

An  
Bord  
Pleanála

**Board Direction**  
**BD-012737-23**  
**ABP-308900-20**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 16/06/2023.

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 arriving at its decision, the Board had regard to –

- (a) the Dún Laoghaire-Rathdown County Development Plan 2022-2028,
- (b) the Planning System and Flood Risk Management Guidelines for Planning Authorities issued by the Department of Environment, Heritage and local Government in 2009,
- (c) the existing condition and underutilised nature of the subject site,
- (d) the character and pattern of the existing developments in the vicinity of the subject site,
- (e) the biodiversity proposals and the proposed public access arrangements into the site,

- (f) the Environmental Impact Assessment Report submitted,
- (g) the Natura Impact Statement submitted,
- (h) the appeal and observations made in connection with the planning application and appeal, and
- (i) the reports of the Inspector and the Ecologist.

### **Appropriate Assessment: Stage 1**

The Board considered the Natura Impact Statement and all the other relevant submissions and carried out both an Appropriate Assessment screening exercise and an Appropriate Assessment in relation to the potential effects of the proposed development on designated European sites. The Board agreed with and adopted the screening assessment carried out and the conclusions reached in the Inspector's report as supported by the Appropriate Assessment report to the Inspector, dated 20<sup>th</sup> December 2022, prepared by the Inspectorate Ecologist that South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), South Dublin Bay Special Area of Conservation (Site Code: 000210), North Bull Island Special Protection Area (Site Code: 004006), Baldoyle Bay Special Protection Area (site code: 004016), Malahide Estuary Special Protection Area (Site Code: 004025) and Dalkey Islands Special Protection Area (site code: 004172) are the only European sites in respect of which the proposed development has the potential to have a significant effect.

### **Appropriate Assessment: Stage 2**

The Board considered the Natura Impact Statement and associated documentation submitted with the application and appeal, the mitigation measures contained therein, the submissions and observations on file, and the Inspector's assessment. The Board completed an Appropriate Assessment of the implications of the proposed development for the aforementioned European sites in view of the sites'

Conservation Objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment. In completing the Appropriate Assessment, the Board considered, in particular, the following:

- the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- the mitigation measures which are included as part of the current proposal, and
- the Conservation Objectives for the European sites.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report, as supported by the Appropriate Assessment report to the Inspector, dated 20<sup>th</sup> December 2022, prepared by the Inspectorate Ecologist, in respect of the potential effects of the proposed development on the aforementioned European sites, having regard to the sites' Conservation Objectives.

In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not affect the integrity of the European Sites, in view of the sites' Conservation Objectives.

### **Environmental Impact Assessment**

The Board completed an environmental impact assessment of the proposed development, taking into account:

- (a) the nature, scale and extent of the proposed development,
- (b) the Environmental Impact Assessment Report and associated documentation submitted in support of the planning application,

- (c) the submissions from the planning authority, prescribed bodies, the appellant and the observers in the course of the application, and
- (d) the Inspector's report.

The Board considered that the Environmental Impact Assessment Report, supported by the documents submitted by the applicant, adequately considers alternatives to the proposed development and identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

The Board agreed with the examination, set out in the Inspector's report, of the information contained in the Environmental Impact Assessment Report, and associated documentation submitted by the applicant and submissions made in the course of the application.

The Board considered, and agreed with the Inspector's reasoned conclusions, that the main significant direct and indirect effects of the proposed development on the environment are:

**Biodiversity:** Potential biodiversity impacts which may arise to European sites in Dublin Bay and the Irish Sea include hydrological impacts, air quality impacts, potential for escape/spread of non-native invasive plant materials, disturbance and displacement impacts, and bird collision risk impacts. There is also potential for the proposed development to impact on habitats and species associated with Booterstown Marsh and Dublin Bay proposed Natural Heritage Areas and for direct impacts on nesting birds and/or mortality of birds arising from the clearance of site vegetation.

The building is located at the greatest distance from sensitive ecological receptors. The landscaping plan will retain as much existing habitats as possible. During the operational phase, the proposed landscape planting and area of habitat retention will result in a long-term increase of local, higher-value habitats within the site. It is also

expected that there will be a long-term increase of pollinator-friendly habitats available to the local population within the site. Extensive mitigation measures have been identified to mitigate potential impacts on biodiversity including adherence to a Construction Management Plan and the implementation of an Invasive Species Management Plan.

**Water:** Potential impacts to water include pollution from runoff and erosion from site earthworks and stockpiles, fuels and lubricants, washing of construction vehicles and equipment and accidental spillages of fuel/oil leaks. Construction activities have the potential to temporarily alter the hydrological regime in the study area. Surface water has the potential to flood excavations, the car parking and lower ground floor areas during construction. The proposed development also has the potential to increase flood risk off the site during construction.

A flood compensatory storage area is proposed to ensure no flood risk arises on or off-site. The proposed drainage design will replicate the natural drainage characteristics of the site and surface water run-off will not increase compared to the existing scenario. The operational phase of the development is predicted to have an overall neutral, long-term impact on the hydrology within the study area. Earthwork operations shall be carried out such that surfaces shall be designed with adequate falls, profiling and drainage to promote safe run-off and prevent ponding and flooding. Good site housekeeping will be enforced to mitigate the risk of spillages. Visual monitoring will be undertaken as part of regular site audits during construction to ensure the existing drainage regime of the site is not impacted by the proposed development.

**Landscape:** The proposed development will permanently alter the landscape character of the site. The visual effects of the proposed development during the construction phase are likely to be negative at first, becoming neutral to positive as the new structure becomes apparent.

During the operational phase, the effects on landscape character, and social and cultural amenity, will be moderate, positive and long-term. The proposed building is likely to be perceived as a landmark due to its unique character and architectural

expression. Proposed mitigation measures include the incorporation of current and emerging trends in built form, scale, texture and colour and the use of appropriate materials, rationalisation of all service elements and other potential visual clutter, the protection of existing habitat and introduction of new habitat, the inclusion of communal/public uses within the building, and providing education and awareness of the adjacent UNESCO Dublin Bay Biosphere.

The Board completed an Environmental Impact Assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures set out in the Environmental Impact Assessment Report, and subject to compliance with the conditions set out below, the effects on the environment of the proposed development, by itself and in combination with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the Inspector. The Board is satisfied that this reasoned conclusion is up to date at the time of taking this decision.

**Proper Planning and Sustainable Development:**

It is considered that, subject to compliance with the conditions set out below, the proposed development would improve the existing use value of the site for recreation and amenity purposes, would be in accordance with the land use zoning of the site, would make a positive contribution to the character of the area, would facilitate public access onto the site, and would not seriously injure the residential or visual amenities of the area or of property in the vicinity. 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, as amended by the further plans and particulars submitted on the 24<sup>th</sup> day of September 2020, 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.

**Reason:** In the interest of clarity.

2. All mitigation and monitoring commitments identified in the updated Environmental Impact Assessment Report dated September 2020 (and summarised in Chapter 18) and the mitigation measures identified in the updated Natura Impact Statement dated September 2020 shall be implemented in full as part of the proposed development, except as may otherwise be required in order to comply with the following conditions.

**Reason:** In the interest of clarity and protection of the environment during the construction and operational phases of the proposed development.

3. (a) A detailed public access management strategy allowing full public access to the proposed interpretive centre and bird hide, as detailed in the "Applicant Response Document" dated September 2020 and submitted to the planning authority on the 24<sup>th</sup> day of September 2020, in consultation with Dublin City Council, shall be provided, prior to commencement of development and shall be permanently maintained thereafter. The opening hours of these facilities shall also be agreed in writing with the planning authority prior to commencement of development.

- (b) Details of the operation and management of the bird hide, shall be submitted to, and agreed in writing with, the planning authority, in consultation with Dublin City Council, prior to commencement of development.

**Reason:** To facilitate public access to the site in accordance with the land use zoning objective and the proper planning and sustainable development of the area.

- 4. Proposals for a development name and associated signage shall be submitted to, and agreed in writing with, the planning authority, in consultation with Dublin City Council, prior to commencement of development.

**Reason:** In the interest of urban legibility.

- 5. (a) Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority, a revised and final alignment and location of the stone boundary wall along Merrion Road and the cycle path and pedestrian path to ensure that the final design takes account of changes to the carriageway and meets the requirements of the Bus Connects Core Bus Corridor and the East Coast Trail proposals. Detailed design and materials, which shall be to a taken-in-charge standard, shall be agreed.
- (b) The implementation of a two-way cycle track and revised public footpath prior to the Bus Connects Core Bus Corridor by the developer shall be subject to written agreement with the planning authority prior to commencement of development. An independent road safety audit shall be carried out for the final design. All works and materials shall be to taken-in-charge standard and costs at the developers' expense.
- (c) In order to facilitate the proposed signalised pedestrian/toucan crossing across Merrion Road, the developer shall contact the planning authority regarding works required to facilitate the new pedestrian crossing and any



works required to the existing signalised junction. All works shall be agreed in writing with the planning authority prior to commencement of development.

- (d) Final details of the right turning lane serving the proposed development and required road markings on the Merrion Road/Rock Road (R118) shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
- (e) Details of the materials proposed in public areas or areas to be taken-in-charge shall comply with the requirements of the planning authority for such works.
- (f) A drawing detailing all areas to be taken in charge shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

**Reason:** In the interest of traffic safety.

6. The construction of the development shall be managed in accordance with a Construction Environmental Management Plan (CEMP), which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:

- (a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
- (b) Location of areas for construction site offices and staff facilities;
- (c) Details of site security fencing and hoardings;

- (d) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
- (e) Measures to obviate queuing of construction traffic on the adjoining road network;
- (f) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- (g) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- (h) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (i) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- (j) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (k) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

A record of daily checks that the works are being undertaken in accordance with the Construction Environmental Management Plan shall be kept for inspection by the planning authority.

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

7. 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.

8. Details of ultraviolet bird warning markers to be used on cranes or any other elevated construction equipment, shall be submitted to, and agreed in writing with, the planning authority, prior to commencement of development.

**Reason:** To protect wild birds whose flight paths cross the route of the proposed development.

9. (a) Ground remediation works regarding the treatment of Japanese Knotweed on the site shall be commenced and completed in advance of the main development construction works.
- (b) The results of a monthly monitoring programme in relation to Japanese Knotweed shall be submitted to the planning authority during the construction stage of the project.
- (c) A post-construction management programme in relation to Japanese Knotweed shall be undertaken for a period of at least five years following the completion of the proposed development.

**Reason:** To ensure appropriate treatment and to prevent the spread of an invasive alien species.

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

**Reason:** In the interest of public health.

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

**Reason:** In the interest of public health.

12. The following requirements of Irish Rail shall be complied with:
  - (a) Should the development require the use of a crane that could swing over the railway property, the developer must enter into an agreement with Iarnród Éireann/C.I.E. regarding this issue.

- (b) No additional liquid, either surface water or effluent, shall be discharged to the Nutley Stream which may undermine the integrity of the railway embankment.
- (c) Boundary treatments shall be designed to withstand noise and vibrations emanating from railway operations and maintenance.

**Reason:** In the interests of safety in the operation of the railway line.

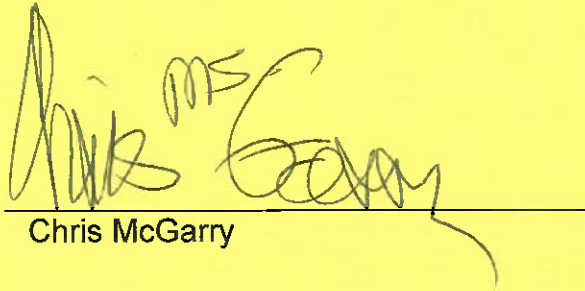
- 13. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

- 14. 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**



Chris McGarry

**Date:** 03/07/2023