

An
Bord
Pleanála

Board Direction
BD-014895-23
ABP-315883-23

The submissions on this file and the Inspector's report were considered at a Board meeting held on 19/12/2023.

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:

- (a) The site's location on lands zoned 'Z1' where Build to Rent residential is 'open for consideration' and the policies and provisions set out in respect of Build to Rent residential development;
- (b) The policies and objectives in 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 to facilitate the development of the site;
- (d) the pattern of existing and permitted development in the area;
- (e) the provisions of Housing for All – A New Housing Plan for Ireland, 2021
- (f) The National Planning Framework issued by the Department of Housing, Planning and Local Government in February 2018;
- (g) 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;

(h) Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government in December 2020;

(i) The Urban Development and Building Heights Guidelines for Planning Authorities 2018; and

(j) The Planning System and Flood Risk Management' (including the associated 'Technical Appendices') 2009;

(k) The grounds of appeal and observations received and responses to same.

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, would provide an acceptable level of amenity for future residents and would be acceptable in terms of traffic and pedestrian safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

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 located in a built-up urban area, the distances to the nearest European sites and the hydrological pathway considerations, submissions and observations on file, the information and reports submitted as part of the subject application, 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 exercise of the proposed development and considered that the Environmental Impact Assessment Screening Report submitted by the first party appellant, which contains information set out in Schedule 7A of the Planning and Development Regulations 2001, amended, identified 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 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', 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(2)(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 and Environmental Management Plan, Demolition Method Statement, the Conservation Assessment and the Engineering Services Report,

In completing the screening exercise, the Board agreed with and adopted the report of the Planning Inspector in that, 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.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 28th July 2022 as amended by further information submitted on 22nd December 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, 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:

- This permission relates to a total of 54 no. units only.
- Apartment Unit A05.58 from the proposed fifth floor of Block A shall be omitted.
- Block B shall be omitted from the scheme in its entirety and a revised landscaping scheme which incorporates these lands into the communal open space shall be submitted for the written agreement of the Planning Authority prior to commencement of development.

Reason: In the interest of the proper planning and sustainable development of the area and in the interest of visual 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. Prior to the commencement of development, the owner shall submit, for the written consent of the planning authority, details of a proposed covenant or legal agreement which confirms that the development hereby permitted shall remain owned and operated by an institutional entity for a minimum period of not less than 15 years and where no individual residential units shall be sold separately for that period. The period of 15 years shall be from the date of occupation of the first residential unit within the scheme. This covenant or legal agreement shall also highlight the reduced level of car parking available to future residents.

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

5. Prior to expiration of the 15-year period referred to in the covenant, the owner shall submit for the written agreement of the planning authority, ownership details and management structures proposed for the continued operation of the entire development as a Build-to-Rent scheme. Any proposed amendment or deviation from the Build-to-Rent model as authorised in this permission shall be subject to a separate planning application.

Reason: In the interests of orderly development and clarity.

6. Prior to the commencement of any work on site, the developer:

i) shall engage the services of an independent, qualified arborist, for the entire period of construction activity.

ii) shall inform the planning authority in writing of the appointment and name of the consultant. The consultant shall visit the site at a minimum on a monthly basis, to ensure the implementation of all of the recommendations in the revised tree reports and plans, once agreed.

iii) shall ensure the protection of trees to be retained

iv) submit photographs and confirmation that fencing for retained trees meets BS5837:2012 "Trees in Relation to Design, Demolition and Construction – Recommendations" for the written agreement of the Planning Authority

v) All works on retained trees shall comply with proper arboricultural techniques conforming to BS 3998:2010 Tree Work – Recommendations. To ensure and give practical effect to the retention, protection and sustainability of trees during and after construction of the permitted development.

vi) The clearance of any vegetation including trees and scrub shall be carried out outside the bird-breeding season (1st day of March to the 31st day of August inclusive) or as stipulated under the Wildlife Acts 1976 and 2000.

vii) The arborist shall carry out a post construction tree survey and assessment on the condition of the retained trees.

viii) A completion certificate is to be signed off by the arborist when all permitted development works are completed and in line with the recommendations of the tree report.

ix) The certificate shall be submitted to the planning authority for written agreement upon completion of the works.

Reason: To ensure the retention, protection and sustainability of trees during and after construction of the permitted development.

7. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company or such other security as may be accepted in writing by the planning authority, to secure the

protection of the trees on site and to make good any damage caused during the construction period, coupled with an agreement empowering the planning authority to apply such security, or part thereof, to the satisfactory protection of any tree or trees on the site or the replacement of any such trees which die, are removed or become seriously damaged or diseased within a period of three years from the substantial completion of the development with others of similar size and species. 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 secure the protection of the trees on the site.

8. A schedule of all materials to be used in the external treatment of the development to include a variety of high-quality finishes, such as brick and stone, roofing materials, windows and doors shall be submitted to and agreed in writing with, the planning authority prior to commencement of development.

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

9. Proposals for an apartment naming / numbering scheme and associated signage shall be submitted to and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all signs, and apartment numbers, shall be provided in accordance with the agreed scheme. The proposed names shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

Reason: In the interest of urban legibility and to ensure the use of locally appropriate place names for new residential areas.

10. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to

commencement of development/installation of lighting. Such lighting shall be provided prior to the making available for occupation of any apartments. The lighting scheme shall form an integral part of landscaping of the site.

Reason: In the interests of public safety and amenity, to prevent light pollution.

11. 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

12. No additional development shall take place above roof level, including lift motors, air handling equipment, storage tanks, ducts or other external plant other than those shown on the drawings hereby approved, unless authorised by a prior grant of planning permission.

Reason: To safeguard the amenities of surrounding occupiers and the visual amenities of the area in general.

13. The construction of the development shall be managed in accordance with a Construction Management Plan and Environmental Management Construction Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise and dust management measures, traffic management arrangements/ measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety.

14. Construction and demolition waste shall be managed in accordance with a construction and demolition waste management plan and construction environmental management plan, which shall be submitted to, and agreed in writing with, the planning

authority prior to commencement of development. The Construction Management Plan shall specifically address the points raised within the submission by TII to The Planning Authority. This plan shall be prepared in accordance with the 'Best Practice Guidelines for the preparation of resource & waste management plans for construction & demolition projects' published by the Environmental Protection Agency in 2021.

Reason: In the interest of sustainable waste management.

15. Drainage arrangements including the updates to the Site Specific Flood Risk Assessment, attenuation and disposal of surface water, shall comply with the requirements of the planning authority.

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

16. Prior to the commencement of any work on site, the developer:

- (i) shall submit the final traffic signal infrastructure design drawings for the Milltown Road and the site access junction to the planning authority for written agreement. The signalisation shall be in accordance with DCC standards and to the specifications of DCC ITS. A Road Safety Audit shall be provided as part of the submission. The works shall be at the applicant/developer's expense.
- (ii) shall submit to the planning authority for written agreement details of emergency vehicle access arrangements for the development.
- (iii) Prior to the commencement of the Development, the applicant shall submit an Operational Waste Management Plan to the planning authority for written agreement. The Plan shall outline how the management of operational waste for the development is to be undertaken in accordance with the current legal and industry standards, and shall include waste collection procedures including refuse vehicle access arrangements. The management company for the development shall be responsible for the implementation of the plan.
- (iv) Details of the materials proposed in public areas, and areas proposed to be taken in charge, are required and shall be in accordance with the document Construction Standards for Roads and Street Works in Dublin City Council and agreed in detail with the Planning Authority.

- (v) Prior to commencement of development, and on appointment of a main contractor, a Construction Management Plan shall be submitted to the planning authority for written agreement. This plan shall provide details of intended construction practice for the development, including traffic management, hours of working, noise and dust management measures and off-site disposal of construction/demolition waste. The Construction Management Plan shall specifically address the points raised within the submission by TII. The applicant shall liaise with TII and DCC during the construction period.
- (vi) Car parking spaces shall be permanently allocated to the proposed use and shall not be sold, rented or otherwise sub-let or leased to other parties. 6 no. spaces shall be allocated to car share. 50% of spaces shall be fitted with EV charging equipment and all remaining spaces shall be ducted to facilitated future installation of EV charging equipment.
- (vii) Prior to completion and occupation of the development, a Parking Management Plan shall be submitted to the planning authority for the written agreement which shall indicate how spaces will be assigned and segregated by use and how use of the car parking will be continually managed.
- (viii) Long Term resident cycle parking to Dublin City Development Plan 2022-2028 standards shall be provided. All resident spaces including cargo bike spaces shall be secure, conveniently located, sheltered and well lit. Electric bike charging facilities shall be provided. Key/fob access should be required to bicycle compounds. Visitor cycle parking design shall allow both wheel and frame to be locked.
- (ix) All costs incurred by Dublin City Council, including any repairs to the public road and services necessary as a result of development, shall be at the expense of the developer.
- (x) The developer shall be obliged to comply with the requirements set out in the Code of Practice.

Reason: In the interest of traffic safety and the proper planning and sustainable development of the area.

17. The developer shall liaise with Transport Infrastructure Ireland and appropriate agreements between TII, Luas Operator and the developer shall be undertaken and

completed prior to the commencement of development regarding the construction and operation of the proposed development which is located in close proximity to a Luas Line.

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

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

Reason: In the interest of public health

19. 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.

20. 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 shall be submitted to, and agreed in writing with, the planning authority prior to commencement of 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. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and 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 hydrological and geotechnical investigations) relating to the proposed development, and

(b) employ a suitably qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

(i) the nature and location of archaeological material on the site, and

(ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological

22. 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.

23. 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.

24. The developer shall pay to the planning authority a financial contribution in respect of Luas Cross City in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to permission.

Note 1

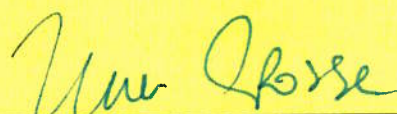
The Board shared the view of the Planning Authority and did not share the view of the Inspector in respect of Apartment Unit A05.58, the omission of which, the Board considered provided a more appropriate response to the site specific considerations.

Note 2

All parties to be advised of the provisions of Section 34(13) of the Planning and Development Act 2000, as amended.

Board Direction to Issue with Decision.

Board Member


Una Crosse

Date: 02/01/2024

DECISION QUASHED