

An
Bord
Pleanála

Board Direction
BD-011093-22
ABP-312568-22

The submissions on this file and the Inspector's report were considered at a Board meeting held on 10/08/2022.

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 making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

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

- a. The site location on lands with a zoning objective for residential development;
- b. The policies and objectives in the Dublin City Development Plan 2016 - 2022
- c. Nature, scale and design of the proposed development;
- d. Pattern of existing development in the area;
- e. The Rebuilding Ireland Action Plan for Housing and Homelessness 2016;
- f. Housing for All – A New Housing Plan for Ireland, 2021
- g. The National Planning Framework issued by the Department of Housing, Planning and Local Government in February 2018;
- h. Regional Spatial and Economic Strategy for the Eastern and Midland Region;

- i. 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;
- j. 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 in March 2013;
- k. Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government in December 2020 ;
- l. The Urban Development and Building Heights Guidelines for Planning Authorities 2018;
- m. The Planning System and Flood Risk Management (including the associated 'Technical Appendices') 2009;
- n. Chief Executive's Report;
- o. Inspector's Report; and
- p. Submissions and observations received.

Appropriate Assessment

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

The Board completed a screening determination 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.

Having regard to:

- The nature and scale of the proposed development, which is below the threshold in respect of Class 10(b)(i) and 10(iv) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended,
- The location of the site on lands zoned Z14 in the Dublin City Development Plan 2016-2022 with the associated land use objective 'to seek the social, economic and physical development and/or rejuvenation of an area with mixed use, of which residential and 'Z6' would be the predominant uses'. The development plan was subject to a strategic environmental assessment in accordance with the SEA Directive (2001/42/EEC).
- The location of the site within the existing built up urban area, which is served by public infrastructure, and the existing pattern of development in the vicinity.
- 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).
- 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).
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended), and
- 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 Flood Risk Assessment, Appropriate Assessment Screening Report, Air Quality Impact Assessment, Inward Noise Impact Assessment, Hydrological and Hydrogeological Qualitative Risk

Assessment , Site Specific Outline Construction and Environmental Management Plan, Site Specific Construction and Demolition Waste and By-Product Management Plan, Operational Waste Management Plan and Waste Classification Report

In conclusion, having regard to the absence of any significant environmental sensitivity in the vicinity and the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development and that 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 the proposed development is, apart from the parameters of SDRA 19 of the Dublin City Development Plan 2016-2022 with regard to Land Use and Activity Mix, Masterplan, Density and Green Infrastructure Strategy, broadly compliant with the provisions of the 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 Strategic Housing Development would not materially contravene a zoning objective of the Development Plan, it would materially contravene SDRA 19 of Dublin City Development Plan 2016-2022 as outlined below: -

- Guiding Principle 2 Land Use and Activity of SDRA 19 states that lands within the Jamestown Character Area shall be developed at an approximate ratio of 70% employment/commercial and 30% residential. The proposed development includes a ratio of 13% employment/commercial uses and 87% residential uses and, therefore, does not comply with the provisions of SDRA 19.
- SDRA 19 requires that a masterplan be prepared of the lands to ensure that development occurs in a sustainable and coherent manner which complies with the guiding principles, to be agreed with the Planning Authority, before the lodgement of any planning application. The subject application has been lodged

prior to the completion of the masterplan and, therefore, is not in accordance with the provisions of SDRA 19.

- Guiding Principle 2 Land Use and Activity of the SDRA states that net densities for residential plots will have a range of 80-100 units per hectare within the Jamestown character area. The proposed development has a density of c. 208 units per net hectare, which is in excess of the stated net densities and does not accord with the provisions of SDRA 19.
- Guiding Principle 5 of the SDRA states that '*a Green Infrastructure Strategy must be prepared and agreed with DCC prior to any permission being lodged*'. A strategy in this respect has yet to be prepared and agreed with Dublin City Council, therefore, it is not in accordance with SDRA 19.

The Board considers that, having regard to the provisions of section 37(2)(b)(i) 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 considerations:

- The subject site has an area of c. 1.76ha and would deliver 321 no. residential units in the urban area. The site's urban location supports the consolidation of the urban environment as outlined in within the Metropolitan Area Strategic Plan (MASP), which is part of the Regional Spatial and Economic Strategy. The provision of a significant quantum of residential units is also in accordance with the government policy as set out in Rebuilding Ireland – Action Plan for Housing and Homelessness and Housing for All – A New Housing Plan for Ireland. The site is also located in close proximity to public transport, employment hubs and a range of services and facilities within the city. It is, therefore, considered that this scheme is strategic by reason of its location and scale, and is critical and integral to the success of national policy, in addressing both housing and homelessness in the City and consolidating the urban environment.

The Board considers that, having regard to the provisions of section 37(2)(b)(ii) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention SDRA 19 of the Dublin City Development Plan 2016-2022 with regard

to the provision of a Masterplan and a Green Infrastructure Strategy would be justified for the following reasons and considerations:

- The subject site is on the vacant site register. It is considered that the requirement for the completion of a masterplan and green infrastructure plan to be completed prior to the lodgement of any planning applications would conflict with Policy SC29 to discourage dereliction and Policy CEE16(i) to engage in active land management of vacant sites.

The Board considers that, having regard to the provisions of section 37(2)(b)(iii) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention of SDRA 19 of the Dublin City Development Plan 2016-2022 with regard to Land Use and Activity Mix would be justified for the following reasons and considerations:

- Objective 33 of the National Planning Framework to prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.
- RPO 5.5 of the Eastern and Midland Regional Assembly – Regional Spatial and Economic Strategy (RSES) 2019 which recommends that the future residential development in the Dublin Metropolitan Area follow a clear sequential approach, with a primary focus on the consolidation of Dublin and suburbs.

The Board considers that, having regard to the provisions of section 37(2)(b)(iii) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention of SDRA 19 of the Dublin City Development Plan 2016-2022 with regard to Density would be justified for the following reasons and considerations:

- Objective 35 of the National Planning Framework which supports increased residential densities at appropriate locations .
- RPO 5.4 and RPO 5.5 of the Eastern and Midland Regional Assembly – Regional Spatial and Economic Strategy (RSES) 2019 which encourage the provision of higher densities and the consolidation of Dublin and suburbs.

The Board considers that, having regard to the provisions of section 37(2)(b)(iv) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention of SDRA 19 of the Dublin City Development Plan 2016-2022 with regard to Density would be justified for the following reasons and considerations:

- Since the making of the Dublin City Development Plan 2016- 2022 the Board granted permission under ABP-310350-21 for 590 no. apartments and commercial uses in 4 no. Blocks ranging in height from 2 -10 storeys with a density of 188 units per ha at Charlestown Place, St. Margaret Road, Charlestown c. 700m west of the subject site; ABP-310722-21 for 191 no. apartments in 3 blocks ranging in height from single storey to 6-storeys with a density of 155 units per ha at Finglas Road c. 1.5km south of the subject site; and ABP-305538-19 for 129 no. apartments in 5 blocks ranging in height from 5-9 storeys with a density of 171 units per ha at Babuigher Lane / St. Margaret's Road c. 1.2km east of the subject site.

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

It is 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 acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of traffic and pedestrian safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development, or as otherwise stipulated by conditions

hereunder, and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows: -

- (a) All 7 no. units (B.G.01, B.G.02, B.G.03, B.G.04, B.G.05, B.G.06 and B.G.07) at the ground floor level of Block B, shall be permanently omitted and replaced with internal residential amenity space. The details of the proposed mix of uses and facilities provided within this internal amenity space shall be agreed with the planning authority.
- (b) The 5 no. corner windows on the northern elevation of Block B and the 5 no. corner windows on the southern elevation of Block B, at first to fifth floor level, shall be fitted with louvers or an alternative appropriate screening. In the interest of clarity this relates to unnumbered units above ground floor units B.G.01 and B.G.03.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of privacy and residential amenity

3. 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

4. a) Pedestrian access to the public open space areas shall be permanent, open 24 hours a day, with no gates or security barrier at the entrance to the development or within the development in a manner which would prevent pedestrian access

(b) Prior to the occupation of any residential unit, the developer shall ensure that the public realm areas and new pedestrian routes, as outlined in the site layout plan and landscape drawings shall be fully completed and open to the public.

Reason: In the interest of social inclusion and to secure the integrity of the proposed development including open spaces.

5. (a) Prior to the commencement of development, the applicant shall submit for the written agreement of the planning authority final details of the number and location of cycle parking spaces within the scheme. Bicycle parking spaces shall be secure, sheltered and conveniently located.

(b) electric charging facilities shall be provided for bicycle parking and proposals shall be submitted to and agreed with the planning authority prior to the occupation of the development.

Reason: In the interest of encouraging the use of sustainable modes of transport and residential amenity

6. 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 proposed 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 apartments within the scheme.

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

7. Prior to expiration of the 15-year period referred to in the covenant, the developer 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 Accommodation scheme. Any proposed amendment or deviation from the Build to Rent Accommodation model as authorised in this permission shall be subject to a separate planning application.

Reason: In the interests of orderly development and clarity.

8. Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be as submitted with the application, unless otherwise agreed in writing with, the planning authority prior to commencement of development. In default of agreement the matter shall be referred to An Bord Pleanála for determination.

Reason: In the interest of visual amenity and to ensure an appropriate high standard of development.

9. The hours of operation of the roof terrace at Block D shall be 07.00 to 22.00 Monday to Sunday, unless otherwise agreed in writing with the Planning Authority.

Reason: In the interest of residential amenity.

10. 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.

11. Prior to commencement of development the applicant shall agree in writing with the Planning Authority the requirement for a piece of public art within the site. All works shall be at the applicant's expense.

Reason: In the interest of place making and visual amenity.

12. Prior to the occupation of the residential units, 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. 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.

13. The car parking facilities hereby permitted shall be reserved solely to serve the proposed development. Prior to the occupation of the development, a Parking Management Plan shall be prepared for the development and shall be submitted to and agreed in writing with the planning authority. This plan shall provide for the permanent retention of the designated residential parking spaces and shall indicate how these and other spaces within the development shall be assigned, segregated by use and how the car park shall be continually managed.

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

14. 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.

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

15. Public lighting shall be provided in accordance with a final scheme to reflect the indicative details in the submitted Public Lighting Report, 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 house.

Reason: In the interests of amenity and public safety.

16. 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.

17. Proposals for an apartment naming / numbering scheme, commercial unit identification 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.

18. In the event of the proposed telecommunications structure becoming obsolete and being decommissioned, the developers shall, at their own expense, remove the mast, antenna and ancillary structures and equipment.

Reason: In the interests of visual and residential amenity.

19. 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.

20. The developer shall enter into water and waste water connection agreement(s) with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

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

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

22. 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.

Reason: In the interest of sustainable waste management.

23. The construction of the 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. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

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

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

25. Prior to commencement of development, the developer 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.

26. 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,

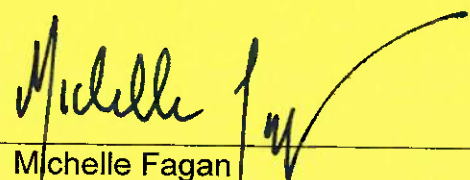
drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall 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

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.

Board Member



Michelle Fagan

Date: 11/08/2022

Note: In not agreeing with the recommendations of the Inspector and the planning authority to omit the telecommunications infrastructure on the roof level of Block D for reasons of visual amenity, the Board had regard to the Z14 mixed use zoning of the site, the contents of the Telecommunications Report dated 14th January 2022 which assesses the effect of the proposed development on existing telecommunications channels and the allowances required for their retention, the proposed location on the roof, the set back and screening of the telecommunications apparatus itself, and were satisfied that sufficient justification for the proposed location had been submitted, and considered that the proposed telecommunications would not have a negative visual impact on the area, due to the screening and set back from the parapets of the plant enclosure, and the screening design of the antennae affixed to the stair core.

DECISION QUASHED