

An  
Bord  
Pleanála

**Board Direction**  
**BD-012246-23**  
**ABP-315709-23**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 22/05/2023.

Prior to assessing and deciding the full case, the Board considered the written recommendation of the Inspector that no oral hearing was warranted. The Board made a determination that no Oral Hearing should be held.

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 within the established 'Dublin City and Suburbs' area on lands with the zoning objective 'MC – Major Town Centre' as per the Fingal County Development Plan 2023-2029, which aims to protect, provide for and/ or improve major town centre facilities including consolidation and densification with residential uses;
- b) The nature, scale and design of the proposed development which is consistent with the policies and objectives of the Fingal County Development Plan 2023-2029;

- c) The pattern of existing and permitted development and the availability of adequate social and physical infrastructure in the area;
- d) 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;
- e) The provisions of Project Ireland 2040 - National Planning Framework, which identifies the importance of compact growth;
- f) 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 (as amended);
- g) 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 2020 (including Circular Letter: NRUP 07/2022);
- h) 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;
- i) 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;
- j) 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;
- k) The provisions of the Greater Dublin Area Transport Strategy 2022-2042 prepared by the National Transport Authority;
- l) The Retail Planning Guidelines for Planning Authorities issued by the Department of the Environment, Community and Local Government in April 2012;
- m) The submissions and observations received;
- n) The reports from the Planning Authority;
- o) The report of the Planning Inspector.

## **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, the 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 that, individually or in combination with other 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 an environmental impact assessment of the proposed development in compliance with section 172 of the Planning and Development Act 2000, as amended, taking into account:

- (a) The nature, scale, location, and extent of the proposed development,
- (b) The Environmental Impact Assessment Report and associated documentation submitted in support of the application,
- (c) The grounds of appeal, reports of the planning authority, and the submissions from observers and prescribed bodies in the course of the application and appeal,
- (d) The report of the Planning Inspector.
- (e) The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, adequately identifies and describes the direct, indirect, secondary and cumulative effects of the proposed development on the environment. The Board is satisfied that



the information contained in the Environmental Impact Assessment Report complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU. The Board agreed with the summary and examination, set out in the Inspector's report, of the information contained in the Environmental Impact Assessment Report and associated documentation submitted by the applicant and submissions made in the course of the planning application and the appeal. The Board is satisfied that the Inspector's report sets out how these were addressed in the assessment and recommendation, including environmental conditions, and these are incorporated into the Board's decision.

### **Reasoned Conclusion on Significant Environmental Effects**

The Board considered and agreed with the Inspector's reasoned conclusions, that the main significant direct and indirect effects of the proposed development on the environment are, and would be mitigated, as follows:

- Construction stage effects on 'population and human health' and 'air quality and climate' as a result of dust, noise, traffic, and waste emissions. These effects would be mitigated through a Construction Environmental Management Plan, a Construction and Demolition Waste Management Plan, and the application of other best practice construction management measures, which would not result in any unacceptable residual effects.
- Operational stage effects on the 'landscape' and townscape character of the area as a result of the height and scale of the proposed development. These effects would be mitigated through embodied design measures and proposed landscaping, which would not result in any unacceptable residual effects.

The Board completed an Environmental Impact Assessment in relation to the proposed development and concluded that, subject to the implementation of the proposed mitigation measures set out in the Environmental Impact Assessment

Report, and subject to compliance with the conditions set out herein, the effects on the environment of the proposed development, by itself and in combination with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the Inspector.

### **Conclusions on Proper Planning and Sustainable Development:**

It is considered that, subject to compliance with the conditions set out below, the proposed development would not contravene the retail objectives of the 'Major Town Centre' zone, would constitute an acceptable quantum of development in this brownfield town centre location which would be served by an appropriate level of public transport, social and community infrastructure, would provide an acceptable form of residential amenity for future occupants, 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 be acceptable in terms of pedestrian and traffic safety, 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 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, and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. (a) In the event that the proposed development is constructed in advance of the delivery of the Bus Connects Project, the proposed site layout shall be in accordance with Drawing No. 20053-OMP-00-00-DR-A-1000 and associated drawings.

(b) In the event that the proposed development is constructed in parallel with or subsequent to the delivery of the Bus Connects Project, the proposed layout shall be in accordance with Drawing No. 20053-OMP-00-00-DR-A-1003 and associated drawings.

**Reason:** In the interest of clarity and to facilitate planned public transport infrastructure.

3. The period during which the development hereby permitted may be carried out shall be ten years from the date of this order.

**Reason:** In the interest of clarity, to ensure the timely delivery of housing, and to minimise disruption to surrounding properties.

4. The mitigation and monitoring measures outlined in the plans and particulars, including the Environmental Impact Assessment Report submitted with this application as set out in Chapter 15 of the EIAR 'Mitigation and Monitoring', shall be carried out in full, except where otherwise required by conditions attached to this permission.

**Reason:** In the interest of clarity and the protection of the environment during the construction and operational phases of the development.

5. (a) The development shall be carried out in accordance with the phasing arrangements as outlined in the 'Phasing Report' submitted with the application, including the scenarios for the delivery of the development in conjunction with the Bus Connects project.



(b) The residential units in each phase shall not be occupied until the community and physical infrastructure for that phase has been provided to the satisfaction of the planning authority.

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

6. Details of the materials, colours and textures of all the external finishes to the proposed development shall be as submitted with the application, unless otherwise agreed in writing with the Planning Authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

7. 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.

8. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through the communal open spaces, details of which shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development/installation of lighting. The lighting scheme shall incorporate the EIAR mitigations measures for bats. Such lighting shall be provided prior to the making available for occupation of any apartment unit.

**Reason:** In the interests of amenity, public safety, and nature conservation.

9. 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.

10. Prior to the commencement of construction works, the developer shall agree in writing with Dublin Airport Authority and the Irish Aviation Authority a strategy for the use of cranes on site and appropriate aeronautical obstacle warning light requirements.

**Reason:** In the interest of air traffic safety.

11. (a) The following shall be submitted to and agreed in writing with the planning authority prior to the commencement of development:
- (i) detailed design and construction of the new junction (Junction 9)
  - (ii) the proposed pedestrian/cycle crossing amendments to the existing roundabout
  - (iii) the signalised crossing to Millennium Park
  - (iv) proposals to provide a continuous footpath from the drop-off area to the creche building.
- (b) The road network serving the proposed development, including turning bays, junctions with the public road, parking areas, footpaths and kerbs, access road to service areas shall be in accordance with the detailed construction standards of the Planning Authority for such works.

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

12. (a) The residential car parking facilities hereby permitted shall be reserved solely to serve the proposed residential units.
- (b) The car parking facilities within the Mobility Hub shall be reserved for the existing and proposed commercial and community uses and shall not be available to the residential units.
- (c) Parking shall be managed in accordance with the Car Parking Management Strategy submitted with the application.



**Reason:** To ensure that adequate residential and commercial parking facilities are permanently available to serve existing and proposed development.

13. A minimum of 10% of all car parking spaces should be provided with functioning electric vehicle charging stations/ points, and ducting shall be provided for all remaining car parking spaces, including in-curtilage 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 has 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. The car parking spaces for sole use of the car sharing club shall also be provided with functioning electric vehicle charging stations/ points.

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

14. A total of 2,008 no. bicycle parking spaces (1,522 for residents and 486 for visitors) and 252 no. cycle and e-mobility facilities shall be provided within the site. Details of the layout, marking demarcation and security provisions for these spaces shall be in accordance with the details submitted with the application, unless otherwise agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To ensure that adequate bicycle and e-mobility parking provision is available to serve the proposed development, in the interest of sustainable transportation.

15. Prior to the occupation of the development, a finalised Mobility Management Plan (Residential 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.

16. 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.

17. 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.

18. 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.

19. The site shall be landscaped in accordance with the detailed comprehensive scheme of landscaping and play facilities, including the drawings and Landscape Design Statement which accompanied the application submitted, unless otherwise agreed in writing with, the Planning Authority prior to

commencement of development. Thereafter, the provisions of the Landscaping Management and Maintenance Plan shall be implemented.

**Reason:** In the interest of residential and visual amenity.

20. A plan containing details for the management of waste (and, in particular, recyclable materials) 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 unit shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.

**Reason:** To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

21. 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 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.

**Reason:** In the interest of sustainable waste management.

22. The construction of the development shall be managed in accordance with a 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 provide details of intended construction practice for the development with measures to reflect mitigation described in the submitted EIAR for the application, in addition to the following:

- a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
- b) Location of access points to the site for any construction related activity;
- c) Location of areas for construction site offices and staff facilities;
- d) Details of site security fencing and hoardings;
- e) Details of on-site car parking facilities for site workers during the course of construction;
- f) 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;
- g) Measures to obviate queuing of construction traffic on the adjoining road network;
- h) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network and for the cleaning of the same;
- i) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- j) Details of appropriate mitigation measures for noise, dust and vibration, 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 drains.
- n) A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority. Reason: In the interest of amenities, public health and safety.

**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 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 amenities of property in the vicinity.

24. (a) No signage, advertising structures/advertisements, security shutters, or other projecting elements, including flagpoles, shall be erected within the site and adjoining lands under the control of the applicant unless authorised by a further grant of planning permission.

(b) The windows to the proposed commercial and community facility units shall not be obscured by adhesive material or otherwise, unless otherwise agreed in writing with the planning authority.

**Reason:** In the interest of visual amenity.

25. 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

26. (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

27. The developer shall provide a piece of public art, sculpture or architectural feature which shall have a relationship with the area. The design, location, and timescale for the piece of art shall be agreed with the planning authority prior to commencement of development.

**Reason:** In the interests of visual amenity and cultural identity.

28. 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 Act 2000, as amended, and of the housing strategy in the development plan of the area.

29. 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.

30. 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. The application of indexation required by this condition 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.

**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.

31. The developer shall pay to the planning authority a financial contribution in lieu of public open space provision, in accordance with the terms of note 5 'open space shortfall' 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. The application of indexation required by this condition 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 shortfall in public open space for the purposes of this condition is set at 3.7 hectares.

**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.

32. The developer shall pay to the planning authority a financial contribution in lieu of playground facilities, in accordance with the terms of note 5 'open space shortfall' 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. The application of indexation required by this condition 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 shortfall in playground facilities for the purposes of this condition is set at 2,657 square metres.

**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.

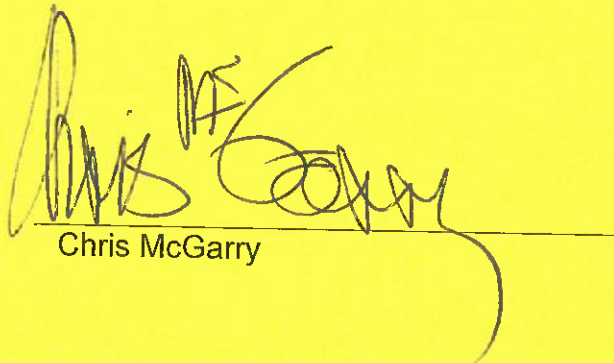
**Note:**

The Board noted the recommendation of the Inspector not to apply condition numbers 35 and 37 of the decision of the planning authority.

On condition 35 (related to a shortfall in playground facilities), the Board agreed with the Inspector that Section 48(2)(c) would not be an appropriate mechanism in this instance. However, the Board determined that a form of financial payment in lieu would be appropriate and in this regard noted the content of Objective DMSO50 of the Fingal County Development Plan 2023-2029 which states as follows, 'require the monetary value in lieu of play facilities to be in line with the Fingal County Council Development Contribution Scheme'. The Board noted the content of the current Contribution Scheme and specifically note 5, '*open space shortfall*' which is the focus for in lieu calculations on matters such as development costs.

On condition 37 (related to a shortfall of open space) the Board noted the commentary of the Inspector at page 80 of his report. The Board determined however that given the scale of the development and the confirmed deficit in public open space, that an in lieu contribution would be warranted. On this point, the Board agreed with the Inspector that the allocated shortfall should be 3.7 hectares.

Board Member



Chris McGarry

Date: 23/05/2023



