th storey 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.

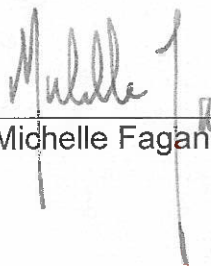
Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

16. Prior to commencement of development above 5th storey, 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 and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public 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 or maintenance 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 and maintenance of the development until taken in charge.

Board Member


Michelle Fagan

Date: 03/02/2021

DECISION QUASHED

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