



An
Bord
Pleanála

Board Direction
BD-008081-21
ABP-309317-21

The submissions on this file and the Inspector's report were considered at a Board meeting held on 05/05/2021.

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 use (under zoning objective Z1 '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 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;
- (e) 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;
- (f) The Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government 2020;

(g) 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;

(h) 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 public transport and water services infrastructure;

(j) The pattern of existing and permitted development in the area;

(k) The planning history of the site, including its partial location in Crumlin Village Architectural Conservation Area and the Glebe House Protected Structure on the site and other protected structures in the vicinity;

(l) 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;

(m) The submissions and observations received;

(n) The Chief Executive Report from the planning authority recommending that permission be granted and highlighting matters of concern; 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 area, the Appropriate Assessment Screening document submitted with the application, the Inspector's report, and submissions on file. In completing the screening exercise, the Board adopted the report of the Inspector and concluded that, by itself or in combination with other development in the vicinity, the proposed development would not be likely to have a significant effect on any European Site in view of the conservation objectives of such sites, and that a Stage 2 Appropriate Assessment is not, therefore, required.

Environmental Impact Assessment Screening

The Board completed an environmental impact assessment screening of the proposed development and considered that the Environment Report submitted by the applicant, identifies and describes adequately the direct, indirect, secondary, and cumulative effects of the proposed development on the environment.

Having regard to:

(a) the nature and scale of the proposed development, which is below the threshold in respect of Class 10(iv) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended.

(b) the location of the site on lands zoned Z1 'To protect, provide and improve residential amenities' where residential is a permissible uses and restaurant is open for consideration in this land use zoning. The proposed café (restaurant) use is permissible in the land use zoning.

(c) The existing use on the site and pattern of development in surrounding area.

(d) The availability of mains water and wastewater services to serve the proposed development.

(e) the location of the development outside of any sensitive location specified in article 299(C)(1)(v) of the Planning and Development Regulations 2001 (as amended).

(f) The guidance set out in the "Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development", issued by the Department of the Environment, Heritage and Local Government (2003).

(f) The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended); and

(g) The features and measures proposed by the applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Preliminary Construction and Waste Management Plan, the Operational Waste Management Plan, the Traffic Impact Assessment and the Flood Risk Assessment.

The Board concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment. The Board decided, therefore, that an environmental impact assessment report for the proposed development was not necessary in this case.

Conclusions on Proper Planning and Sustainable Development

Having regard to the zoning objective for the site as set out in the Dublin City Development Plan 2016-2022, the planning history of the site, its location in Crumlin Village Architectural Conservation Area, the protected structure on the site and other protected structures in proximity to the site and to the pattern of development in the area, 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 consistent with national and local planning policy and would be acceptable in terms of urban design, scale, height, mix of uses and quantum of development and in terms of pedestrian and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

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 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 consideration.

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

The proposed development is considered to be of strategic and national importance having regard to the definition of 'strategic housing development' pursuant to section

3 of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended) supporting National Policy Objectives in Project Ireland 2040 National Planning Framework, in particular National Policy Objective 33 that seeks to “prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location”, and its potential to contribute to the achievement of the Government’s policy to increase delivery of housing from its current under supply set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016.

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

Permission for the development should be granted having regard to guidelines under section 28 of the Act, specifically SPPR 3 of the Building Height Guidelines which states that where a development complies with the Development Management Criteria in section 3.2, it may be approved, even where specific objectives of the relevant development plan or local area plan may indicate otherwise and national policy in Project Ireland 2040 National Planning Framework (in particular objectives 13 and 35). An assessment of the proposed development was carried out to determine that the proposed development conforms with the development management criteria in section 3.2 of those guidelines.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars. In default of

agreement, such issues may be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:

- (a) screening shall be added to the western side of the balcony of the 1bed B unit on the south elevation of Block A at fourth floor level.
- (b) the vehicular entrance on St Agnes Road to demonstrate sightlines in accordance with DMURS and improved inter-visibility between cars using the access / egress and parking spaces, pedestrians and vehicles on the road.
- (c) final details of the landscape finish to the new pedestrian / cycle link to include a minimum, unobstructed width of 3m through the site from Somerville Drive to St Agnes Road.
- (d) revised Taking in Charge Plan and swept path analysis to meet the design specifications of the planning authority.
- (e) details of revised vehicle dishing on Somerville Drive and demarcation of the car park located north of the pedestrian / cycle link.
- (f) final detail of all boundary treatments as a result of the above amendments, to incorporate reuse of rumble / stone resulting from demolition works.

Revised drawings 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 residential amenity.

3. 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, including:

- Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
- Location of areas for construction site offices and staff facilities;
- Details of site security fencing and hoardings;
- Details of on-site car parking facilities for site workers during the course of construction;
- 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;
- Measures to obviate queuing of construction traffic on the adjoining road network;
- Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- 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;
- Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- 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;
- Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- 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 Management Plan shall be kept for inspection by the planning authority.
- Mitigation measures as described in the bat assessment approved part of the application.

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

4. (a) Prior to commencement of development, all trees which are to be retained shall be enclosed within stout fences not less than 1.5 metres in height. This protective fencing shall enclose an area covered by the crown spread of the branches, or at minimum a radius of two metres from the trunk of the tree or the centre of the shrub, and to a distance of two metres on each side of the hedge for its full length and shall be maintained until the development has

been completed.

(b) No construction equipment, machinery or materials shall be brought onto the site for the purpose of the development until all the trees which are to be retained have been protected by this fencing. No work is shall be carried out within the area enclosed by the fencing and, in particular, there shall be no parking of vehicles, placing of site huts, storage compounds or topsoil heaps, storage of oil, chemicals or other substances, and no lighting of fires, over the root spread of any tree to be retained.

(c) Excavations in preparation for foundations and drainage shall be carried out under the supervision of a specialist arborist, in a manner that will ensure that all major roots are protected, and all branches are retained.

(d) No trench, embankment or pipe run shall be located within three metres of any trees which are to be retained adjacent to the site unless otherwise agreed with the Planning Authority.

(e) All engineer works, service lines and pathways shall be compatible with tree and root protection measures, with details amended if required.

(f) Shrubs and trees identified for removal from the site, shall only take place outside of main bird nesting season (September to February).

(g) A NPWS-licensed bat worker to survey the site for bats prior to commencement of site clearance works. Felling of mature trees (identified for removal) on the site which might harbour bat roosts shall only take place in September or October where bat roost and bat activity surveys of such trees have been carried out before any felling takes place.

Reason: To protect trees and planting during the construction period in the interest of visual amenity.

5. Bat roosts shall be incorporated into the site and the recommendation of the Bat Assessment report (including lighting specifications) shall be carried out on the site to the written satisfaction of the planning authority and in

accordance with the details submitted to An Bord Pleanála with this application unless otherwise agreed in writing with the planning authority

Reason: To ensure the protection of the natural heritage on the site.

6. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company or such other security as may be accepted in writing by the planning authority, to secure the protection of the trees on site and to make good any damage caused during the construction period, coupled with an agreement empowering the planning authority to apply such security, or part thereof, to the satisfactory protection of any tree or trees on the site or the replacement of any such trees which die, are removed or become seriously damaged or diseased within a period of five years from the substantial completion of the development with others of similar size and species. 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 secure the protection of the trees on the site.

7. The landscaping scheme as submitted to An Bord Pleanála as part of this application shall be carried out within the first planting season following substantial completion of external construction works. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

8. Standard Construction Working Hours

9. The site shall be landscaped (and earthworks carried out) in accordance with the detailed comprehensive scheme of landscaping, which accompanied the application submitted, unless otherwise agreed in writing with, the planning authority prior to commencement of development. Landscape details shall include final boundary treatments for the development.

Reason: In the interest of residential and visual amenity

10. The areas of public open space shown on the lodged plans shall be reserved for such use and shall be soiled, seeded, and landscaped in accordance with the landscape scheme submitted to An Bord Pleanála with this application, unless otherwise agreed in writing with the planning authority. This work shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open space by the developer until taken in charge by the local authority or management company.

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

11. Works to the carriageway to facilitate the development, including footpaths and kerbs (and vehicle dishing), shall be in accordance with the detailed construction standards of the planning authority for such works and design standards outlined in DMURS. 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.

12. 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.

Reason: In the interest of encouraging the use of sustainable modes of transport.

13. Prior to the occupation of the development, a Parking Management Plan shall be prepared for the development and shall be submitted to and agreed in writing with the planning authority. This plan shall provide for the permanent retention of the designated residential parking spaces and shall indicate how these and other spaces within the development shall be assigned, segregated by use and how the car park shall be continually managed.

Reason: To ensure that adequate parking facilities are permanently available to serve the proposed residential units.

14. A minimum of 10% of all communal car parking spaces should be provided with functioning EV charging stations/points, and ducting shall be provided for all remaining car parking spaces, including in-curtilage spaces, facilitating the installation of EV charging points/stations at a later date. Where proposals relating to the installation of EV ducting and charging stations/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.

15.274 no. bicycle parking spaces shall be provided within the site, with the incorporation of functioning electric charging stations/points to a limited number of spaces to be agreed with the planning authority. Details of the layout, marking demarcation and security provisions for these spaces shall be as submitted to An Bord Pleanála with this application, unless otherwise agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure that adequate bicycle parking provision is available to serve the proposed development, in the interest of sustainable transportation.

16. 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, recording or preservation in situ) 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.

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

Reason: In the interest of public health.

18. All works to the protected structure, shall be carried out in accordance with current Conservation Guidelines issued by the Department of Arts, Heritage and the Gaeltacht, and under the supervision of a qualified professional with specialised conservation expertise (RIAI Grade 2 or higher).

Reason: To secure the authentic preservation of this [protected] structure and to ensure that the proposed works are carried out in accordance with best conservation practice.

19. Details of all security shuttering, external shopfronts, lighting and signage shall be as submitted to An Bord Pleanála with this application unless otherwise submitted to, and agreed in writing with, the planning authority prior to occupation of the commercial/retail units. Glazing to the café use shall be kept free of stickers / advertisements.

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

20. 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.

21. The applicant shall comply with the following requirements of the Air Quality Monitoring & Noise Control Unit:

i) The LAeq level measured over 15 minutes (daytime) or 5 minutes (night time) at a noise sensitive premises when plant associated with the development is operating, shall not exceed the LA90 (15 minutes day or 5 minutes night), by 5 decibels or more, measured from the same position, under the same conditions and during a comparable period with no plant in operation.

ii) Any stack emitting fumes/odours from the proposed development shall be positioned in an area from which the emissions will cause the minimum nuisance.

Reason: In the interests of orderly development and residential amenity.

22. Details of the materials, colours and textures of all the external finishes to the proposed dwellings/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.

23. Proposals for an estate name, 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 signs, and apartment numbering, shall be provided in accordance with the agreed scheme. The proposed name 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 of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.

Reason: In the interest of urban legibility.

24. 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. The management scheme shall also provide final details of the operation and management of the residents' amenity / community facility space. The development shall be carried out in accordance with the agreed scheme.

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

25. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of

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.

26. 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.

27. 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 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.

28. 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.

29. 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

Terry Prendergast

Terry Prendergast

Date: 05/05/2021

DECISION QUASHED