

An  
Bord  
Pleanála

**Board Direction**  
**BD-008008-21**  
**ABP-309098-21**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 27/04/2021.

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 policies and objectives in the Dún Laoghaire-Rathdown County Development Plan 2016-2022,
- (b) the planning history of the site,
- (c) the site's location on lands with a zoning objective which includes residential development,
- (d) the nature, scale and design of the proposed development,
- (e) the pattern of existing development in the area,
- (f) the provisions of Rebuilding Ireland Action Plan for Housing and Homelessness 2016,
- (g) the provisions of Project Ireland 2040 National Planning Framework,
- (h) the provisions of the Eastern and Midland Regional Assembly Regional Spatial and Economic Strategy 2019-2031,
- (i) the provisions of 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 2019, as amended,
- (j) the provisions of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in December 2020,
- (k) the provisions of the Urban Development and Building Heights Guidelines for Planning Authorities, issued by the Department of Housing, Planning and Local Government in December 2018,
- (l) the provisions of the Architectural Heritage Protection, Guidelines for Planning Authorities, issued by the Department of Arts, Heritage and the Gaeltacht in October 2011,
- (m) the Chief Executive's Report of the planning authority,
- (n) the submissions and observations received, and
- (o) the report of the Planning Inspector.

It is considered that, subject to compliance with the conditions set out below, the proposed development 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 and would be acceptable in terms of traffic and pedestrian safety and convenience. The Board was also satisfied that the proposed development would not seriously injure the character and setting of the adjacent protected structures and other protected structures in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### **Appropriate Assessment**

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 adequately serviced urban site, the information for the Screening Report for Appropriate Assessment and the Ecological Statement 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 a screening determination of the proposed development and considered that the Environmental Impact Assessment Screening 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) nature and scale of the proposed development, which is below the threshold in respect of Class 10(b)(iv) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,
- b) the location of the site on lands zoned Major Town Centre (MTC) to protect, provide and or improve Major Town Centre facilities in the Dun Laoghaire Rathdown Development Plan 2016-2022. The development plan was subject to a strategic environmental assessment in accordance with the SEA Directive (2001/42/EEC).
- c) The location of the site within the existing built-up urban area, which is served by public infrastructure, and the existing pattern of development in the vicinity.
- d) The location of the development outside of any sensitive location specified in article 299(C)(1)(a)(v) of the Planning and Development Regulations 2001 (as amended).
- e) 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 Management Plan, Construction Environmental Management Plan, Outline Construction and Demolition Waste Management and Outline Operational Waste Management Plan.

In conclusion, having regard to the absence of any significant environmental sensitivity in the vicinity and the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development and that the preparation and submission of an environmental impact assessment report would not therefore be required.

#### **Conclusions on Proper Planning and Sustainable Development:**

The Board considered that the proposed development is, apart from the parameters of Section 8.2.3.3(iii) - Housing Mix set and Section 8.2.8.4 – Private Open Space of the Dun Laoghaire Rathdown County Development Plan 2016-2022, broadly compliant with the provisions of the Dun Laoghaire Rathdown County Development Plan 2016-2022 and would therefore be in accordance with the proper planning and sustainable development of the area.

The Board considers that, while a grant of permission for the proposed Strategic Housing Development would not materially contravene a zoning objective of the Development Plan, it would materially contravene Section 8.2.3.3(iii) - Housing Mix set and Section 8.2.8.4 – Private Open Space of Dun Laoghaire Rathdown County Development Plan 2016-2022 as outlined below: -

**Mix of Units:** Section 8.2.3.3(iii) – Mix of Units requires that larger schemes over 30 units should generally comprise of no more than 20% 1-bed units. The proposed development comprises 80 no. 1-bed units and 22 no. 2-bed units and, therefore, does not accord with the development plan standard.

**Private Open Space:** Section 8.2.8.4 refers to Table 8.2.5: Balconies / Winter Gardens: Minimum Private Open Space Standards which requires 6sqm private



Open space for 1 bed apartments and 8sqm of private open space for 2-bed apartments. 15 no. number of units on the northern elevation of Building 01, fronting onto Crofton Road do not have a balcony or terrace and, therefore, does not accord with the development plan.

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

- The proposed development falls within the definition of strategic housing set out in Planning and Development (Housing) and Residential Tenancies Act 2016.
- Government's policy to provide more housing set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016.

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

**Housing Mix** the proposed material contravention of Section 8.2.3.3(iii) – Mix of Units is justified by reference to: -

- SPPR8(i) of the Sustainable Urban Housing: Design Standards for New Apartments, 2020 which states that no restrictions on dwelling mix and all other requirements of these Guidelines shall apply for Build to Rent developments.

**Private Open Space** the proposed material contravention of Section 8.2.8.4 refers to Table 8.2.5: Balconies / Winter Gardens: Minimum Private Open Space Standards is justified by reference to: -

- SPPR8(ii) of the Sustainable Urban Housing: Design Standards for New Apartments, 2020 which states that flexibility shall apply in relation to the provision of a proportion of the private amenity space associated with individual units.

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

Furthermore, the Board considered that, subject to compliance with the conditions set out below that the proposed development 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 and would be acceptable in terms of traffic and pedestrian safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area

### Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

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

2. The proposed development shall be amended as follows:
  - (a) The ground floor kitchen and lounge area (85.7 square metres) and attached games room area (72.8 square metres) located on the ground



floor of Building 01 shall be replaced with an additional unit(s) accommodating uses permissible under class 1, 2 and 8 of Part 4, Schedule 1 the Planning and Development Regulations, 2001, as amended,

- (b) The first floor level Units B1\_01.05 and B1\_01.06 shall be omitted and replaced with kitchen and lounge area and games room and residential amenity space,
- (c) The fully obscure bedroom windows on the eastern elevation of Building 01 serving apartments B1\_01.05, B1\_02.06, B1\_03.06, B1\_04.06, B1\_05.05, B1\_06.03 and B1\_07.03 shall be omitted and replaced with angled windows as indicated in the bedroom of apartment B1\_01.04. Unless otherwise agreed in writing with the planning authority,
- (d) The bedroom window serving apartment B1\_08.02 on the 8<sup>th</sup> floor level of Building 01 shall be omitted and replaced with angled windows as indicated in the bedroom of apartment unit B1\_01.04. Unless otherwise agreed in writing with the planning authority,
- (e) The eastern elevation of balconies on Building 01, adjacent to Harbour View, shall be permanently screened with louvres. Unless otherwise agreed in writing with the planning authority,
- (f) A high-level screen, a minimum of 2 metres in height, shall be permanently provided on the southern and western elevations of the 5<sup>th</sup> floor roof terrace of Building 01.

**Reason:** In the interests of protecting the residential amenities of adjoining properties

3. Prior to commencement of development the developer shall agree in writing with the planning authority details of microclimate mitigation measures, including high level screening and planting for all roof terraces.

**Reason:** In the interest of residential amenity.

4. 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.

5. 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.

6. Proposals for an apartment naming 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 signs, and apartment numbers, shall be provided in accordance with the agreed scheme. The proposed names shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements or marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

**Reason:** In the interest of urban legibility and to ensure the use of locally appropriate place names for new residential areas.

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. All mitigation and monitoring measures outlined in the plans and particulars, including the environmental impact assessment report, bat survey and subsequent reports submitted with this application shall be carried out in full, except where otherwise required by conditions attached to this permission. The developer shall employ a suitably qualified Ecological Clerk of Works to oversee and implement the mitigation measures and other ecological works listed throughout the submitted documentation.

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

9. Prior to the commencement of development, the owner shall submit, for the written consent of the planning authority, details of a proposed covenant or

legal agreement which confirms that the proposed 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 15 years shall be from the date of occupation of the first apartments within the scheme.

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

10. Prior to expiration of the 15 year period referred to in the covenant, the developer shall submit for the written agreement of the planning authority, ownership details and management structures proposed for the continued operation of the entire development as a Build to Rent Accommodation scheme. Any proposed amendment or deviation from the Build to Rent Accommodation model as authorised in this permission shall be subject to a separate planning application.

**Reason:** In the interests of orderly development and clarity.

11. 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.



2. To mitigate against potential damage to mature trees on Crofton Road the developer shall submit to, and agree in writing with, the planning authority the final location of the underground surface water infrastructure prior to commencement of development.

**Reason:** In the interests of sustainable development and visual amenity.

13. Any vegetation (felling, removal, surgery) shall be undertaken by a suitably qualified and insured Tree Surgeon, in accordance with British Standard BS 3998:1989 including trees and scrub should be carried out outside the bird-breeding season 1<sup>st</sup> March to 31<sup>st</sup> August inclusive as stipulated under the Wildlife Acts 1976 as amended by section 46 of the Wildlife (Amendment) Act 2000.

**Reason:** In the interest of proper planning and sustainable development of the area.

14. 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.

15. All car parking spaces should be provided with functioning electric vehicle charging stations or points. Where proposals relating to the installation of charging stations or points has 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.

16. The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs shall be in accordance with the detailed construction standards of the planning authority for such works and design standards outlined in 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.

17. Prior to commencement of development details of the works to the public road, shall be submitted to, and agreed in writing with, the planning authority.

**Reason:** In the interest of road safety and to ensure the satisfactory completion of the works.

18. Prior to the opening or occupation of the development, a Mobility Management Strategy including an interim or temporary strategy reflecting any requirements or adjustments relating to Covid-19 movement and travel patterns shall be submitted to, and agreed in writing with, the planning authority. This shall provide for incentives to encourage the use of public transport, cycling, walking and carpooling by residents, occupants and staff employed in the development and to reduce and regulate the extent of parking. Details may include the provision of centralised facilities within the commercial element of the development for bicycle parking, shower and changing facilities associated with the policies set out in the strategy. The interim or temporary strategy, where applicable, should reflect the requirements of Design Manual for Urban Roads and Street 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.

19. 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.

20. Prior to commencement of development, the developer shall enter into water and or wastewater connection agreement(s) with Irish Water.

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

21. The site shall be landscaped, in accordance with the scheme of landscaping, which accompanied the application. The developer shall appoint and retain the services of a qualified Landscape Architect or qualified Landscape Designer as a Landscape Consultant, throughout the life of the construction works, unless otherwise agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of residential and visual amenity.

22. A schedule of landscape maintenance shall be submitted to, and agreed in writing with, the planning authority prior to occupation of the development. This schedule shall cover a period of at least three years and shall include details of the arrangements for its implementation.

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

23. 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.

24. 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.

25. 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.

**Reason:** In the interest of sustainable waste management.

26. 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 details of intended construction practice for the development, noise management measures and off-site disposal of construction and demolition waste.

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

27. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion 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

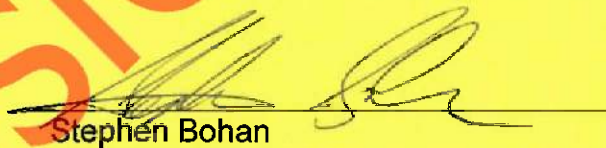
determination.

**Reason:** To ensure the satisfactory completion and maintenance of the development until taken in charge.

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 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**

  
Stephen Bohan

**Date:** 27/04/2021