



An
Bord
Pleanála

Board Direction
BD-008198-21
ABP-309345-21

The submissions on this file and the Inspector's report were considered at a Board meeting held on 18/05/2021.

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 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 in March 2018 and particularly Specific Planning Policy Requirement 7 and 8;

- (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 a wide range of social, transport and water services infrastructure;
- (j) The pattern of existing and permitted development in the area;
- (k) The planning history of the site and within the area;
- (l) The submissions and observations received;
- (m) The Chief Executive Report from the Planning Authority; and
- (n) The report of the Inspector,

The Board 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, and would be acceptable in terms of pedestrian and traffic safety and convenience. 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 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 on an urban site served by public infrastructure,
- (b) the absence of any significant environmental sensitivities in the area,
- (c) the location of the development outside of any other sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),

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

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 plan for the area, a grant of permission could materially contravene Dublin City Development Plan 2016-2022 in relation to the matters of building height and public open space provision. 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) 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 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 National Policy 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.

- In relation to the matter of public open space, permission for the proposed development should be granted having regard to Regional Policy Objective 4.3 of the Regional Spatial and Economic Strategy for the Eastern and Midland Region and National Policy Objective 35 of the National Planning Framework.

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 Ecological Impact Assessment and the Bat Assessment Report, submitted with this application, 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) The south facing bedrooms on floors number one to ten of Block C shall be used as a home office and study only.
- (b) The perforated metal screens to the southern elevation of Block C shall be set forward of the window frame as is the case with those screens to Blocks A and B. The screens shall not be a flat plane and shall have some level of three dimensionality as an architectural feature.

(c) All balconies shall be fitted with obscure glazed enclosures, all winter gardens shall have clear glazing to their front with the exception of the winter gardens to the ground floor units facing the canal which may have some level of obscure glazing to 1.2 metres above floor level if so required.

(d) The obscure glazed balconies to the studio units on the southern elevation of Blocks A and B shall be raised to 1.5 metres above floor level to provide additional screening toward the south.

(e) Windows shall be inserted into the southern wall of the corridor at the sixth floor of both Blocks A and B where this wall abuts the roof terraces.

(f) The proposed coloured render external treatment shall be replaced by a more durable finish, to the satisfaction of the planning authority.

Revised plans and particulars showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: To provide a development of appropriate scale and finishes for this location in accordance with Development Plan and national policy in the interests of the residential amenities of both existing and future residents and the proper planning and sustainable development of the area.

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. 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 development hereby permitted shall be for build to rent units which 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 issued by the Department of Housing, Planning and Local Government in December 2020 and be used for long term rentals only. No portion of this development shall be used for short term lettings.

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

8. 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 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 residential unit within the scheme.

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

9. Prior to expiration of the 15 year period referred to in the covenant, the owner 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 scheme. Any proposed amendment or deviation from the Build to Rent model as authorised in this permission shall be subject to a separate planning application.

Reason: In the interests of orderly development and clarity.

10. Glazed screens to a height of two metres shall be provided on all external sides of the roof terraces. Access to the roof terraces shall be restricted to residents of the scheme between the hours of 0700 and 2200 Monday to Sunday.

Reason: In the interest of residential amenities.

11. The pedestrian access to the Royal Canal and the public plaza at the eastern end of the site shall be opened during the hours of 0700 and 2200 only.

Reason: In the interest of residential amenities.

12. The developer shall submit full details of all proposed changes to the site boundary facing the Royal Canal including removal of boundary wall or access on to canal banks along the Royal Canal, such details shall be agreed in writing with the planning authority prior to the commencement of development. Use of the accesses to the canal by members of the public and residents of the development shall be limited to the daytime hours of 0700 to 2200 only.

Reason: To protect the Royal Canal as a heritage site and public amenity.

13. The developer shall submit proposals for noise mitigation measures to address noise impacts on residential amenities of apartments from the adjacent railway line and railway maintenance works to the planning authority for agreement in writing prior to the commencement of development. The proposed mitigation measures shall be based on a noise risk assessment and an Acoustic Design Statement. The detail of the Acoustic Design Statement should be commensurate with the level of risk identified in the noise risk assessment.

Reason: In the interest of residential amenities.

14. Details of proposed signage to the café to be submitted prior to occupation for the written agreement of the planning authority. An extraction and ventilation plan for the café shall also be submitted for the written agreement of the planning authority prior to occupation. All emissions to air associated with the development must be free from offensive odour and shall not result in an impairment of or an interference with amenities or the environment.

Reason: In order to safeguard the amenities of adjoining premises, residential amenity, and the general surroundings.

15. No advertisement or advertisement structure 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.

16. 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.

17. The following requirements in terms of traffic, transportation and mobility shall be incorporated, and where required revised plans and particulars showing compliance with these requirements shall be submitted to and agreed in writing with the planning authority prior to commencement of development:

(a) The roads and traffic arrangements serving the site, including signage, shall be in accordance with the detailed requirements of the planning authority for such works and shall be carried out at the developer's expense.

(b) The materials used in any roads and footpaths provided by the developer shall comply with the detailed standards of the planning authority for such road works.

(c) All works to public roads and footpaths shall be completed to the satisfaction of the planning authority.

(d) The roads layout shall comply with the requirements of the Design Manual for Urban Roads and Streets, in particular carriageway widths and corner radii.

(e) The developer shall carry out a Stage 3 - Road Safety Audit of the constructed development on completion of the works and submit to the planning authority for approval and shall carry out and cover all costs of all agreed recommendations contained in the audit.

(f) A detailed construction traffic management plan shall be submitted to and agreed in writing with, the planning authority prior to commencement of development. The plan shall include details of arrangements for routes for construction traffic, parking during the construction phase, the location of the compound for storage of plant and machinery and the location for storage of deliveries to the site.

(g) The developer shall submit a Mobility Management Plan and details of car parking design, layout and management to the planning authority for agreement in writing prior to the commencement of development.

In default of agreement, the matter(s) in dispute shall be referred to An Board Pleanála for determination.

Reason: In the interests of traffic, cyclist and pedestrian safety and to protect residential amenity.

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. A minimum of 10% of all car parking spaces should be provided with electric vehicle charging stations/points, and ducting shall be provided for all remaining car parking spaces facilitating the installation of electric vehicle charging points or stations at a later date. Where proposals relating to the installation of electric vehicle ducting and charging stations or points has not been submitted with the application, in accordance with the above noted requirements, the developer shall submit 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.

20. Prior to commencement of the development, details of all areas of boundary treatment, green walls, play equipment and roof terrace planting, shall be submitted to, and approved, by the planning authority. Boundaries and areas of communal 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.

21. 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.

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. Public lighting shall be provided in accordance with a final scheme to reflect the indicative details in the submitted Site Lighting Report, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development or installation of lighting. Such lighting shall be provided prior to the making available for occupation of any residential unit.

Reason: In the interests of amenity and public safety.

24. No external lighting shall be installed on the canal side of the proposed development.

Reason: To prevent illumination of the Royal Canal tow path, locks and water body adjacent to the proposed development inhibiting their usage by otter and bat species which are afforded a regime of strict protection under the Habitats Directive (92/43/EEC).

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

Reason: In the interests of public health and surface water management

26. 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.

27. 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. All existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

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

Reason: In the interest of urban legibility.

29. 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.

30. A plan containing details for the management of waste within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

31. 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.

32. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive and 0800 to 1400 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.

33. 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:

- (a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse,
- (b) Location of areas for construction site offices and staff facilities,
- (c) Details of site security fencing and hoardings,
- (d) Details of on-site car parking facilities for site workers during the course of construction,
- (e) 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,
- (f) Measures to obviate queuing of construction traffic on the adjoining road network,
- (g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network,
- (h) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels,
- (i) Containment of all construction related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater,
- (j) Off-site disposal of construction and demolition waste and details of how it is proposed to manage excavated soil,
- (k) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains,
- (l) 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.

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

34. 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.

35. 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 planning authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the planning 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.

36. 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

Paul Hyde

Date: 18/05/2021

DECISION QUASHED