

An
Bord
Pleanála

Board Direction
BD-015861-24
ABP-315351-22

The submissions on this file and the Inspector's report were considered at a Board meeting held on 19/03/2024.

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 Dun Laoghaire Rathdown County Development Plan 2022-2028 including the zoning objective 'A' pertaining on the site which seeks to provide residential development while improving and protecting existing residential amenities, the location of the site and the pattern of development in the area, the scale and nature of the proposed development, 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 not adversely affect the character or setting of the protected structures on the site or within the wider area, would be acceptable in terms of the density of development 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.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 18th and 22nd day of August 2022 and by the clarifications submitted on 27th day of October 2022, 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.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:

(a) the second floor in its entirety shall be omitted from each of units H1-H4;

Revised floor plans, elevations and sections for Units H1-H4 including details of measures to prevent overlooking from the private terrace on the rear elevation shall be submitted for the written agreement of the planning authority.

Reason: In the interests of the protection of the residential amenity of No. 1 Durham Place.

3. No demolition shall be undertaken other than that shown on the approved plans and a Conservation Accredited Architect shall be retained to oversee the proposed works to Nos. 2 and 3 Durham Place (Protected Structures).

Reason: In order to safeguard the special architectural and historic interest of the building.

4. Details of the materials, colours and textures of all the external finishes to the proposed dwellings; and details of paving, play equipment and seating for the open space, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

5. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services, with details submitted and approved in writing prior to commencement of development.

Reason: In the interest of public health.

6. Prior to the commencement of development, the developer shall enter into water and/or wastewater connection agreement(s) with Uisce Eireann.

Reason: In the interests of public health.

7. Prior to the commencement of development, the developer or any agent acting on its behalf, shall prepare a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) including demonstration of proposals to adhere to best practice and protocols. The RWMP shall include specific proposals as to how to how the RWMP will be measured and monitored for effectiveness; these details shall be placed on the file and retained as part of the public record. The RWMP must be submitted to the Planning Authority for written agreement prior to the commencement of development. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

Response: In the interests of sustainable waste management.

8. The construction of the development shall be managed in accordance with a Construction and 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 hours of working, noise and dust management measures, waste management and recycling of materials, environmental protection measures, welfare facilities, site deliveries, complaints procedure, pest control and traffic management arrangements.

Reason: In the interest of public safety, environmental protection, and residential amenity.

9. The developer shall comply with the transport requirements of the Planning Authority in terms of:

- (a) Undertaking the recommendations of the Stage 1 Road Safety Audit.

- (b) Detailed drawings shall be submitted for written approval prior to the commencement of development demonstrating that the internal access road has been designed to meet the requirements of DLRCC 'Taking in Charge Policy Document (May 2022)'.

- (c) Submission of a Stage 2 Quality Audit (detailed design, including a walking and cycling audit to address potential conflict between pedestrians, cyclist and vehicles). This shall be submitted for written approval prior to commencement prior to the commencement of development.

- (d) Submission of a Post Construction Stage 3 Quality Audit (to include Road Safety Audit, Access Audit, Walking and Cyclin Audit). This shall be submitted for written approval within 12 months of practical completion.

Reason: In the interest of public safety and orderly development.

10. Development described in Classes 1 or 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, shall not be carried out within the curtilage of any of the proposed dwellinghouses without a prior grant of planning permission.

Reason: In the interest of residential amenity and to ensure that a reasonable amount of private open space is provided for the benefit of the occupants of the proposed dwellings.

11. Prior to commencement of development, the applicant shall submit to and agree in writing with the Planning Authority full details, including relevant areas, for the proposed Taking in Charge of the development, which shall be carried out and completed at least to the construction standards set out in the DLRCC 'Taking in Charge Policy Document (May 2022). Following completion, the development shall be maintained by the developer, in compliance with these standards, until taken in charge by the planning authority.

Reason: To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

12. The management and maintenance of the proposed development (all areas not intended to be taken in charge), 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 commencement of development.

Reason: To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

13. 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.

14. Proposals for an estate/street name, house numbering scheme and associated signage (in Irish and English) shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name 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 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 placenames for new residential areas.

15. 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 social and affordable housing in accordance with the requirements of section 96 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 97(7) applies) may be referred by the planning authority or any other prospective party to the agreement to the Board 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 for the area.

16.
 - a) Prior to the commencement of any house or duplex unit in 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 house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all houses and duplex 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.
 - b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each specified house or duplex unit for use by individual purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.
 - c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified housing units, in which case the planning authority shall confirm in writing to the applicant or any person with an interest in the land that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.

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 interests of the common good.

17. 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 of roads, footpaths, watermains, drains, 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 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 of the development.

18. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities (including the shortfall in open space provision) 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

Note (1)

The Board did not share the Inspectors view, as proposed in recommended Condition 2 that the duplex units, annotated D1-8 on the submitted plans, should be omitted from the development. The Board did not concur with the Inspector that the units would be overbearing on the lane and considered that the design of the rear of the units with set backs and design measures to avoid overlooking would successfully overcome the concerns raised. The Board did not share the Inspectors concern regarding the design of the southernmost duplex elevation and considered that the design proposed was appropriate.

In this regard, the Board shared the view of the Planning Authority in respect of the units that the amendments provided for in the response to further information would address the concerns originally raised and the fenestration of the facades, set backs at upper floors and design measures to avoid overlooking would be appropriate.

Note (2)


The Board did however have concerns as to the potential impact on the residential amenity of the private open space to the rear of No. 1 Durham Place having regard to the height of Houses H1-H4. House H5 has an unusual site configuration addressing the rear of No 1 for a very short interface and the Board did not consider the same overbearing impact likely to arise from Houses H1-H4 would arise from H5. In this regard the Board did not share the view of the Inspector or the Planning Authority that the development as proposed in this location would not detrimentally harm the amenity or usability of the garden due to the overbearing impact arising from the proposed three floors. The Board noted the design measures proposed to avoid overlooking including from the private terrace at 1st floor but were concerned that the development of Houses H1-H4 as proposed would impact the development potential of this rear garden area which addresses the mews lane which is considered appropriate for suitable mews development. Therefore, the Board considered that it would be appropriate to omit the second-floor level from the proposed design from houses H1-H4 and have included Condition 2 to require this

alteration. Revised plans for the first floor would facilitate the provision of appropriately sized units and would provide appropriate development on the subject site at this location while ensuring that the amenity of the adjoining property was not significantly impacted.

Note (3)

It was also noted by the Board that the Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities, 2024 came into effect on 12 January 2024. The Board considered that the density proposed was appropriate for the very specific context of the subject site, adjoining protected structures and abutting a mews lane which has been identified in the County Development Plan for mews type development.

Board Member



Una Crosse

Date: 19/03/2024