

An
Bord
Pleanála

Board Direction
BD-008954-21
ABP-310138-21

The submissions on this file and the Inspector's report were considered at a Board meeting held on 23/08/2021.

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

Reasons and Considerations

In coming to its decision, the Board had regard to the following:

- (a) The site's location within an area with a zoning objective that permits residential development in principle;
- (b) The National Planning Framework issued by the Department of Housing, Planning and Local Government in February 2018;
- (c) Regional Spatial and Economic Strategy for the Eastern and Midland Region, 2019 – 2031;
- (d) the policies and objectives set out in the Dún Laoghaire-Rathdown County Development Plan 2016-2022
- (e) the Rebuilding Ireland Action Plan for Housing and Homelessness, 2016
- (f) the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, 2009
- (g) the Guidelines for Planning Authorities on Sustainable Urban Housing: Design Standards for New Apartments, 2020

- (h) The Urban Development and Building Heights Guidelines for Planning Authorities 2018;
- (i) The Architectural Heritage Protection, Guidelines for Planning Authorities, issued by the Department of Arts, Heritage and the Gaeltacht in October 2011;
- (j) The Planning System and Flood Risk Management (including the associated Technical Appendices), 2009
- (k) The Design Manual for Urban Roads and Streets, DMURS 2013,
- (l) The pattern of existing and permitted development in the area
- (m) The nature, scale and design of the proposed development and the availability in the area of a wide range of community, social, retail and transport infrastructure, including the Luas Green Line;
- (n) The submissions and observations received,
- (o) The Chief Executive's Report of the planning authority and associated appendices, including its recommended reasons to refuse permission;
- (p) The report of the Inspector.

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 site, the information for the Screening for Appropriate Assessment submitted with the planning 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 Environmental Impact Assessment Screening Report submitted by the applicant, identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

Thus, having regard to:

- (a) the nature and scale of the proposed development, which is below the threshold in respect of Class 10 (b) (i) and (iv) of Schedule 2, Part 5 of the Planning and Development Regulations, 2001 (as amended),
- (b) the location of the site on land zoned "A" in the Dún Laoghaire-Rathdown County Development Plan 2016-2022, with the objective "to protect and/or improve residential amenity" and the compliance of the proposed development with the policies, objectives and development management standards outlined in the Plan,
- (c) the pattern of development on the lands in the surrounding area,
- (d) the availability of mains water and wastewater services to serve the development,
- (e) the location of the development outside 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),
- (g) the criteria set out in Schedule 7 of the Planning and Development Regulations, 2001 (as amended),
- (h) the features and measures proposed by the applicant to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Outline Construction Environmental Management Plan, Construction and Demolition Waste Management Plan and Operational Waste

Management, Ecological Impact Assessment, Flood Risk Assessment, Arboricultural Impact Assessment Report and Report on Heritage Impact.

It is considered that the proposed development, by reason of the nature, scale and location of the subject site, would not be likely to have significant effects on the environment and the preparation and submission of an Environmental Impact Assessment Report would not therefore be required.

Conclusions on Proper Planning and Sustainable Development:

The Board considers that the proposed development is, apart from the Building Height, Transitional Zone and Unit Mix, broadly compliant with the Dún Laoghaire-Rathdown County Development Plan 2016-2022 and would therefore be in accordance with the proper planning and sustainable development of the area.

The Board, considers that the omission of Block (Villa) A and the consequent reduction in the development footprint, the incorporation of this area into the public open space provision, and the disposition of the open space with regard to the adjacent lands, would satisfy the requirement to retain the open character of the development land, which has an Institutional Lands Objective, and would provide meaningful open space.

The Board considers that, while a grant of permission for the proposed Strategic Housing Development would not materially contravene a zoning objective of the Development Plan, it would materially contravene the Dún Laoghaire-Rathdown County Development Plan 2016-2022 as outlined below: -

- Building Height: Appendix 9 - Building Height Strategy of the Plan
- Transitional Zone – Section 8.3.2
- Unit Mix – Section 8.2.3.3 (iii)

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 County Development Plan would be justified for the following reasons and consideration.

Building Height and Transitional Zone:

In relation to section 37(2)(b) (i) and (iii) 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 and to facilitate the achievement of greater density and height in residential development in an urban centre close to public transport.
- 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) and the Urban Development and Building Height Guidelines for Planning Authorities 2018, in particular SPPR3.

Unit Mix:

In accordance with section 37(2)(b) (i), (ii) and (iii) 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 and to facilitate the achievement of greater density and height in residential development in an urban centre close to public transport.
- Due to conflicting objectives in the operative CDP in relation to Section 8.2.3.3 (iii) and the contradictory Advisory Note to the front of Chapter 8 of same development plan;
 - Having regard to SPPR 1 of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2020, the proposed mix of apartment types complies with SPPR 1 of the guidelines as more than half of the units would have more than one bedroom. That SPPR restricts the extent to which planning authorities can impose additional restrictions on housing mix in their development plans unless they have completed a Housing Needs and Demand Assessment, which the Council has not. A grant of permission in contravention of that provision would therefore be justified under section 37(2)(b)(iii) of the planning act to give effect to guidelines on Design Standards for New Apartments, 2020.

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

Furthermore, the Board considered that, subject to compliance with the conditions set out below that the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of traffic and pedestrian safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be

required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development, 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. The proposed development shall be amended as follows:

(a) Block A shall be omitted. Revised drawings showing compliance with this requirement shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

(b) Details of the pedestrian/cyclist access on the eastern boundary of the site with Churchfields shall be submitted to, and agreed in writing with, the planning authority.

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 and pedestrian/cyclist and traffic safety.

3. This grant of planning permission permits 191 number apartment units.

Reason: In the interests of clarity

4. Details of signage relating to the childcare facility and café shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

5. Prior to commencement of development a detailed inspection of the junctions between the existing buildings along the northern boundary and the existing northern boundary wall will be undertaken by a suitably qualified person and a risk assessment and method statement outlining the most appropriate method of

removing these structures whilst retaining the existing boundary walls shall be submitted for the written agreement of the planning authority.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

6. 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.

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

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

8. 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, antennae 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.

9. Not more than 50% of residential units shall be made available for occupation before completion of the childcare facility unless the developer can demonstrate to the written satisfaction of the planning authority that a childcare facility is not needed at this time.

Reason: To ensure that childcare facilities are provided in association with residential units, in the interest of residential amenity.

10. The developer shall ascertain and comply with all requirements of the planning authority in relation to conservation matters and works which may impact on the protected structure. In that regard:

- (a) Prior to the commencement of development, the applicant shall submit proposals for the infill of the opes on the southern wall of the Small Hall and details of the fire escape to be installed to the eastern elevation of Robert Emmet House for writing agreement with the planning authority.
- (b) All repair works shall be carried out in accordance with best conservation practice and the department of Culture, Heritage and the Gaeltacht 'Architectural Heritage Protection Guidelines for Planning Authorities'.
- (c) All works are to be carried out under the professional supervision of an appropriately qualified person with specialised conservation expertise (RIAI Grade 2 or higher) who shall manage, monitor and implement the works on site and to ensure adequate protection of the retained and historic fabric and to certify upon completion that the specified works have been carried out in accordance with good conservation practice.

Reason: in the interest of architectural conservation.

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

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

- b) employ a suitably qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

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

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

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

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

12. All service cables associated with the proposed development such as electrical, telecommunications and communal television shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity.

13. A minimum of 10% of all car parking spaces should be provided with EV charging stations/points, and ducting shall be provided for all remaining car parking 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 to, 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.

14. The mitigation measures outline in the Ecological Impact Assessment submitted with this application, shall be carried out in full, except where otherwise required by conditions of this permission.

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

15. The car parking facilities hereby permitted shall be reserved solely to serve the proposed development, apart from the 20 no. car spaces designated to serve Robert Emmet House. 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 and to prevent inappropriate commuter parking.

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

17. Prior to the opening/occupation of the development, a Mobility Management Strategy shall be submitted to and agreed in writing with the planning authority. This shall provide for incentives to encourage the use of public transport, cycling, walking and carpooling by residents/occupants/staff employed in the

development and to reduce and regulate the extent of parking. The mobility strategy shall be prepared and implemented by the management company for all units within the development. Details to be agreed with the planning authority shall include the provision of centralised facilities within the commercial element of the development for bicycle parking, shower and changing facilities associated with the policies set out in the strategy.

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

18. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces, details of which shall be submitted to, and agreed in writing with, the Planning Authority prior to the commencement of development. Such lighting shall be provided prior to the making available for occupation of any unit.

Reason: In the interests of amenity and public safety.

19. The construction of the development shall be managed in accordance with a Construction Management Plan and Environmental Management Construction 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 hours of working, noise and dust management measures, traffic management arrangements/measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety.

20. Construction and demolition waste shall be managed in accordance with a construction and demolition waste management plan and 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 be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition

Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

21. 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, and agree in writing with, the Planning Authority 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, and agreed in writing with, the planning authority.

Reason: In the interest of public health and surface water management.

22. Prior to commencement of development, the developer shall submit full details of any PV panels proposed for the site to ensure the green roof proposals are not compromised.

Reason: In the interest of public health.

23. Prior to the commencement of development, the developer shall enter into water and/or waste-water connection agreement(s) with Irish Water.

Reason: In the interest of public health.

24. In the interest of residential and visual amenity 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.

25. A revised detailed comprehensive landscape scheme shall be submitted to, and agreed in writing with, the local authority. The areas of public open space shall be reserved for such use and shall be soiled, seeded, and landscaped in accordance with the agreed landscape scheme. This work shall be completed before any of the apartment units 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 the interest of residential and visual amenity and in order to ensure the satisfactory development of the public open space areas, and their continued use for this purpose.

26.

- 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 retained 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 retained.
- c) Excavations in preparation for foundations and drainage, and all works above ground level in the immediate vicinity of trees numbered 1482,

1483 and 1484 on drawing Landscape Masterplan, 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 or hedging which are to be retained on the site.

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

27. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

28. 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.

29. 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.

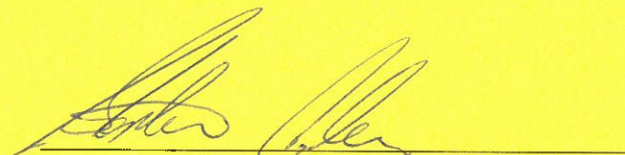
30. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company or such other security as may be accepted in writing by the planning authority, to secure the protection of the trees on site and to make good any damage caused 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 [three] 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.

31. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Board Member



Stephen Bohan

Date: 23/08/2021

