



An
Bord
Pleanála

Board Direction
BD-007902-21
ABP-308917-20

The submissions on this file and the Inspector's report were considered at a Board meeting held on 13/04/21. The Board noted some discrepancies in the Inspectors report and deferred the case for further consideration. Following amendments to the Inspectors report the Board met again on 15/04/2021.

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 development (Z14, within Strategic Development and Regeneration Area Number 12, SDRA 12 and a small portion of the land to the north east is zoned Z1 – Sustainable Residential Neighbourhoods, with the land use zoning objective to protect, provide and improve residential amenities);
- (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) the Design Manual for Urban Roads and Streets (DMURS) issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government in March 2013 (and Interim Advice note Covid 19 May 2020);

- (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) the 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 March 2018;
- (h) the Architectural Heritage Protection- Guidelines for Planning Authorities 2011;
- (i) 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;
- (j) the planning history of the site and within the area, including the non-statutory Framework and Masterplans for the site and wider Strategic Development and Regeneration Area Number 12 lands at this location;
- (k) 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;
- (l) the pattern of existing and permitted development in the area,
- (m) the Chief Executive's Report from the planning authority;
- (n) the submissions and observations received, and
- (o) the report and recommendation 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

The Board completed, in compliance with s.172 of the Planning and Development Act 2000, 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 application,
- (c) The submissions from the applicant, planning authority, the observers and the prescribed bodies in the course of the application; and
- (d) The Planning Inspector's report.

The Board considered that the environmental impact assessment report, supported by the documentation submitted by the applicant, adequately identifies and describes 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 planning 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, and would be mitigated, as follows:

- Significant direct positive effects with regard to population and material assets due to the increase in the housing stock that it would make available in the urban area.
- A significant direct effect on land by the change in the use and appearance of a relatively large area of brownfield land to residential. Given the location of the site within the built up area of Dublin and the public need for housing in the region, this effect would not have a significant negative impact on the environment.
- Potential significant effects on soil during construction, which will be mitigated by the re-use of material on the site and the implementation of measures to control emissions of sediment to water and dust to air during construction.
- Potential effects arising from noise and vibration during construction which will be mitigated by appropriate management measures.
- Potential effects on air during construction which will be mitigated by a dust management plan including a monitoring programme.
- Potential indirect effects on water which will be mitigated during the occupation of the development by the proposed system for surface water management and attenuation with respect to stormwater runoff and the drainage of foul effluent to the public foul sewerage system, and which will be mitigated during construction by appropriate management measures to control the emissions of sediment to water.
- A positive effect on the streetscape because the proposed development would improve the amenity of the land through the provision of dedicated public open spaces and improved public realm.
- A positive direct effect on cultural heritage due to the proposed alterations to existing built heritage features within the site and a positive impact on cityscape views.

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.

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 urban 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 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 in relation to building height. 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 considerations.

(a) 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.

It is further considered to be strategic in so far as it contributes to the achievement of the National Planning Framework objective in respect of delivering compact growth and urban regeneration specifically in this instance involving the regeneration of a disused former industrial site, brownfield infill development, within close proximity of the city centre, adjacent to significant public transport links. In addition, the subject site is located within a Strategic Development and Regeneration Area (SDRA 12), that in itself implies strategic importance that elevates it above other residentially zoned lands contained in the development plan.

(b) In relation to section 37(2)(b) (iii) of the Planning and Development Act 2000 (as amended):

Permission for the development should be granted having regard to guidelines under section 28 of the Act and the National Planning Framework, specifically: in relation to the matter of building height, 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 the Urban Development and Building Height Guidelines.

(c) In relation to section 37(2)(b) (iv) of the Planning and Development Act 2000 (as amended):

Permission has been granted recently (Ref. PL29S.307221) for the demolition of all existing structures at the former Bailey Gibson Site and the construction of 416 residential units. The permitted development includes a single building that

marginally exceeds 50m; building BG2 ranges from 2-16 storeys 51 metres (max. height 72.435m above datum).

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. Mitigation and monitoring measures outlined in the plans and particulars, including the Environmental Impact Assessment Report submitted with this application as set out in Chapter 16 of the Environmental Impact Assessment Report 'Summary of Mitigation Measures', 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. The proposed development shall be amended as follows:

(a) A 1.8 metre high privacy screen shall be incorporated on the roof terrace of the crèche aligning with and setback 1 metre from the shared east side boundary.

(b) The proposed works shall be designed to retain as much as possible of the original fabric of the building, such as the main staircase within the former Player Wills Factory to be retained (if feasible) and that all repairs and enhancements are executed in accordance with best conservation practice and guidance.

(c) A Property Management and Operational Plan shall be prepared to address access and control arrangements to the internal communal area of block PW1, and pedestrian/cyclist access from St Catherine's Avenue.

Revised reports, drawings and plans showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority/An Bord Pleanála prior to commencement of development.

Reason: In the interests of visual and residential amenity.

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'/ Build to Rent 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 Build to Rent and shared accommodation scheme. Any proposed amendment or deviation from the Build to Rent and 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. 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.

8. The boundary planting and areas of communal open space and public open space shown on the lodged plans shall be landscaped in accordance with the landscape scheme submitted to An Bord Pleanála with this application, unless otherwise agreed in writing with the planning authority. The landscape scheme shall be implemented fully in the first planting season following completion of the development, and any trees or shrubs which die or are removed within three years of planting shall be replaced in the first planting season thereafter. This work shall be completed before any of the dwellings are made available for occupation. Access to green roof areas shall be strictly prohibited unless for maintenance purposes.

Reason: In order to ensure the satisfactory development of the public open space areas, and their continued use for this purpose.

9. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities for each apartment unit shall be submitted to, and agreed in writing with, the planning authority not later than six 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.

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. Public lighting shall be provided in accordance with a final scheme to reflect the indicative details in the submitted Public Lighting Report, 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 any house.

Reason: In the interests of amenity and public safety.

12. A minimum of 10% of all car parking spaces shall be provided with functioning electric vehicle charging stations/points, and ducting shall be provided for all remaining car parking spaces, facilitating the installation of electric vehicle charging points/stations at a later date. Where proposals relating to the installation of electric vehicle ducting and charging stations/points have not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted and agreed in writing with the planning authority prior to the occupation of the development.

Reason: To provide for and/or future proof the development such as would facilitate the use of electric vehicles

13. a) Prior to the opening/occupation of the development, a Mobility Management Strategy shall be submitted to and agreed in writing with the planning authority. This shall provide for incentives to encourage the use of public transport, cycling, walking and carpooling by residents/occupants/staff employed in the development and to reduce and regulate the extent of parking. The mobility strategy shall be prepared

and implemented by the management company for all units within the development. Details to be agreed with the planning authority shall include the provision of centralised facilities within the childcare facility of the development for bicycle parking, shower and changing facilities associated with the policies set out in the strategy.

b) The Mobility Management Strategy shall incorporate a Car Parking Management Strategy for the overall development, which shall address the management and assignment of car spaces to residents and uses over time and shall include a strategy for the crèche, retail and car-share parking. Car parking spaces shall not be sold with units but shall be assigned and managed in a separate capacity via leasing or permit arrangements.

c) The 81 car parking spaces shown at basement level including circulation area for said spaces (drawing PW2 PL1250 refers), shall be utilised permanently as storage ancillary to the proposed residential development unless otherwise agreed.

Reason: In the interest of encouraging the use of sustainable modes of transport, traffic and pedestrian safety.

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

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

15. Details of any alterations to the road and pedestrian network serving the proposed development, including loading areas, footpaths, kerbs and access road to the underground car park shall be in accordance with the detailed construction standards of the planning authority for such works and design standards outlined in the Design Manual for Urban Roads and Streets. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

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

16. 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.

17. The developer is required to sign a connection agreement with Irish Water prior to any works commencing and connecting to its network. All development is to be carried out in compliance with Irish Water Standards codes and practices.

Reason: In the interest of public health.

18. Construction and demolition waste shall be managed in accordance with a final 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.

19. The construction of the development shall be managed in accordance with a final 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 details of intended construction practice for the development, including:

- (a) Works to remove trees and structures from the site shall take place outside of bird nesting season;
- (b) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
- (c) Location of areas for construction site offices and staff facilities;
- (d) Details of site security fencing and hoardings. Hoardings shall include a one square metre area on each road frontage detailing site management contact details;
- (e) Details of on-site car parking facilities for site workers during the course of construction;
- (f) 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;
- (g) Measures to obviate queuing of construction traffic on the adjoining road network;
- (h) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- (i) 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;
- (j) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (k) 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;
- (l) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (m) Details of dewatering arrangements for construction of the basement to be determined in consultation with the Drainage Division at Dublin City Council and Inland Fisheries Ireland;

(n) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

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

(p) A community liaison officer shall be appointed for the duration of the construction works.

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

20. 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.

21. Site development and building works shall be carried out only between 0700 to 1900 hours Mondays to Fridays inclusive and 0800 to 1300 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.

22. 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.

23. 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.

24. Proposals for an estate/street name, apartment block name, unit 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 unit 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 legibility and to ensure the use of locally appropriate place names for new residential areas.

25. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and

(b) employ a suitably qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works. The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works. In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

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. Prior to commencement of development, the developer or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

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

28. The developer shall 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 for Dublin City Council 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.

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.

Board Member

Date: 15/04/2021

Paul Hyde