

An  
Bord  
Pleanála

**Board Direction**  
**BD-012031-23**  
**ABP-311428-21**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 18/04/2023.

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**

Having regard to the provisions of the Dún Laoghaire Rathdown County Development Plan 2022-2028, to the 'NC' and 'A' Zoning Objectives of the site, and to the nature, scale and design of the development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be an appropriate mixed use scheme with an acceptable quantum of retail and residential floorspace, would be an appropriate residential density, would respect the existing character of the area, would not seriously injure the residential or visual amenities of property in the vicinity, would not be prejudicial to public health, and would be acceptable in terms of pedestrian and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area. In relation to the concerns raised about legal interest in relation to the parking areas in front of The Mart and 1 and 2 Old Bray Road, the Board however noted the provisions of Section 34(13) of the Planning and Development Act, as amended which provides that 'A person shall not be entitled solely by reason of a permission under this section to carry out any development'.

## Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the significant further information plans and particulars submitted to the planning authority on the 2nd day of June 2021, and by clarification of further information plans and particulars submitted to the planning authority on the 28th 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 and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>The mitigation measures outlined in the Ecological Impact Assessment, Bat Fauna Survey, Tree Survey Report, Arboricultural Report, and other plans and particulars lodged with the application, as amended by the significant further information submitted to the planning authority on the 2nd day of June 2021, and/ or by clarification of further information submitted to the planning authority on the 28th day of July 2021 shall be carried out in full, except where otherwise required by conditions attached to this permission. Documentary evidence of the satisfactory completion of the mitigation measures shall be submitted to the planning authority for its written agreement.</p> <p><b>Reason:</b> In the interests of wildlife and environmental protection.</p>
3.	<p>The use of the two retail units at lower ground floor level shall be within the definition of 'shop' in the Planning and Development Regulations, 2001, as amended.</p> <p><b>Reason:</b> In the interests of clarity and to protect the amenity of the area.</p>

4.	<p>Details of external shopfront, lighting, security shuttering, and signage for the retail units shall be agreed in writing with the planning authority prior to occupation of the retail units.</p> <p><b>Reason:</b> In the interest of the amenities of the area.</p>
5.	<p>Details of the materials, colours, and textures of all the external finishes to the proposed building and site boundary walls shall be as submitted with the application, unless otherwise agreed in writing with the planning authority prior to commencement of development. In addition, details of a maintenance strategy for materials within the proposal shall also be submitted for the written agreement of the planning authority.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
6.	<p>Proposals for a development name, retail unit identification, and apartment numbering scheme with 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.</p> <p><b>Reason:</b> In the interest of urban legibility.</p>
7.	<p>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.</p> <p><b>Reason:</b> To protect the residential amenities of property in the vicinity and the visual amenities of the area.</p>
8.	<p>Windows in apartment units in the northern elevation of the block shall be fitted with permanent obscure glazing and/ or be high level in design.</p> <p><b>Reason:</b> To prevent overlooking of adjoining property.</p>
9.	<p>Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority the following:</p>



	<p>(a) taking in charge arrangements for the publicly accessible areas (footpath, roadway, and/ or parking spaces) along Mart Lane and Old Bray Road;</p> <p>(b) final design, construction, and operation (signage) details of the on-street parking/ set down area on Old Bray Road; and</p> <p>(c) hard and soft landscaping proposals for the publicly accessible areas along Mart Lane and Old Bray Road.</p> <p><b>Reason:</b> In the interest of orderly development.</p>
10.	<p>Operation of crane(s) during the construction phase shall be coordinated with, and a minimum of 28 days written notification prior to use shall be given to, the Air Corps Air Traffic Services, Department of Defence.</p> <p><b>Reason:</b> To ensure the safety of aircraft operations at Casement Aerodrome and in the interests of public safety.</p>
11.	<p>Construction of the proposed development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>This plan shall include inter alia: details and location of site offices, staff facilities, site compounds, on-site parking facilities, storage locations (for plant, machinery, materials), intended construction practice for the development including noise and dust management measures, a construction traffic management plan with details on access arrangements, haulage routes, timing and routing details for deliveries and disposal trips, measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network, and directional signage, and off-site disposal of construction/ demolition waste and/ or by products.</p> <p><b>Reason:</b> In the interests of amenity and public safety.</p>
12.	<p>Construction and demolition waste from the proposed development shall be managed in accordance with a Construction and Demolition Waste</p>

	<p>Management Plan, which shall be submitted to and agreed in writing with, the planning authority prior to commencement of development.</p> <p>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 demolition and site clearance 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.</p> <p><b>Reason:</b> In the interest of sustainable waste management.</p>
13.	<p>Site development and construction works shall be carried out 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.</p> <p><b>Reason:</b> In order to safeguard the amenities of properties in the vicinity.</p>
14.	<p>(a) The communal open spaces, including hard and soft landscaping, car and cycle parking areas and access ways, communal refuse/ bin storage and all areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company.</p> <p>(b) Details of the management company contract, drawings/ particulars describing the parts of the development (including entrances, internal road, footpaths, communal open spaces and shared areas) for which the company would have responsibility shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.</p> <p><b>Reason:</b> To provide for the satisfactory future maintenance of this development in the interest of residential amenity.</p>

15. i) The car and cycle parking spaces for the development shall be provided as indicated in the plans and particulars of the significant further information submitted to the planning authority on the 2nd day of June 2021, unless otherwise agreed with the planning authority;
- (ii) 22 car parking spaces and 46 cycle parking spaces shall be provided off-street at the rear of the block, and shall be assigned permanently for residential use and shall be reserved solely for that purpose. These residential spaces shall not be sold, sublet, utilised for any other purpose including for use in association with the retail units of the development hereby permitted. The car parking spaces shall be allocated as follows: 1 space to each studio, 1, and 2 bedroom apartment, 2 spaces to the 3 bedroom apartment, and 1 space to visitors. Details of the layout, marking demarcation, management of, and security provisions for these car/ cycle spaces shall be agreed in writing with the planning authority prior to commencement of development;
- iii) 4 car parking spaces and 8 cycle parking spaces shall be provided on-street (Old Bray Road) for retail use by customers, services, and deliveries associated with the retail units. Details of the design, layout, signage, management of, and security provisions for these car/ cycle spaces shall be agreed in writing with the planning authority prior to commencement of development; and
- iv) Prior to the occupation of the development, the developer shall submit a final Mobility Management Plan, which shall be in line with the outline Mobility Management Plan (inclusive of management measures) lodged with the application, to the planning authority for written agreement. This plan shall provide for incentives to encourage the use of public transport, cycling, walking, and carpooling by residents/ staff employed in the development, and to reduce and regulate the extent of parking demand for residents, visitors, retail customers, and retail deliveries. The Mobility Management Plan shall be implemented by the management company for the development with annual updates of same submitted to the planning authority for written approval.



	<p><b>Reason:</b> To ensure that adequate parking facilities are permanently available to serve the residential and retail units, to prevent inappropriate commuter parking, and to encourage the use of sustainable modes of transport.</p>
16.	<p>i) A minimum of 10% of all car parking spaces shall be provided with functioning electric vehicle charging stations/ points, and ducting shall be provided for all remaining car parking spaces, facilitating the installation of electric vehicle charging points/ stations at a later date. Where proposals relating to the installation of electric vehicle ducting and charging stations/ points have not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted and agreed in writing with the planning authority prior to the occupation of the development.</p> <p>ii) Electric charging facilities shall be provided for motorbike and bicycle parking, and proposals shall be submitted to and agreed in writing with the planning authority prior to the occupation of the development.</p> <p><b>Reason:</b> To provide for and/ or future proof the development such as would facilitate the use of electric vehicles.</p>
17.	<p>i) The areas of open space, public realm (along Mart Lane and Old Bray Road), and site boundary treatments shown on the lodged plans and particulars shall be landscaped (hard and soft) in accordance with the Landscape Design Report and associated landscape masterplans submitted with the application, as amended by the significant further information submitted to the planning authority on the 2nd day of June 2021, and by clarification of further information submitted to the planning authority on the 28th day of July 2021 unless otherwise agreed with the planning authority. This work shall be carried out within the first planting season following substantial completion of external construction works.</p> <p>ii) All planting shall be adequately protected from damage until established. Any plants which are removed, damaged, diseased or die within a period of five years from the completion of the development shall be replaced within</p>

	<p>the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p>iii) The developer shall retain the services of a suitably qualified Landscape Architect throughout the duration of the site development works. The developer's Landscape Architect shall certify to the planning authority by letter their opinion on compliance with the completed landscape scheme with the approved landscape proposal within six months of substantial completion of the proposed development.</p> <p><b>Reason:</b> In the interest of visual and residential amenity, and to ensure the satisfactory development and maintenance of the areas and boundary treatments.</p>
18.	<p>Drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health and surface water management.</p>
19.	<p>Prior to commencement of development, the developer shall enter into water and/ or wastewater connection agreement(s) with Irish Water.</p> <p><b>Reason:</b> In the interest of public health.</p>
20.	<p>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.</p> <p><b>Reason:</b> In the interests of visual and residential amenity.</p>
21.	<p>(a) A plan containing details for the management of waste within the development, including the provision of facilities for the storage, separation, and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities 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. This shall be done for:</p>



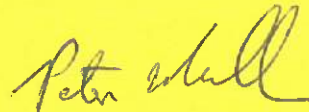
	<p>i) each retail unit and</p> <p>ii) each apartment unit.</p> <p>(b) This plan shall provide for screened communal bin stores serving the residential apartments, the locations and designs of which shall be included in the details to be submitted.</p> <p><b>Reason:</b> In the interest of amenity and to ensure the provision of adequate refuse storage in the development.</p>
22.	<p>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.</p> <p><b>Reason:</b> 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.</p>
23.	<p>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</p>

	<p>and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.</p> <p><b>Reason:</b> To ensure the satisfactory completion and maintenance of the development until taken in charge.</p>
24.	<p>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.</p> <p><b>Reason:</b> 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.</p>
25.	<p>The developer shall pay to the planning authority a financial contribution in lieu of the provision of public open space within the site, as provided for under Sections 12.8.3 and 12.8.8 of the Dún Laoghaire Rathdown County Development Plan 2022-2028, and in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The amount of the contribution 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 for determination. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with</p>

changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

**Reason:** It is considered reasonable that the developer should pay a financial contribution in lieu of the provision of public open space within the site as a result of the infill nature and restricted size of site, and to comply with applicable Development Plan policy.

Board Member



Date: 18/04/2023

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Peter Mullan



