



**An
Bord
Pleanála**

**Board Direction
BD-008923-21
ABP-310112-21**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 17/08/2021.

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 of the Dublin City Development Plan 2016-2022, as varied;
- b) The Rebuilding Ireland Action Plan for Housing and Homelessness 2016;
- c) the National Planning Framework, Project Ireland 2040, which identifies the importance of compact growth;
- d) Urban Development and Building Heights Guidelines for Planning Authorities, 2018;
- e) The Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities 2020;
- f) The Design Manual for Urban Roads and Streets 2013;
- g) The Planning System and Flood Risk Management Guidelines for Planning Authorities (including the associated Technical Appendices) 2009;

- h) 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;
- i) The pattern of existing and permitted development in the area;
- j) 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 that materially contravenes a Development Plan;
- k) The submissions and observations received;
- l) The Chief Executive's report from the Planning Authority;
- m) 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 site, the Appropriate Assessment Screening Report submitted with the application, the Inspector's Report and the 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, other than South Dublin Bay and River Tolka Estuary SPA (Site Code:004024), North Bull Island SPA (Site Code:004006) and Baldoyle Bay SPA (Site Code:004016), which are European Sites for which there is a likelihood of significant effects.

Appropriate Assessment Stage 2

The Board considered the Natura Impact Statement and all other relevant submissions, including expert submissions received and carried out an appropriate assessment of the implications of the proposed development on South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024), North Bull Island SPA (Site

Code: 004006) and Baldoye Bay SPA (Site Code: 004016) in view of the above sites' Conservation Objectives. The Board considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the sites' Conservation Objectives using the best available scientific knowledge in the field.

In completing the assessment, the Board considered, in particular, the following:

- (a) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects;
- (b) the mitigation measures that are included as part of the current proposal, and;
- (c) the conservation objectives for the European sites.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Sites, having regard to the sites' conservation objectives.

In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of European sites in view of the sites' conservation objectives. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable scientific doubt as to the absence of adverse effects.

Environmental Impact Assessment Screening

The Board completed an environmental impact assessment screening of the proposed development and considered that the Environment Impact Assessment Screening Statement submitted by the applicant, which contains the information set out in Schedule 7A to the Planning and Development Regulations 2001-2021, as well as identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment. Having regard to:

- the nature and scale of the proposed development, which is below the threshold in respect of classes 10(b)(i) and 10(b)(iv) of Part 2 to Schedule 5 of the Planning and Development Regulations 2001-2021;
- Class 14 of Part 2 to Schedule 5 of the Planning and Development Regulations 2001-2021;
- the location of the residential, childcare facility, café, gym and remote office hub development on lands zoned 'Z10' for inner suburban and inner-city sustainable mixed-uses within the Dublin City Development Plan 2016-2022, and the results of the Strategic Environmental Assessment of this Plan, including the adopted variation no.26;
- the existing development on site and the pattern of development in the surrounding area;
- the availability of mains water and wastewater services to serve the proposed development;
- the location of the development outside of any sensitive location specified in Article 299(C)(1)(a)(v) of the Planning and Development Regulations 2001-2021;
- 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);
- the criteria set out in Schedule 7 of the Planning and Development Regulations 2001-2021, and;
- 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 Noise and Vibration Impact Assessment, the Construction Environmental Management Plan and the Ecological Impact Statement.

It is considered that the proposed development would not be likely to have significant effects on the environment 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, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable density of development in this accessible urban location, 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, would be acceptable in terms of impacts on traffic and pedestrian safety and convenience and would provide an acceptable form of residential amenity for future occupants.

The Board considered that with the exception of building heights, apartment mix and block configuration, the proposed development would be compliant with Dublin City 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 statutory plan for the area, it would materially contravene the Dublin City Development Plan 2016-2022 in relation to building heights, apartment mix and block configuration. 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 Dublin City Development Plan 2016-2022, would be justified for the following reasons and consideration.

- the proposed development is considered to be of strategic or national importance by reason of its potential to contribute to the achievement of the Government's policy to increase the delivery of housing set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016 and to facilitate the achievement of greater density and height in residential development in an urban centre close to public transport and centres of employment. Accordingly, the provisions set out under section 37(2)(b)(i) are applicable;
- it is considered that permission for the proposed development should be granted having regard to Government policies, as set out in the National Planning Framework, in particular objectives 13 and 35, the Urban

Development and Building Heights Guidelines for Planning Authorities (2018), in particular Specific Planning Policy Requirement 3(a) and the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020), in particular Specific Planning Policy Requirement 1 and Specific Planning Policy Requirement 6. Accordingly, the provisions set out under section 37(2)(b)(iii) are applicable.

- the Board has previously approved a 24.1m high building (ABP-303435-19) and a 27.8m high building (ABP-309627-21) on sites 700m to the northwest of the application site. The proposed development is continuing on that pattern of development. Accordingly, the provisions set out under section 37(2)(b)(iv) are applicable with respect to the proposed building heights.

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, or as otherwise stipulated by conditions hereunder, 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. Revised details shall be submitted with regard to the following:
 - (a) repositioning of 'Core A Waste Storage Area', as identified on the ground-floor plan drawing (no.BRK_JFA_02_00_DR_A_P2002) adjoining the Sunshine commercial estate to basement level or an alternative location on site;
 - (b) floor to ceiling heights at least 2.7m for the ground-floor apartments in block D;

- (c) revised landscape layout to provide privacy strips fronting the living room window serving the one-bedroom apartment on the east side of core D1 to block D and along the apartment terrace areas on the north side of block B;
- (d) resolution of the conflicting location of a hotwater tank press and an access door to unit B.00.04 on the ground-floor plan layout drawing no.BRK_JFA_02_00_DR_A_P2002;
- (e) provision of the two routes on site indicated in the applicant's Masterplan extending to the southern boundary with Sunshine commercial estate to provide for a future potential level connection to these adjoining lands;
- (f) extension of the path along the west side of Block D to the shared surface route providing for the future potential route indicated in the applicant's Masterplan.

Revised drawings 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: In the interests of visual and residential amenity, traffic and pedestrian safety.

3. 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.

4. All plant including extract ventilation systems and refrigerator condenser units shall be sited in a manner so as not to cause nuisance at sensitive locations due to odour or noise. All mechanical plant and ventilation inlets and outlets shall be sound insulated and or fitted with sound attenuators to ensure that noise levels do not pose a nuisance at noise sensitive

locations. Audio equipment / speakers shall not be operated from the external terrace areas to the café and gym.

Reason: In the interests of residential 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 visual amenities of the area.

6. The following requirements shall apply to the proposed café unit:
- i) Prior to the occupation of the café, details of any proposed signage to be applied to the elevations of the building, including details of the materials, colour, lettering and depth of the signage shall first be submitted to and agreed in writing with the Planning Authority.
 - ii) The glazing to the café unit shall be kept free of all stickers, posters and advertisements.
 - iii) The café use shall operate only between the hours of 0700 to 2200 hours Monday through Sunday.
 - iv) Permission is for café use, where no hot food preparation on the premises is permitted. Any change to this arrangement shall be subject to a separate grant of planning permission.

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

7. Proposals for a development 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 such names and numbering shall be provided in accordance with the agreed scheme.

Reason: In the interest of urban legibility.

8. (a) The car parking facilities hereby permitted shall be reserved solely to serve the proposed development. Five clearly identified car parking spaces for the childcare facility and four clearly designated spaces for car share use shall be assigned permanently. Off-street loading bays/set-down areas for the café unit, shall be identified and allocated for this use. Residential car parking spaces shall not be utilised for any other purpose, including for use in association with any other uses of the development hereby permitted, unless the subject of a separate grant of planning permission.
- (b) 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 car parking shall be continually managed.

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

9. Prior to the occupation of the development, a Mobility Management Strategy (travel plan) shall be submitted to and agreed in writing with the planning authority. This shall include modal shift targets and shall provide for incentives to encourage the use of public transport, cycling, walking and carpooling by residents and 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.

10. A minimum of 10% of all car parking spaces should be provided with electric vehicle (EV) charging stations/points, at least one of which should serve a car club / car share space, and ducting shall be provided for all

remaining car parking spaces facilitating the installation of EV charging points/stations at a later date.

Reason: To provide for and/or future proof the development such as would facilitate the use of Electric Vehicles.

11. 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.

12. a) Drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.
- b) 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.
- c) 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.

13. Public lighting shall be provided in accordance with a scheme, which shall include lighting along finalised pedestrian routes through open spaces and the mitigation measures to address impacts on bats, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The design of the lighting scheme shall take account of existing public lighting in the surrounding area. Such lighting shall be provided prior to the making available for occupation of any unit.

Reason: In the interests of amenity and public safety.

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. 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.

15. a) The site shall be landscaped and earthworks carried out in accordance with the detailed comprehensive scheme of landscaping, including the Landscape Management and Maintenance Plan Design Book, which accompanied the application submitted, unless otherwise agreed in writing with, the planning authority prior to commencement of development.
b) details of the boundary treatment shall be submitted to and agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity

16. (a) Prior to commencement of development, all trees, groups of trees, hedging and shrubs 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 maintained have been protected by this fencing. No work 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 maintained.

(c) Excavations in preparation for foundations and drainage, and all works above ground level in the immediate vicinity of trees identified for protection and retention on Tree Protection Plan drawing no. BFH002, as submitted with the application, 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, shrubs, hedging which are to be maintained on the site or in the adjoining park.

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

17. 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.

18. Prior to commencement of development the developer shall submit, for the written agreement of the Planning Authority, a schedule of Ecological Avoidance, Remedial and Alleviation Measures, as detailed in Section 6 of the Ecological Impact Assessment Report (dated April 2021) submitted with the application. The schedule shall set out the timeline for implementation of each measure and assign responsibility for implementation. All of the mitigation measures shall be implemented in full and within the timescales stated.

Reason: In the interests of clarity, protection of the environment and the proper planning and sustainable development of the area.

19. Trees to be removed on site shall be felled in late summer or autumn outside bird nesting season and winter (bat hibernation). Any disturbance to bats on site shall be in a manner to be agreed in writing with the

planning authority on the advice of a qualified ecologist. Any envisaged destruction of structures that support bat populations shall be carried out only under licence from the National Parks and Wildlife Service and details of any such licence shall be submitted to the planning authority.

Reason: In the interest of nature conservation.

20. Bat roosts shall be incorporated into the site and the recommendations of the Ecological Impact Assessment Report 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.

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) 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 and non-residential 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.

(b) This plan shall provide for secure communal bin stores for the development, the locations and designs of which shall be included in the details to be submitted.

Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

23. 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 and shall undertake a pre- and post-construction survey for potential burial grounds on site.

The assessment shall address the following issues:

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

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements, including, if necessary, archaeological excavation, prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation and protection of any archaeological remains that may exist within the site.

24. 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. 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.

25. The construction of the development shall be managed in accordance with a Construction Environmental 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 areas 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) Alternative arrangements to be put in place for pedestrians, cyclists and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- i) Details of appropriate measures to mitigate vibration from construction activity in accordance with BS6472: 1992 Guide to Evaluation of Human Exposure to Vibration in Buildings (1Hz to 80Hz) and BS7385: Part 2 1990: Evaluation and Measurement for Vibration in Buildings - Guide to Damage Levels from Ground-Borne Vibration, and for the monitoring of such levels.
- j) Details of appropriate mitigation measures for noise and dust, and monitoring of such levels;
- k) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- l) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- m) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains;
- n) A record of daily checks that the works are being undertaken in accordance with the Construction Environmental Management Plan shall be kept for inspection by the planning authority.

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

26. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Saturdays inclusive, and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where proposals have been submitted and agreed in writing with the Planning Authority.

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

27. 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.

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. Prior to the commencement of development, the developer shall enter into an agreement with the Planning Authority to provide for the payment of a financial contribution to the Planning Authority in lieu of the on-site shortfall in public open space as provided for under section 16.3.4 of the Dublin City Development Plan 2016-2022. The manner of payment and amount of payment 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: In the interest of the proper planning and sustainable development of the area.

30. 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



Michelle Fagan

Date: 17/08/2021