

An
Bord
Pleanála

Board Direction
BD-012064-23
ABP-315584-23

The submissions on this file and the Inspector's report were considered at a Board meeting held on 27/04/2023.

The Board decided to make a split decision, to

1. grant permission, for the following reasons and considerations marked 1 below and subject to the following conditions for Block A and B and all associated works,
- and
2. refuse permission for Block B for the following reasons and considerations, in deciding not to accept the Inspector's recommendation to the Board having regard to:
 - The need for high-level screens to the balconies serving the bedrooms in apt. 13 - C 13 to obviate overlooking of the existing dwellings to the east,
 - The designed restricted aspect from the main habitable rooms in apartments 13 - C 13 and 20C – C 20 to obviate overlooking of the dwellings to the east,
 - The extent of blank façade along the eastern elevation of Block C to obviate overlooking of the dwellings to the east,

The Board considered that the proposed Block C would result in substandard level of residential amenity for future occupants in a number of the proposed units and would present a visual disamenity, and have an overbearing impact, when viewed from the existing dwellings to the east. The proposed Block C would, therefore, be contrary to the proper planning and sustainable development of the area.

1. Reasons and Considerations

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

- a) The location of the site within the established urban area of Dublin city with land-use zoning objectives for 'Z1 – Sustainable Residential Neighbourhoods', 'Z10 - Inner Suburban and Inner City Sustainable Mixed-Uses' and 'Z2 - Residential Neighbourhoods (Conservation Areas)' under the Dublin City Development Plan 2022-2028;
- b) The policies and objectives of the Dublin City Development Plan 2022-2028;
- c) The nature, scale and design of the proposed development and the availability in the area of infrastructure;
- d) The pattern of existing and permitted development in the area;
- e) The provisions of Housing for All – A New Housing Plan for Ireland issued by the Department of Housing, Local Government and Heritage in September 2021;
- f) The provisions of Project Ireland 2040 - National Planning Framework, which identifies the importance of compact growth;
- g) The provisions of the Urban Development and Building Heights Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in December 2018;
- h) The provisions of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in December 2022;
- i) The provisions of Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, including the associated Urban Design Manual (2009) issued by the Department of Environment, Heritage and Local Government in May 2009;
- j) 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 Environment, Community and Local Government in 2019;

- k) The provisions of the Architectural Heritage Protection Guidelines for Planning Authorities issued by the Department of Arts, Heritage and the Gaeltacht in October 2011;
- l) The provisions of the Planning System and Flood Risk Management Guidelines for Planning Authorities (including the associated Technical Appendices) issued by the Department of Environment, Heritage and Local Government in 2009;
- m) The provisions of the Eastern and Midland Regional Assembly Regional Spatial and Economic Strategy 2019-2031, which supports compact sustainable growth and accelerated housing delivery integrated with enabling infrastructure;
- n) The submissions and observations received;
- o) The reports from the Planning Authority.

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 and observations on file, the information submitted as part of the subject application Appropriate Assessment Screening Report and application documentation, and the Planning Inspector's report. In completing the screening exercise, the Board agreed with and adopted the report of the Planning 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 Environment Impact Assessment Screening Report submitted by the applicant, which contains information set out in Schedule 7A to the Planning and Development Regulations 2001, as revised, 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 classes 10(b)(i), 10(b)(iv) and 14 of Part 2 to Schedule 5 of the Planning and Development Regulations 2001-2022;
- the location of the proposed residential units, a gym, a local retail shop, a dry cleaner's premises and a café on lands zoned within the Dublin City Development Plan 2022-2028 as 'Z1 - Sustainable Residential Neighbourhoods' with a stated objective 'to protect, provide and improve residential amenities', zoned 'Z10 - Inner Suburban and Inner City Sustainable Mixed-Uses' with a stated objective 'to consolidate and facilitate the development of inner city and inner suburban sites for mixed-uses' and zoned 'Z2 - Residential Neighbourhoods (Conservation Areas)' with a stated objective 'to protect and/or improve the amenities of residential conservation areas, and the results of the Strategic Environmental Assessment of the Development Plan;
- the nature of the existing site and the pattern of development in the surrounding area;
- the availability of mains water and wastewater services to serve the proposed development;
- the location of the development outside of any sensitive location specified in Article 299(C)(1)(a)(v) of the Planning and Development Regulations 2001, as revised;
- 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 criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as revised, and;
- the features and measures proposed by the applicant that are envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified to be provided as part of the project Construction and Demolition Waste Management Plan, the Outline Construction Management Plan, the Outline Construction and Environmental Management Plan, the Archaeological and Architectural Heritage Impact Statement and the Engineering Services Report.

It is considered that the proposed development would not be likely to have significant effects on the environment 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, subject to compliance with the conditions set out below including those permitting a total of 109 residential units with the redesign of ten residential units to form five residential units, the proposed development would constitute an acceptable quantum and density of development in this inner-urban brownfield location, 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 scale of development, would not detrimentally impact on the built heritage or archaeology of the area, would be acceptable in terms of impacts on traffic, would provide an acceptable form of residential amenity for future occupants, would not be at risk of flooding, or increase the risk of flooding to other lands and would be capable of being adequately served by wastewater and water supply networks.

The Board considered that the proposed development would be compliant with the provisions of the Dublin City Development Plan 2022-2028, and 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 received by Dublin City

Council on the 21st 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) all proposed balconies, terraces and landing lights above ground floor shall be fitted with opaque glazing;
 - (b) any assigned high level windows and high screens to balconies shall be at least 1.8m above finished floor level;
 - (c) provision of landscaping to form defensible space between the footpath serving the communal open space to proposed block B and the northern bedroom window serving apartment 10B-B-04;
 - (d) omission of the render finish to sections of the western elevation to proposed blocks A and C to be replaced with a uniform brick finish;
 - (e) provision of a second set of demountable bollards or alternative additional physical barrier measures on site along the emergency access route. A staggered maintenance regime shall be implemented to ensure that a minimum of one set of demountable bollards is in situ at all times. Both sets of demountable bollards shall not be removed at the same time except in the event of required emergency access by emergency services vehicles.

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

Reason: In the interests of visual and residential amenities, the amenities of future residents, and to comply with the objectives of the Dublin City Development Plan 2022-2028.

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

Reason: In the interest of visual amenity.

4. The applicant shall submit the following architectural conservation details/revisions for the written approval of the Planning Authority prior to the commencement of development:
- a) Details of materials to be used in the repair of Nos.61 and 63 Fairview Strand to include confirmation of natural (Bangor Blue) or similar roof slates, (cast iron) rainwater goods and external joinery (windows, doors);
 - b) A methodology for addressing the issue of damp within the historic structures, based on an assessment of the levels of existing damp is to be provided by way of written submission.

All works to nos.61 and 63 Fairview Strand shall be carried out in accordance with best conservation practice and the Architectural Heritage Protection Guidelines for Planning Authorities (2011) issued by the Department of Housing, Local Government and Heritage. Any repair works shall retain the maximum amount of surviving historic fabric in situ.

Reason: In order to protect the original fabric, character and integrity of the historic buildings and to ensure that the proposed works are carried out in accordance with best conservation practice.

5. Proposals for a development name and numbering scheme and 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.

Reason: In the interest of urban legibility.

6. The internal road network and works along Esmond Avenue serving the proposed development, including junctions, setdown parking space, footpaths and kerbs, shall be in accordance with the detailed construction standards of the planning authority for such works and design standards outlined in the Design Manual for Urban Roads and Streets issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government in March 2019, as amended. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

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

7. (a) The car parking facilities hereby permitted shall be reserved solely to serve the development on the subject site. Car parking spaces shall not be

utilised for any other purpose than those stated in the application, unless the subject of a separate grant of planning permission.

(b) Prior to the occupation of the development, a Parking Management Plan shall be prepared for the development and shall be submitted to and agreed in writing with the planning authority. This plan shall provide for the permanent retention of the designated residential parking spaces and shall indicate how these spaces within the development shall be assigned, segregated by use and how car, cycle, motorcycle and car-share club parking, shall be continually managed.

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

8. Prior to the occupation of the development, a finalised Mobility Management Plan (Travel Plan) shall be submitted to and agreed in writing with the planning authority. This plan shall include modal shift targets and shall provide for incentives to encourage the use of public transport, cycling, walking and carpooling by residents of 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.

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

9. A minimum of 10% of all car parking spaces should be provided with electric vehicle charging stations/points, including all car club / car share spaces, and ducting shall be provided for all remaining car parking spaces facilitating the installation of electric vehicle charging points/stations at a later date.

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

10. All plant, including extract ventilation systems, shall be sited in a manner so as not to cause nuisance at sensitive locations due to emissions. All mechanical plant and ventilation inlets and outlets shall be sound insulated and or fitted with sound attenuators to ensure that noise levels do not pose a nuisance at noise sensitive locations. Basement ventilation shall not be positioned adjacent to apartment terraces.

Reason: In the interests of residential amenity.

11. 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 visual amenities of the area.

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

Reason: In the interest of public health.

13. a) Drainage arrangements including the attenuation and disposal of surface water, shall comply with the 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 Sustainable Urban Drainage System infrastructure and the fuel interceptors shall be submitted to and agreed in writing with the Planning Authority prior to the occupation of proposed development and shall be implemented in accordance with that agreement.
- e)

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

14. Public lighting shall be provided in accordance with a scheme, which shall include lighting for the public open spaces, communal spaces, surface cycle parking areas and the pedestrian / cycle routes, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The design of the lighting scheme shall take into account the existing and permitted public lighting in the surrounding area. Such lighting shall be provided prior to the making available for occupation of any unit.

Reason: In the interests of amenity and public safety.

15. No advertisement or advertisement structure shall be erected or displayed on the buildings (or within the curtilage of the site) in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

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. The opening hours for all commercial units shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any operations in each respective unit.

Reason: In the interests of residential amenity.

18. 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.

19. (a) All areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company.
(b) Details of the legally constituted management company contract, and drawings/particulars describing the parts of the development for which the legally-constituted management 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. The management scheme shall provide adequate measures for the future maintenance of public open spaces, roads and communal areas.

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

20. The developer shall facilitate the protection of archaeological materials or features which may exist within the site. In this regard, the developer shall -

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including geotechnical investigations) relating to the proposed development;
- (b) employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works, and;
- (c) during the demolition and construction period for the proposed development, the protection measures for the Jewish Cemetery boundary wall adjoining the application site, shall be implemented in full, as stated in the document titled 'Photographic record, specification and methodology for the protection, partial reconstruction and repair of the existing historic east wall of the Jewish Cemetery between 63 and 65 Fairview Strand, a protected structure' prepared by Cathal Crimmins and dated the 7th day of May, 2022, excluding any partial construction or repair works to the boundary wall;
- (d) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and the adjoining wall, and to secure the preservation and protection of any remains that may exist within the site.

21. 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 for each apartment and non-residential unit shall be submitted to, and agreed in writing with, the planning authority not later than six months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

22. The construction of the development shall be managed in accordance with a final project 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 the construction practice for the development, including:
- a) Location of the site and materials compound(s), including areas identified for the storage of construction refuse;

- b) Location and details of areas for construction site offices, staff facilities, site security fencing and hoardings;
- c) Details of on-site car parking facilities for site workers during the course of construction;
- d) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site.
- e) Measures to obviate queuing of construction traffic on the adjoining road network;
- f) Details of construction phase mobility strategy, incorporating onsite mobility provisions;
- g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- h) Alternative arrangements to be put in place for pedestrians, cyclists and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- i) Details of appropriate measures to mitigate vibration from construction activity in accordance with BS6472: 1992 Guide to Evaluation of Human Exposure to Vibration in Buildings (1Hz to 80Hz) and BS7385: Part 2 1990: Evaluation and Measurement for Vibration in Buildings - Guide to Damage Levels from Ground-Borne Vibration, and for the monitoring of such levels.
- j) Details of appropriate mitigation measures for noise and dust, and monitoring of such levels;
- k) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- l) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- m) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or watercourses;
- n) A record of daily checks that the works are being undertaken in accordance with the final project Construction and Environmental Management Plan shall be kept for inspection by the planning authority;

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

- 23. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Saturdays inclusive, and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where proposals have been submitted and agreed in writing with the Planning Authority.

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

24. 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.

25. 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.

26. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the

application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

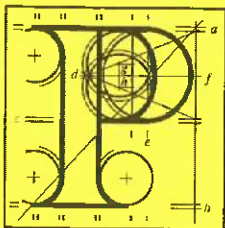
Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Board Member:



Peter Mullan

Date: 02/05/2023



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The submissions on this file were considered at a Board meeting held on 27/04/2023.

The Board decided that there was sufficient written evidence on file to enable an assessment of issues raised, and therefore that an Oral Hearing should not be held.

Board Member:

Peter Mullan

Date: 02/05/2023

