

An
Bord
Pleanála

Board Direction
BD-010329-22
ABP-311722-21

The submissions on this file and the Inspector's report were considered at a Board meeting held on 23/03/2022.

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 an established mixed-use area, adjacent to a public transport node and in an area zoned 'MOC' with the objective "To provide for a mix of uses, which complements the inner core, but with less retail and residential and more emphasis on employment and services".
- (b) The policies and objectives of the Dun Laoghaire Rathdown County Development Plan 2016-2022, including the Sandyford Urban Framework Plan, which is set out as Appendix 15 of the development plan.
- (c) The provisions of the National Planning Framework with regard to compact growth and the provision of new homes within existing settlements, in particular Objectives 27 and 33.
- (d) The provisions of the Dublin Metropolitan Area Strategic Plan (MASP), part of the Eastern & Midland Regional Assembly RSES 2019-2031.
- (e) The provisions of Rebuilding Ireland Action Plan for Housing and Homelessness 2016.

- (f) The provisions of the 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 (2019).
- (g) 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.
- (h) The Urban Development and Building Heights Guidelines for Planning Authorities, prepared by the Department of Housing, Planning and Local Government in December 2018.
- (i) The ‘Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities’ prepared by the Department of Housing, Planning and Local Government 2020.
- (j) The Guidelines for Planning Authorities on The Planning System and Flood Risk Management (including technical appendices) issued by the Department of the Environment, Heritage and Local Government in November 2009.
- (k) The nature, scale and design of the proposed development and the availability in the area of a wide range of educational, social, community, transport, and water services infrastructure.
- (l) The pattern of existing and permitted development in the area, and the planning history relating to the site and the wider area.
- (m) The submissions and observations received;
- (n) The Chief Executive Report from the Planning Authority; and
- (o) The report and recommendation of the Inspector including the examination, analysis and evaluation undertaken in relation to screening for environmental impact assessment and screening for appropriate assessment.

The Board, in deciding not to accept the refusal recommendations as contained in the Report of the Chief Executive of the Planning Authority, agreed with the Inspector’s assessment and recommendation on those matters.

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 on file, the information submitted as part of the applicant's Appropriate Assessment screening documentation and the Inspector's report. In completing the screening exercise, the Board agreed with and adopted the report of the 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.

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 Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,
- (b) Class 14 of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,
- (c) the location of the site on lands that are zoned for mixed use development under the provisions of the Dun Laoghaire Rathdown County Development Plan 2016 – 2022 and the results of the strategic environmental assessment of the Dun Laoghaire Rathdown County Development Plan 2016 – 2022 undertaken in accordance with the SEA Directive (2001/42/EC),
- (d) the pattern of development on the lands in the surrounding area,

- (e) the availability of mains water and wastewater services to serve the development,
- (f) 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),
- (g) 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),
- (h) the criteria set out in Schedule 7 of the Planning and Development Regulations, 2001 (as amended),
- (i) 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 Planning Report, Environmental Impact Assessment Screening Report, Appropriate Assessment Screening Report, Infrastructure Report, Site Specific Flood Risk Assessment, Mobility Management Plan, Landscape Design Report, Microclimate Report, Public Lighting Report, Arboricultural Assessment and Arboricultural Report, Construction and Demolition Waste Management Plan, Construction Environmental Management Plan, Operational Waste Management Plan and Ecological Impact Assessment.

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 considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable quantum and density of development in this highly accessible urban location, would not seriously injure the residential or visual amenities of the area, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of pedestrian safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area. In coming to this

conclusion, specific regard was had to the Chief Executive Report from the Planning Authority.

The Board considered that, while a grant of permission for the proposed Strategic Housing Development would not materially contravene a zoning objective of the statutory plan for the area, a grant of permission could materially contravene the Dun Laoghaire Rathdown County Development Plan 2016-2022 in relation to building height, car parking and housing mix. 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 and Local Area Plan would be justified for the following reasons and considerations.

In relation to section 37(2)(b)(i) 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.

In relation to section 37(2)(b)(iii) of the Planning and Development Act 2000 (as amended):

Permission for the development should be granted having regard to guidelines under section 28 of the Act and the National Planning Framework, specifically:

- In relation to the matter of building height, SPPR 3 of the Building Height Guidelines which states that where a development complies with the Development Management Criteria in section 3.2 of the Guidelines, it may be approved, even where specific objectives of the relevant development plan or local area plan may indicate otherwise and national policy in Project Ireland 2040 National Planning Framework (in particular objectives 13 and 35). An assessment of the proposed development was carried out to determine that the development conforms with the development management criteria in section 3.2 of the Urban Development and Building Height Guidelines.

- In relation to car parking and housing mix, regard is had to the Eastern & Midland Regional Assembly Regional Spatial & Economic Strategy 2019-2031, Project Ireland 2040 National Planning Framework and in particular National Policy Objective 35, and the provisions of Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in December 2020.

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 proposed basement layout and cycle parking provision shall be revised such that the following issues are addressed to the satisfaction of the planning authority:
 - (a) The bicycle lift shall be increased in size such that it is capable of carrying a minimum of two cyclists.
 - (b) Covered cycle parking shall be provided at surface level.
 - (c) The basement access ramp shall have a revised gradient such that it is suitable for cyclists.

- (d) A revised swept path analysis shall be submitted to the satisfaction of the planning authority.
- (e) Revised basement cycle parking provision shall be provided to the satisfaction of the planning authority.
- (f) Covered cycle parking at surface level shall be provided to the satisfaction of the planning authority.
- (g) The car park layout shall be revised to indicate satisfactory provision for accessible parking.

Revised drawings showing compliance with the above requirements shall be submitted to and agreed in writing with the planning authority prior to commencement of development. In the default of agreement, the matter(s) in dispute shall be referred to an Bord Pleanála for determination.

Reason: In the interest of pedestrian/cyclist and traffic safety.

- 3. The roof top play areas shall be omitted.

Reason: In the interest of residential amenity and safety.

- 4. The development hereby permitted shall be for build to rent units which shall operate in accordance with the definition of Build-to-Rent developments as set out in the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (December 2020) and be used for long term rentals only. No portion of this development shall be used for short term lettings.

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

- 5. Prior to the commencement of development, the owner shall submit, for the written consent of the planning authority, 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. This covenant or legal agreement shall also highlight the reduced level of car parking available to future residents.

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

6. Prior to expiration of the 15-year period referred to in the covenant, the owner shall submit for the written agreement of the planning authority, 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.

7. 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/An Bord Pleanála 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.

8. 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.

9. 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.

10. The site shall be landscaped in accordance with the submitted scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Sufficient planting depths in the raised planters shall be agreed with the planning authority for all podium and roof level planting. The developer shall retain the services of a suitably qualified Landscape Architect throughout the life of the site development works. The approved landscaping scheme shall be implemented fully in the first planting season following completion of the development or each phase of the development and any plant materials that die or are removed within three years of planting shall be replaced in the first planting season thereafter.

Reason: In the interest of residential and visual amenity.

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

Reason: To protect the environment and in the interest of wildlife protection.

12. Detailed measures in relation to the protection of bats shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. These measures shall be implemented as part of the development. Any envisaged destruction of structures that support bat populations shall be

carried out only under licence from the National Parks and Wildlife Service and details of any such licence shall be submitted to the planning authority.

Reason: In the interest of wildlife protection.

13. Prior to commencement of the development, details of all areas of boundary treatment, play equipment and planting, shall be submitted to, and approved, by the planning authority. Boundaries and areas of public communal open space shown on the lodged plans shall be landscaped in accordance with the landscape scheme submitted to An Bord Pleanála with this application, unless otherwise agreed in writing with the planning authority. Access to green roof areas shall be strictly prohibited unless for maintenance purposes.

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

14. 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.

15. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development/installation of lighting. Such lighting shall be provided prior to the making available for occupation of any apartments.

Reason: In the interests of amenity and public safety.

16. 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

17. 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 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.

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

18. The internal road network serving the proposed development, including set down areas, footpaths and kerbs and the underground car park and ramps to same shall be in accordance with the detailed construction standards of the planning authority for such works and design standards outlined in DMURS. Details of signage in relation to cycle parking and safe access to same should also be submitted for agreement 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 amenity and of traffic and pedestrian safety.

19. 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. The Mobility Management Strategy shall also incorporate a Car Parking Management Strategy for the overall development, which shall address the management and assignment of car spaces to residents and units over time and shall include a strategy for the community use and any car-share parking.

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

20. 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. It shall also address the operation of cranes as raised in the submission of the Department of Defence.

Reason: In the interests of public safety.

21. 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.

22. All roads and footpaths shown to adjoining lands shall be constructed up to the boundaries to provide access to adjoining land. These areas shall be shown for taking in charge in a drawing to be submitted to and agreed with the Planning Authority.

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

23. (a) Drainage arrangements including the attenuation and disposal of surface water, shall comply with the detailed 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 SUDS infrastructure and the petrol/oil interceptors should be submitted to and agreed in writing with the planning authority prior to occupation of proposed dwelling units and shall be implemented in accordance with that agreement.

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

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

Reason: In the interest of public health.

25. 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

26. 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.

27. 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.

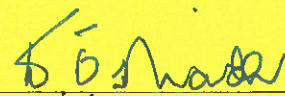
Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

28. The developer shall pay to the planning authority a financial contribution in respect of the extension of Luas Line B1 – Sandyford to Cherrywood in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 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 Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

Plus: ABP Model conditions on Construction working hours and electric bicycles.

Board Member



Terry Ó Niadh

Date: 23/03/2022

