



An
Bord
Pleanála

Board Direction
BD-007792-21
ABP-308875-20

The submissions on this file and the Inspector's report were considered at a Board meeting held on 31/03/2021.

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 Dublin City Development Plan 2016-2022
- (b) the Rebuilding Ireland Action Plan for Housing and Homelessness, 2016,
- (c) Urban Development and Building Heights, Guidelines for Planning Authorities, 2018
- (d) the Design Manual for Urban Roads and Streets (DMURS), 2019
- (e) the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, 2009
- (f) the Guidelines for Planning Authorities on Sustainable Urban Housing: Design Standards for New Apartments, 2018 and Sustainable Urban Housing, Design Standards for New Apartments, (Updated) Guidelines for Planning Authorities (2020)
- (g) the Planning System and Flood Risk Management (including the associated Technical Appendices), 2009

- (h) Architectural Heritage Protection – Guidelines for Planning Authorities, 2011
- (i) the nature, scale and design of the proposed development
- (j) the availability in the area of a wide range of social, community and transport infrastructure
- (k) the pattern of existing and permitted development in the area
- (l) the planning history within the area
- (m) the submissions and observations received
- (n) the report of the Chief Executive of Dublin City 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 information for 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). Having regard to:

- a) the nature and scale of the proposed development, which is below the threshold in respect of Class 10(b)(iv) and Class 13 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 Z4 'To provide for and improve mixed-service facilities' in the Dublin City 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 in the Outline Construction Management Plan and Outline Demolition Waste 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 at this

location, 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, as well as in terms of traffic and pedestrian safety and convenience. The proposal would, subject to conditions, 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.

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 could materially contravene Section 16.7.2 of Dublin City Development Plan 2016-2022 as outlined below: -

- Section 16.7.2 of the Dublin City Development Plan sets a maximum building height of 'up to 24m' for residential developments in the city centre.

Blocks A and B have a maximum height of 26m. The proposed development, therefore, materially contravenes the development plan.

The Board considers that, having regard to the provisions of section 37(2) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention of the Dublin City Development Plan 2016-2022 would be justified for the following reasons and considerations:

With regard to S.37(2)(b)(i), the development is in accordance with the definition of Strategic Housing Development, as set out in section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016. The proposed development is of strategic importance to the consolidation of development and compact growth within existing urban footprints, as supported by NPO 11 of the National Planning Framework, and RPO 3.2 and RPO 4.3, as set out the Dublin MASP within the RSES. The site is in proximity to public transport and major employment facilities and proximate to the Luas greenline, which is considered a strategic development corridor. The application site has the potential to contribute to

the achievement of the Government's policy to increase delivery of housing from its current under-supply as set out in Rebuilding Ireland Action Plan for Housing and Homelessness issued in July 2016.

With regard to S.37(2)(b)(iii), it is considered that the proposed development in terms of the density, layout and design is in accordance with national guidance, including the National Planning Framework specifically NPO 13 and NPO 35, and the EMRA-RSES, which support compact sustainable development on central and accessible sites. In relation to Section 28 Guidelines, of particular relevance are the Urban Development and Building Height Guidelines for planning authorities issued in December 2018 which state that inter alia building heights must be generally increased in appropriate urban locations, subject to the criteria as set out in Section 3.2 of the Guidelines. The proposal has been assessed against the criteria therein. The proposal also complies with the provisions of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities' 2018, as relates to shared accommodation proposals, subject to conditions being imposed requiring the omission of bedrooms and the provision of additional communal kitchen/dining/living floorspace.

In relation to section 37(2)(b)(iv) of the Planning and Development Act 2000, as amended), the Board has previously approved a 24m high buildings on this site (ABP Ref 300241-17). As such, precedent for higher buildings has been recently established on this site.

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 Pleanála for determination.

Reason: In the interest of clarity.

2. The development shall comply with the terms and conditions governing the overall site under Planning Register Reference Number 2628/17 (An Bord Pleanála Ref PL29N.300241), unless modified or otherwise required by this grant of planning permission or any conditions contained in this schedule.

Reason: In the interests of orderly development and clarity.

3. The proposed development shall be amended as follows:
 - (a) One bedroom unit (18.0 sqm) to the immediate north west of the proposed shared kitchen/dining/living room at the eastern end of Block A on floors 3,4,5, and 6 shall be incorporated into the shared kitchen/dining/living room on each of those floors.
 - (b) Two bedroom units (18 sqm x 2) to the west of the shared kitchen / dining/living room within the central 'crank' of Block A on floors 3,4,5 and 6 shall be incorporated into the shared kitchen/dining/living room on each of those floors.
 - (c) One bedroom unit (18 sqm) to the immediate north west of the shared kitchen/dining/living room at the eastern end of Block B on floors 3,4,5 and 6 shall be incorporated into the shared kitchen/dining/living room on each of those floors.
 - (d) Two bedroom units (18 sqm x 2) to the immediate south-east of the shared kitchen/dining /living room within the centre of Block B on floors 3,4,5 and 6 shall be incorporated into the shared kitchen/dining/living room on each of those floors.
 - (e) This grant of planning permission permits 297 bedrooms of Shared Accommodation.
 - (f) The western elevation of the shared accommodation Block B shall be amended to incorporate fenestration on each level from second

floor to seventh floor levels, inclusive, similar to that proposed on the west-facing elevation of Block A.

- (g) The west facing elevations to the two number shared accommodation blocks shall be finished in brick similar in quality and pattern to that proposed on the east-facing elevations.
- (h) All glazing to the western elevations, from ground through to seventh floor level shall be fitted and maintained with clear glazing only and the glazing shall not be obscured by screens or other such devices as would reduce passive surveillance of the area to the west of the building.
- (i) A portion of the service yard to the north of Block B shall comprise a roof covering or other similar structure to act as a visual and noise barrier between the northern residential accommodation of Block B and the service yard below, details of which shall be submitted to the planning authority for written agreement.

Revised plans and particulars 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 and to improve overlooking of pedestrian routes through the site.

- 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.

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. Details of the materials, colours and textures of all the external finishes to the proposed buildings and detailed public realm finishes shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development.

Reason: In the interest of visual amenity.

9. Details of all security shuttering, external shopfronts, lighting and signage shall be as submitted to, and agreed in writing with, the planning authority prior to-occupation of the commercial/retail units.

Reason: In the interest of the amenities of the area/visual amenity.

10. Noise mitigation measures outlined in the Technical Note 'Summary of Potential noise Impacts on Residential Amenity' (dated 2nd December 2020) shall be carried out in full, except where otherwise agreed with the planning authority.

Reason: In the interest of residential amenity.

11. All plant including extract ventilation systems and refrigerator condenser units shall be sited in a manner so as not to cause nuisance at sensitive locations due to odour or noise. All mechanical plant and ventilation inlets and outlets shall be sound insulated and/or fitted with sound attenuators to ensure that noise levels do not pose a nuisance at noise sensitive locations.

Reason: In the interest of residential amenity.

12. No additional development shall take place above roof parapet level of the shared accommodation buildings, 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, and to allow the planning authority to assess the impact of any such development through the planning process.

13. Proposals for a development name, office/commercial unit identification and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all such names and numbering shall be provided in accordance with the agreed scheme.

Reason: In the interest of urban legibility.

14. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through the scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development/installation of lighting. Such lighting shall be provided prior to the making available for occupation

of the shared accommodation.

Reason: In the interests of amenity and public safety.

15. 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.

16. The developer shall comply with all requirements of the planning authority in relation to roads, access, lighting and parking arrangements, including facilities for the recharging of electric vehicles. In particular:

- (a) Prior to the commencement of development all works proposed on the public road in particular footpaths and carriageway changes at the junction of Connaught Street and Phibsborough Road, shall be subject to written agreement with the planning authority. Any works to the existing public road and the public realm, including relocation of traffic control cabinets removal of car parking, loading bays/set down areas, road and footpath modifications, and signage, shall be carried out at the developer's expense and to the detailed requirements of the planning authority.
- (b) The proposed new civic space, footpaths and hard landscaping areas to be taken in charge including all materials and public lighting shall be agreed in writing with the planning authority prior to commencement of development. All materials shall be in accordance with the requirements of the planning authority.
- (c) A minimum of four car parking spaces within the development shall be permanently allocated to Car Club use.
- (d) 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.

(e) All costs incurred by Dublin 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.

Reason: In the interests of traffic, cyclist and pedestrian safety, to ensure adequate bicycle parking provision is available and to protect residential amenity.

17. 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 and Streets 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.

18. 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 the commencement of development the developer shall submit to the Planning Authority for written agreement a Stage 2 – Detailed Design Stage Stormwater Audit. Upon completion of the development, a Stage 3 Completion Stage Stormwater Audit to demonstrate that Sustainable Urban Drainage Systems measures have been installed, are working as designed, and that there has been no

misconnections or damage to stormwater 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.

19. 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 the size, species and location of all vegetation, including biodiversity enhancement measures;
 - (c) provision for nesting for swifts, through the use of 'swift bricks' into the normal courses of facades, 'swift boxes' under eaves, or 'swift towers' in courtyards;
 - (c) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes;
 - (d) details in relation to public furniture/benches and public artwork;
 - (e) 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 amenity, ecology and sustainable development.

20. A qualified ecologist shall survey the site for invasive alien species designated under the Third Schedule of the European Communities (Birds

and Natural Habitats) Regulations (2011) to produce a verification report which shall be submitted to the planning authority for written agreement prior to commencement of development to ensure all invasive species have been eradicated from the site. Should any IAS be found, an IAS Management Plan shall be submitted to the planning authority for written agreement prior to commencement of development.

Reason: In the interest of amenity, ecology and sustainable development.

21. 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 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.

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

23. The construction of the development shall be managed in accordance with a 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 a demolition management plan, together with details of intended construction practice for the development, including a detailed traffic management plan, hours of working, noise management measures and off-site disposal of construction/demolition waste.

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

24. 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.

25. The applicant or developer shall enter into water and waste water connection agreements with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

26. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the reinstatement of public roads which may be damaged by the transport of materials to the site, to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of the development.

27. 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.

28. The developer shall pay to the planning authority a financial contribution in respect of Luas Cross City 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.

Board Member

Date: 31/03/2021

Michelle Fagan

Note:

The Board notes the adoption and coming into effect of the new Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government on 23rd December, 2020. Section 5 of the Guidelines introduced to a new Specific Planning Policy Requirement 9, whereby ‘there shall be a presumption against granting planning permission for shared accommodation/co-living development unless the proposed development is either:-

(i) required to meet specific demand identified by a local planning authority further to a Housing Need and Demand Assessment (HNDA) process;

or,

(ii) on the date of publication of these updated Guidelines, a valid planning application to a planning authority, appeal to An Bord Pleanála, or strategic housing development (SHD) planning application to An Bord Pleanála.

The Board is satisfied in this instance and in respect of the proposed development that it falls within category (ii), ie. on the date of publication of these updated Guidelines, a valid planning application to a planning authority, appeal to An Bord Pleanála, or strategic housing development (SHD) planning application to An Bord Pleanála. In accordance with the 2020 Guidelines, the application should therefore be determined on its merits.

In considering the merits of the case, the Board, notes and accepted the use of the 2018 Guidelines in respect of co-living standards as an aid, in that the applications had been designed and lodged at a time when these standards were the statutory standards applicable. Although used as an aid/tool to assist in the merits-based assessment, it is acknowledged by the Board that these standards have no statutory basis.

The Board are satisfied that the applicable Guidelines, ie new Sustainable Urban Housing: Design Standards for New Apartments, 23rd December, 2020 have been complied with.