

An
Bord
Pleanála

Board Direction
BD-014958-24
ABP-318075-23

The submissions on this file and the Inspector's report were considered at a Board meeting held on 04/01/2024.

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

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

- (a) the location of the site in an area where residential/mixed use development is permitted under zoning Z1 of 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 2021;
- (f) The Guidelines for Sustainable Residential Developments in Urban Areas and the accompanying Urban Design Manual – a Best Practice Guide, issued by the Department of the Environment, Heritage and Local Government in May 2009;
- (g) Urban Development and Building Heights Guidelines for Planning Authorities, prepared by the Department of Housing, Planning and Local Government in December 2018;

h) The Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of Housing Local Government and Heritage, July 2023

(i) 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 2019;

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

(k) The Architectural Heritage Protection Guidelines for Planning Authorities 2011.

(l) The provisions of the Climate Action Plan 2023

(m) The policies and objectives set out in the National Planning Framework

(n) The policies and objectives of the Regional and Spatial Economic Strategy for the Eastern and Midland Regional Assembly

(o) The grounds of appeal received

(p) The observations received

(q) The submission from the Planning Authority

it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density, would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of traffic and pedestrian safety and convenience.

In arriving at this conclusion, the Board considered both the Inspectors and the Planning Authorities assessment of the density proposed, the Board noted that the density proposed exceeded the general rule for densities at this location. The Board had regard to the City Development Plan, Appendix 3 which provides for a nuanced approach to the assessment of a scheme based on performance requirements, the Board concurred with both the Planning Authority and the Inspector that the scheme as proposed including the increase in density is appropriate to the location and context and is consistent with the overall provisions of the Dublin City Development Plan 2022- 2028.

The Board considered it appropriate that the applicant would pay an additional contribution in lieu of open space in accordance with the relevant Section 48 scheme.

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, 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 concluded 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 Site No. 004024 (South Dublin Bay and River Tolka Estuary SPA), European Site No. 004006 (North Bull Island SPA), European Site No. 000206 (North Dublin Bay SAC) and European Site No. 000210 (South Dublin Bay SAC) or on any European Site in view of the Conservation Objectives of such sites, and that a Stage 2 Appropriate Assessment is, therefore, not 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 amended, 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, as amended;

- the location of the proposed apartments on lands zoned within the Dublin City Development Plan 2022-2028 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 amended;
- 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 amended, and;
- the features and measures proposed as part of the project, which are envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the project Resource and Waste Management Plan, Natura Impact Statement, Preliminary Construction Environmental Management Plan, Ecology Impact Assessment, Archaeological Assessment, Conservation Assessment, Arboricultural Impact Assessment, Site Specific Flood Risk Assessment and Civil Engineering Repots.

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, the proposed development would constitute an acceptable quantum and density of development in this suburban / 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 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 7th July 2023, 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. Mitigation and monitoring measures outlined in the plans and particulars, submitted with this application, shall be carried out in full, except where otherwise required by conditions attached to this permission.

Reason: In the interest of protecting the environment and in the interest of public health.

3. 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. 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 and to ensure an appropriate high standard of development.

4. Details of signage, waste management and hours of operation of the non-residential units 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. The gym shall be fully fitted out and suitable for immediate occupation and operation prior to the first occupation of the residential units hereby approved.

Reason: To ensure the delivery of residential amenities.

6. With regard to the gym the development shall ensure the following: a) Music associated with the use of the proposed gym must be inaudible at the nearest noise sensitive premises. b) Classes shall only be held between the hours of 7am-9pm. All music played within the premises shall be controlled through a limiter system. c) A floating floor or equivalent flooring system shall be installed in all areas where weights and treadmills are to be used. The floor must provide an adequate level of isolation at frequencies below 50Hz for weights up to 200kg.

Reason: In order to safeguard the amenities of adjoining premises, residential amenity, and the general surroundings

7. 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, including:

- a) A Pre-Construction Invasive Species Management Plan and an Invasive Species Management Plan if required;

- b) A pre-construction condition survey of properties on Mullingar Terrace, if required;
- c) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
- d) Location of areas for construction site offices and staff facilities;
- e) Details of site security fencing and hoardings;
- f) Details of on-site car parking facilities for site workers during the course of construction;
- g) 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;
- h) Measures to obviate queuing of construction traffic on the adjoining road network;
- i) Details of lighting during construction works;
- j) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- k) 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 works;
- l) Provision of parking for existing properties at during the construction period;
- m) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- n) 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;
- o) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- p) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.
- q) A record of daily checks that the works are being undertaken in accordance with the Construction Environmental Management Plan shall be kept for inspection by the planning authority.

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

8. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

9. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays and between 0800 and 1400 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.

10. Prior to commencement of development, the developer shall enter into water and wastewater connection agreements with Irish Water.

Reason: In the interest of public health.

11. Drainage arrangements including the 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

12. The developer shall comply with the detailed requirements of Transportation Planning Division of Dublin City Council

Reason: To ensure a satisfactory standard of development in the interest of public safety.

13. A minimum of 50% of all car parking spaces should be provided with functioning EV charging stations/points, and ducting shall be provided for all remaining car parking spaces, facilitating the installation of EV charging points/stations at a later date. Where proposals relating to the installation of EV 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.

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

14. The boundary planting, lighting and open spaces and biodiversity enhancement plan shall be in accordance with the details submitted to the planning authority with the application, unless otherwise agreed in writing with the planning authority. The landscape scheme shall be implemented fully in the first planting season following completion of the development, and any trees or shrubs which die or are removed within three years of planting shall be replaced in the first planting season thereafter. This work shall be completed before any of the dwellings are made available for occupation. Access to green roof areas shall be strictly prohibited unless for maintenance purposes.

Reason: In order to ensure the satisfactory of the public open space areas, and their continued use for this purpose.

15. Prior to the occupation of the residential units, a Mobility Management Strategy shall be submitted to and agreed in writing with the planning authority. This shall provide for incentives to encourage the use of public transport, cycling, walking. The mobility strategy shall be prepared and implemented by the management company for all units within the development.

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

16. Proposals for a naming 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 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 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.

17. 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.

18. The development shall comply with the following requirements of the City Archaeologist of Dublin City Council:

- a) No construction or site preparation work may be carried out on the site until all archaeological requirements of the Planning Authority are complied with.
- b) The applicant shall install vibration monitors on all sections of the Phoenix Park deerpark wall (RPS No. 6781; RMP No. DU018-00701) within the site. A survey of the wall is to be carried out at regular intervals during all phases of works. A report providing the results of the above is to be provided to the Planning Authority.
- c) Any temporary works by the main contractor to the wall during construction and from unauthorised access are to be installed per the details on the submitted drawing 200076-X-10-Z01-B1-DR-DBFL-SE-1971.
- d) The project shall have an archaeological assessment (and impact assessment) of the proposed development, including all temporary and enabling works, geotechnical investigations, e.g. boreholes, engineering test pits, etc., carried out for this site as soon as possible and before any site clearance/construction work commences. The assessment shall be prepared by a suitably qualified archaeologist and shall address the following issues.
 - i. The archaeological and historical background of the site, to include industrial heritage.
 - ii. A paper record (written, drawn, and photographic, as appropriate) of any historic buildings and boundary treatments, etc.
 - iii. The nature, extent and location of archaeological material on site by way of archaeological testing &/or monitoring of the removal of overburden.
 - iv. The impact of the proposed development on such archaeological material.
- e) The archaeologist shall forward their Method Statement in advance of commencement to the Planning Authority.
- f) Where archaeological material is shown to be present, a detailed Impact Statement shall be prepared by the archaeologist which will include specific information on the

location, form, size and level (corrected to Ordnance Datum) of all foundation structures, ground beams, floor slabs, trenches for services, drains etc. The assessment shall be prepared on the basis of a comprehensive desktop study and, where appropriate/feasible, trial trenches excavated on the site by the archaeologist and/or remote sensing. The trial trenches shall be excavated to the top of the archaeological deposits only. The report containing the assessment shall include adequate ground-plan and cross-sectional drawings of the site, and of the proposed development, with the location and levels (corrected to Ordnance Datum) of all trial trenches and/or bore holes clearly indicated. A comprehensive mitigation strategy shall be prepared by the consultant archaeologist and included in the archaeological assessment report.

- g) No subsurface work shall be undertaken in the absence of the archaeologist without his/her express consent. The archaeologist retained by the project to carry out the assessment shall consult with the Planning Authority in advance regarding the procedure to be adopted in the assessment.
- h) One digital copy in pdf format containing the results of the archaeological assessment shall be forwarded on completion to the Planning Authority. The Planning Authority (in consultation with the City Archaeologist and the National Monuments Service, Dept. of Housing, Local Government and Heritage, shall determine the further archaeological resolution of the site.
- i) The developer shall comply in full with any further archaeological requirement, including archaeological monitoring, and if necessary archaeological excavation and/or the preservation in situ of archaeological remains, which may negate the facilitation of all, or part of any basement.
- j) The developer shall make provision for archaeological excavation in the project budget and timetable.
- k) Should archaeological excavation occur the following shall be submitted to the Planning Authority:
 - i. A bi weekly report on the archaeological excavation during the excavation and post excavation period.
 - ii. A preliminary report on the archaeological excavation not later than four weeks after the completion of the excavation.

iii. A final report on the archaeological excavations not later than twelve months after the completion of the excavation

l) Before any site works commence the developer shall agree the foundation layout with the Planning Authority.

m) Following submission of the final report to the Planning Authority, where archaeological material is shown to be present the archaeological paper archive shall be compiled in accordance with the procedures detailed in the Dublin City Archaeological Archive Guidelines (2008 Dublin City Council), and lodged with the Dublin City Library and Archive, 138-144 Pearse Street, Dublin 2.

Reason: In the interest of preserving or preserving by record archaeological material likely to be damaged or destroyed in the course of development.

19. (a) Prior to the commencement of development, the applicant shall delineate on a map those areas which are to be taken in charge for written agreement of the Planning Authority.

(b) 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. Prior to commencement of development, the developer or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter

in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the plan of the area.

21. (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 (as amended), 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 common good.

22. 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.

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.

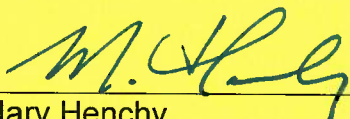
Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Contribution Scheme made under section 48 of the Act be applied to the permission.

24. The developer shall pay to the planning authority a financial contribution in lieu of the public open space requirement in respect of public open space 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 Contribution Scheme made under section 48 of the Act be applied to the permission.

Board Member



Mary Henchy

Date: 05/01/2024

