



An
Bord
Pleanála

Board Direction
BD-009715-21
ABP-310709-21

The submissions on this file and the Inspector's report were considered at a Board meeting held on 14/12/2021.

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;
- 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) The provisions of the Urban Development and Building Heights Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in December 2018;
- e) The provisions of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in December 2020;
- f) The provisions of the Planning System and Flood Risk Management Guidelines for Planning Authorities (including the associated Technical Appendices) issued by the Department of Environment, Heritage and Local Government in 2009;

- g) 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;
- h) The pattern of existing and permitted development in the area;
- i) The provisions of 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;
- j) The submissions and observations received;
- k) The report of the Planning Inspector.

Appropriate Assessment Screening

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on European Sites, taking into account the nature and scale of the proposed development on serviced lands, the nature of the receiving environment which comprises a built-up urban area, the distances to the nearest European sites and the hydrological pathway considerations, submissions and observations on file, the information submitted as part of the appellant's Appropriate Assessment documentation and the Planning Inspector's report. In completing the screening exercise, the Board agreed with and adopted the report of the Planning Inspector and that, by itself or in combination with other development, plans and projects 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. In particular, the Board agreed with and adopted the Planning Inspector's assessment and conclusion that a Stage 2 Appropriate Assessment was not required notwithstanding the submission of a Natura Impact Statement by the applicant for permission, which proceeded on the basis that a Stage 2 Appropriate Assessment was 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 considers that with the exception of building heights and apartment mix, 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 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 and apartment mix. The Board considers that with the attachment of a condition to reduce the height of block A to six storeys only, 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 the 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) of the Planning and Development Act 2000, as amended, are applicable;
- it is considered that permission for the proposed development should be granted having regard to national policy as set out in the Project Ireland 2040

National Planning Framework, in particular Objectives 13 and 35, the Urban Development and Building Heights Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in December 2018, in particular Specific Planning Policy Requirement 3(a) and 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, in particular Specific Planning Policy Requirement 8. Accordingly, the provisions set out under section 37(2)(b)(iii) of the Planning and Development Act 2000, as amended, are applicable.

- since adoption of the Dublin City Development Plan 2016-2022, the Board has approved a 22m-high building at the Bonnington hotel on Swords Road (ABP-306721-20), which is approximately 1km to the southwest of the appeal site, as well as a 40m-high building at the Omni Park Shopping Centre (ABP-307011-20) and a 24m-high building at Swiss Cottage (ABP-306987-20) both approximately 1.2km to the northwest of the appeal site in Santry. The proposed development is continuing on that pattern of development. Accordingly, the provisions set out under section 37(2)(b)(iv) of the Planning and Development Act 2000, as amended, 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, as amended by the further plans and particulars received by An Bord Pleanála on the 1st day of July 2021, 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) the height of block A, which fronts onto the slip road to Beaumont Road, shall be reduced to a maximum of six storeys. This shall be achieved by the omission of the top two floors in this block;
- (b) revised elevation details breaking up the appearance of the northwest gable ends of blocks A and B facing Ellenfield Road;
- (c) direct ramped access from the public street to the secure and sheltered basement level cycle parking facility;
- (d) the omission of car parking spaces nos.1, 2, 39 and 40 identified on drawing no.20-048 P005.

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. Prior to the commencement of development, the developer shall submit 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 interest of the proper planning and sustainable development of the area.

4. Prior to expiration of the 15-year period referred to in the covenant, the developer shall submit 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.

5. Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be as submitted with the application and appeal, 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.

6. 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. Access to sedum roofs shall be for maintenance purposes only.

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

7. Proposals for a development name, apartment 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. No advertisements or marketing signage relating to the name of the development shall be erected until the developer has obtained the Planning Authority's written agreement to the proposed name.

Reason: In the interest of urban legibility.

Prior to the occupation of the development, a Mobility Management Strategy (travel plan), 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 and staff employed in the development and to reduce and regulate the extent of parking. 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 the Covid-19 pandemic.

9. The Mobility Management Strategy shall incorporate a car parking management strategy for the development, which shall address the management and assignment of car spaces to residents over time and shall include a strategy for any car-share parking. Car parking spaces shall not be utilised for any other purpose and shall be assigned and managed in a separate capacity via leasing or permit arrangements, unless the subject of a separate grant of planning permission.

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

Reason: To provide for and future proof the development such as would facilitate the use of electric vehicles.

11. Prior to commencement of development, the developer shall enter into water and / or waste water connection agreement(s) with Irish Water. All development is to be carried out in compliance with Irish Water standards codes and practices.

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.
- d) A maintenance policy to include regular operational inspection and maintenance of the Sustainable Urban Drainage System infrastructure and the fuel interceptors shall be submitted to and agreed in writing with the Planning Authority prior to the occupation of proposed apartments and shall be implemented in accordance with that 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 pedestrian routes through open spaces, 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 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. 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, which accompanied the application submitted, unless otherwise agreed in writing with, the planning authority prior to commencement of development.

The landscape scheme shall be implemented fully in the first planting season following completion of the development, and any trees or shrubs that 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 apartments are made available for occupation.

Reason: In the interest of residential and visual amenity

16. 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.

17. (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 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.

18. 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 or buildings or removal of trees 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.

19. 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.

20. 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.

21. 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) A Construction Traffic Management Plan providing 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.

22. 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.

23. 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(1) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

24. 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.

25. 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: 22/12/2021