

**An
Bord
Pleanála**

**Board Direction
BD-009698-21
ABP-311329-21**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 20/12/2021.

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 location of the site in the established urban area of Dún Laoghaire Rathdown in an area zoned for residential (under 'Objective A' with the associated land use objective '*to protect and-or improve residential amenity*');
- (b) the policies and objectives of the Dún Laoghaire Rathdown Development Plan 2016-2022;
- (c) The Rebuilding Ireland Action Plan for Housing and Homelessness 2016 and Housing for All – A New Housing Plan for Ireland;
- (d) The Guidelines for Sustainable Residential Developments in Urban Areas and the accompanying Urban Design Manual – a Best Practice Guide, issued by the Department of the Environment, Heritage and Local Government in May 2009;
- (e) Urban Development and Building Heights Guidelines for Planning Authorities, prepared by the Department of Housing, Planning and Local Government in December 2018 and particularly Specific Planning Policy Requirement 3;
- (f) The Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government 2020;

- (g) Design Manual for Urban Roads and Streets (DMURS) issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government in March 2013;
- (h) The nature, scale and design of the proposed development and the availability in the area of public transport and water services infrastructure;
- (i) The pattern of existing and permitted development in the area;
- (j) The planning history of the area;
- (k) The submitted NIS and potential effect upon European sites;
- (l) 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 which materially contravenes a Development Plan;
- (m) The submissions and observations received;
- (n) The Chief Executive Report from the Planning Authority and specifically the recommended reasons for refusal; and
- (o) The report of the planning 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, would be appropriate in context of surrounding uses and would otherwise 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: Stage 1

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 Natura Impact Statement Report 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 an adverse effect on any European Site in view of the conservation objectives of such sites, other than Rockabill to Dalkey Island Special Area of Conservation (Site Code: 003000, South

Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), Dalkey Islands Special Protection Area (Site Code: 004172), North Bull Island Special Protection Area (Site Code: 004006) and Baldoyle Bay Special Protection Area (Site Code: 004016), which are European Sites where the likelihood of adverse effects could not be ruled out.

Appropriate Assessment: Stage 2

The Board considered the Natura Impact Statement and all other relevant submissions on the file and carried out an Appropriate Assessment of the implications of the proposed development on Rockabill to Dalkey Island Special Area of Conservation (Site Code: 003000, South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), Dalkey Islands Special Protection Area (Site Code: 004172), North Bull Island Special Protection Area (Site Code: 004006) and Baldoyle Bay Special Protection Area (Site Code: 004016), in view of the sites' conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment.

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

- a) the site-specific conservation objectives for the European sites,
- b) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects, and in particular the risk of impacts on water quality and ex-situ feeding areas,
- c) the mitigation measures which are included as part of the current proposal.

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.

This conclusion is based on the measures identified to control the quality of surface water discharges which provide for the interception of silt and other contaminants prior to discharge from the site during construction and operational phases.

Environmental Impact Assessment Screening

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

Having regard to: -

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

(b) the location of the site on lands zoned 'Objective A' with the associated land use objective '*to protect and-or improve residential amenity*' under the Dún Laoghaire-Rathdown Development Plan where residential is a permitted in principle use, and childcare is an open for consideration use.

(c) The pattern of development in surrounding area.

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

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

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

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

(g) The features and measures proposed by the applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Natura Impact Statement, Ecological Impact Assessment, Construction and Environmental Management Plan, The Construction Waste

Management Plan, the Traffic Impact Assessment Report, the Environmental Report for Noise and Vibration, and the Flood Risk Assessment.

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

Conclusions on Proper Planning and Sustainable Development

Having regard to the zoning objective for the site as set out in the Dún Laoghaire Rathdown County Council Development Plan 2016-2022, the pattern of existing development in the immediate vicinity of the site, the NIS submitted with the application and subsequent Appropriate Assessment in the Inspectors Report, the infill site location a reasonable walking distance to bus services and Deansgrange centre, it is considered that the proposed development would not seriously injure the residential or visual amenities of the area or of property/land in the vicinity, would be consistent with national and local planning policy and would be acceptable in terms of design, scale, height, mix and quantum of development, and in terms of pedestrian and traffic safety. It was also concluded that the development would not subject future occupiers to flood risk or increase the risk of flood elsewhere. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

The Board noted and agreed with the Inspectors conclusions that there would not be a material contravention in respect of the following: - height, car parking, dual aspect, density and institutional lands.

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 the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. The mitigation measures contained in the Natura impact statement which was submitted with the application shall be implemented in full.

Reason: In the interests of clarity and the proper planning and sustainable development of the area and to ensure the protection of the European Sites.

3. The mitigation measures contained in the Ecological Impact Assessment which was submitted with the application shall be implemented in full.

Reason: In the interests of clarity and the proper planning and sustainable development of the area and to ensure the protection of the European Sites.

4. The proposed development shall be amended as follows:
Details of a pedestrian and bicycle link through to Monaloe Park Road to be provided as part of the development and accessible to the public. The link is to be delivered by the developer prior to occupation of the approved units, unless the applicant can demonstrate to the satisfaction of the planning authority that this is not feasible in relation to landownership;

Reason: In the interest of residential amenity.

5. Prior to the commencement of the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority such agreement must specify the number and location of each duplex units, pursuant to section 47 of the Planning and Development Act 2000, as amended, that restricts all residential units permitted to first occupation by individual purchasers i.e. those not being a corporate entity, and or by those eligible for the occupation of social and or affordable housing, including cost rental housing.

Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

6. 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.

7. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company, or by the local authority in the event of the development being taken in charge. Detailed proposals in this regard shall be submitted to, and agreed in writing with, the planning authority prior to occupation of the development.

Reason: To ensure the satisfactory completion and maintenance of this development.

8. The internal road network serving the proposed development, including turning bays, junctions, 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 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 2019, as amended. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination. The development shall not be commenced above grade until details of a Stage 2 - Quality Audit have been approved by the planning authority.

Reason: In the interests of amenity and of traffic and pedestrian safety.

9. 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. 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 development 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.

10. (a) The car parking facilities hereby permitted shall be reserved solely to serve the proposed development. The car parking spaces shall be assigned permanently for the residential development and shall be reserved solely for that purpose. These residential 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 the car park shall be continually managed.

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

11. Electric charging facilities shall be provided for bicycle parking and proposals shall be submitted to and agreed in writing with the planning authority prior to the occupation of the development.

Reason: In the interests of orderly development and to provide for and future proof the development as would facilitate the use of electric bicycles.

12. 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 area(s) identified for the storage of construction refuse;
- (b) Location of access points to the site for any construction related activity;
- (c) Location of areas for construction site offices and staff facilities;
- (d) Details of site security fencing and hoardings;

- (e) Details of on-site car parking facilities for site workers during the course of construction;
- (f) 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;
- (g) Measures to obviate queuing of construction traffic on the adjoining road network;
- (h) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- (i) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- (j) Details of appropriate mitigation measures for noise, dust and vibration, 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 and 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 Management Plan shall be kept for inspection by the planning authority.

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

13. 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.

14. (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 is shall be carried out within the area enclosed by the fencing and, in particular, there shall be no parking of vehicles, placing of site huts, storage compounds or topsoil heaps, storage of oil, chemicals or other substances, and no lighting of fires, over the root spread of any tree to be retained.

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

15. 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.

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

17. Public lighting shall be provided in accordance with a scheme, which shall include details of any light spill into open spaces on the site, 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 designed in accordance with guidance contained in the Institution of Lighting Professionals (ILP) (2018) Guidance Note 08/18 Bats and artificial lighting in the UK. The approved lighting shall be provided prior to the making available for occupation of any house.

Reason: In the interests of amenity and public safety.

18. Prior to commencement of development, the developer shall enter into water and or wastewater connection agreement(s) with Irish Water. All works are to be carried out in accordance with Irish Water Standards codes and practices, including in relation to separation distances and restrictions on the building up over assets.

Reason: In the interest of public health.

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

Prior to commencement of development the developer shall submit to the Planning Authority for written agreement a Stage 2 - Detailed Design Stage Storm Water Audit.

Upon Completion of the development, a Stage 3 - Completion Stormwater Audit to demonstrate Sustainable Urban Drainage System measures have been installed and are working as designed and that there has been no misconnections or damage to storm water drainage infrastructure during construction, shall be submitted to the planning authority for written agreement.

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

20. 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.

21. The public open space areas shall be reserved for such use and shall be soiled, seeded, and landscaped in accordance with the revised landscape scheme to be agreed in writing with the planning authority. This work shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open space by the developer.

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

22. Proposals for an estate name and numbering scheme with associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate signs, and apartment numbers, shall be provided in accordance with the agreed scheme. The proposed name shall be based on local historical or other alternatives acceptable to the planning authority. 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 interests of urban legibility and to ensure the use of locally appropriate place names for new residential areas.

23. 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.

24. 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.

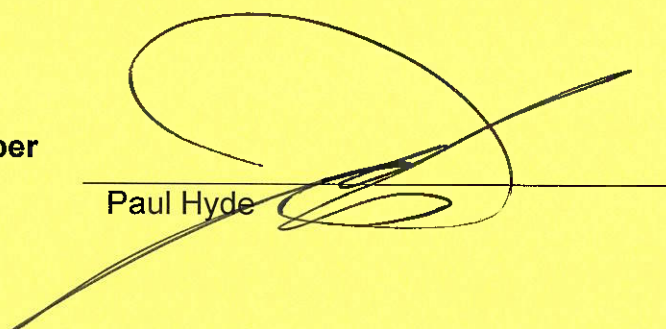
25. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, 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.

26. 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: 20/12/2021