

An
Bord
Pleanála

Board Direction
BD-018398-24
ABP-320660-24

The submissions on this file and the Inspector's report were considered at a Board meeting held on 06/12/2024.

The Board decided to grant permission generally in accordance with the Inspector's recommendation, for the following reasons and considerations, and subject to the following conditions.

Reasons and Considerations

Having regard to the following:

- a) the location of the site in the urban area of Howth in an area zoned largely for residential (under Objective RS 'RS' Residential – 'Provide for residential development and protect and improve residential amenity', with ancillary area to the south zoned 'HA' High Amenity – 'Protect and enhance high amenity areas');
- b) the policies and objectives of the Fingal Development Plan 2023 – 2029;
- c) the Rebuilding Ireland Action Plan for Housing and Homelessness (2016) ;
- d) Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024) ;
- e) Guidelines for Planning Authorities on Sustainable Urban Housing: Design Standards for New Apartments (2018) ;
- f) Urban Development and Building Heights, Guidelines for Planning Authorities (2018) ;
- g) Design Manual for Urban Roads and Streets (DMURS) (2013) ;
- h) Architectural Heritage Protection- Guidelines for Planning Authorities 2011;

- i) Planning System and Flood Risk Management (including the associated Technical Appendices) (2009) ;
- j) Climate Action Plan 2024, with which the proposed development is consistent with;
- k) the National Biodiversity Plan 2023-2030;
- l) the nature, scale and design of the proposed development and the availability in the area of public transport;
- m) the availability in the area of a wide range of social, community, transport and water services infrastructure;
- n) the pattern of existing and permitted development in the area;
- o) The planning history of the area, including its partial location in the Buffer Zone to the Howth Special Amenity Area and in the setting of the Howth Demesne Architectural Conservation Area and proximate to Protected Structures in the ACA (particularly Howth Castle and St Mary's Church) ;
- p) the submissions and observations received; and,
- q) the report and recommendation of the inspector.

The Board 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 be appropriate to the historic sensitivity of the site and would otherwise be acceptable in terms of pedestrian and traffic safety and convenience. The Board considered that the height proposed at this specific location was acceptable due to:

- a) Proximity to public transport including the DART and given the density and height of the locally permitted and built development at the edge of Howth village, which is reflective of a City-Suburban / Urban Extension as designated in the Sustainable and Compact Settlements Guidelines for Planning Authorities (2024 Guidelines). Therefore, residential densities up to 150 dwellings per hectare at accessible urban extension location (as defined in Table 3.8 of the 2024 Guidelines) is considered to be acceptable.

- b) The evolving and changing character of this sensitive baseline landscape and visual environment, taken together with the embedded design mitigation measures, the proposed building heights are considered to be fully consistent with the provision of the Urban Development and Building Heights Guidelines (2018).
- c) The generally high quality design, layout and disposition of the scheme, which provides high quality accommodation and amenity for future occupants and does not give rise to any significant amenity issues in terms of overlooking or overshadowing of adjoining developments, together with the fact that the development complies with the standards set out in the Guidelines for Planning Authorities on Sustainable Urban Housing: Design Standards for New Apartments (2022)

The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment (AA):

The Board noted that the proposed development is not directly connected with or necessary to the management of a European Site. The Board noted the Inspector's report in full.

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, scale, and location of the proposed development adjoining the serviced urban area, the nature of the receiving environment, the distances to the nearest European sites and the hydrological pathway considerations, the Natura Impact Statement submitted with the application, the incorporation within the proposal of best-practice standard measures which have not been designed or intended to avoid or reduce any harmful effects of the project on a European Site, the submissions and observations on file, the reports of the planning authority, and the Planning Inspector's report.

In completing the screening for Appropriate Assessment, the Board accepted and adopted the screening assessment and conclusion in the Inspector's report in respect of the identification of the European sites which could potentially be affected, and the identification and assessment of potential significant effects of the proposed development, either individually or in combination with other plans or projects, on these European sites in view of the site's Conservation Objectives.

The Board was satisfied that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the following European Sites

- North-East Irish Sea SPA (004236)
- Baldoyle Bay SPA (004016)
- Howth Head Coast SPA (004113)
- North Bull Island SPA (004006)
- Ireland's Eye SPA (004117)
- Malahide Estuary SPA (004025)
- South Dublin Bay and River Tolka Estuary SPA (004024)
- Lambay Island SPA (004069)
- Rogerstown Estuary SPA (004015)
- Skerries Island SPA (004122).
- Dalkey Island SPA (004172)
- Rockabill SPA (004014)
- Ireland's Eye SAC (002193)
- Rockabill to Dalkey Island SAC (003000)
- Howth Head SAC (000202)
- North Dublin Bay SAC
- South Dublin Bay SAC

, in view of the site's Conservation Objectives.

In relation to the North-west Irish Sea SPA and Baldoyle Bay SAC there is no potential for direct effects. A potential for significant effect was identified in the form of

deterioration of water quality during construction and operation of the proposed development via a weak hydrological pathway.

The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded, taking precautionary approach, that the project individually (or in combination with other plans or projects) could, potentially, have a significant indirect effect on the following European Sites

- Baldoyle Bay SAC
- North-West Irish Sea SPA

in view of the sites' conservation objectives in the absence of mitigation. Appropriate Assessment is therefore required.

Appropriate Assessment Stage 2

The Board was satisfied that a full examination of the potential impacts has been analysed and evaluated using the best scientific knowledge. The potential for significant effects on the following European sites was identified:

- Baldoyle Bay SAC
- North-West Irish Sea SPA

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment of the implications of the proposed development for the above European Sites in view of the site's Conservation Objectives. The Board considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the sites conservation objectives.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Sites.

Having regard to

- (i) the mitigation measures proposed,
- (ii) the scientific information set out in the NIS

the Board concluded that the proposed development individually or in combination with other plans or projects would not adversely affect the integrity of the Baldoyle Bay SAC (000199) and North-West Irish Sea SPA (004236) or any other European site, in view of the sites' Conservation Objectives. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable doubt as to the absence of adverse effects.

Environmental Impact Assessment

The Board completed an environmental impact assessment of the proposed development, taking into account:

- a) The nature, scale, location, and extent of the proposed development;
- b) The Environmental Impact Assessment Report and associated documentation submitted with the application and the appeal response;
- c) The content of the appeals, the reports of the planning authority, and the submissions received from third parties and prescribed bodies; and
- d) The report of the Planning Inspector.

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. 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 Conclusions on the Significant 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:

- **Population and Human Health** – A positive impact with regard to population and material assets due to the increase in housing stock and facilities that would be made available in the area. Construction related disturbance including noise, dust, dirt, and traffic, which would be mitigated by construction management measures including the agreement of a Construction Environmental Management Plan, a Construction Traffic Management Plan, and a Resource and Waste Management Plan.
- **Traffic and Transport** - Potential for moderate short-term negative impacts in terms of construction traffic will be mitigated as part of a construction management plan. There will be no significant negative impact on traffic junctions in the immediate area in the operational phase and any potential impact will be mitigated by way of design and implementation of a Mobility Management Strategy for the development.
- **Biodiversity** - Disruption to birds and bats due to the construction works, lighting, dust, and the loss of vegetation. This will be mitigated by the employment of good practice construction measures to reduce disruption, including pre-construction surveys and monitoring by the project ecologist, and by the design of the proposed scheme (including lighting and landscaping) which will retain and protect important habitats, and features. Impacts on water quality and the aquatic environment as a result of silt laden and contaminated runoff, which will be mitigated by standard good practice construction stage measures and the operational surface water drainage system.
- **Water** - Construction stage impacts on groundwater and surface water quality, which will be mitigated by standard good practice construction stage measures including a Construction Environmental Management Plan. Operational stage

surface water discharges to groundwater including associated downstream impacts on biodiversity, which will be mitigated by the implementation of suitably designed Sustainable Urban Drainage System (SuDS) measures.

- **Air & Climate** – Potential negative effects arising from noise and air during the construction and operational phases, which will be short term in nature and will be mitigated by appropriate construction management and design measures outlined in the relevant section of the EIAR. Operational effects will be longer term but will be mitigated through design and operational practices and are not considered to be significant.
- **Material Assets (Archaeology)** - Disturbance of recorded and unrecorded archaeological features as a result of construction stage excavation and groundworks, which will be mitigated by a range of measures including the retention/protection of important features, further archaeological testing and monitoring, and the recording of archaeological remains.
- **Landscape** – There will be changed views from various locations given the change from a green field site to a high rise residential development. The site is zoned for development and the proposal is not expected to involve the introduction of new or uncharacteristic features into the local or wider landscape character setting, relative to what exists and is under construction in the immediate and wider area. The potential impact will be positive. Changes to the localised landscape character associated with the development of this site, which will be mitigated by the design and layout of the proposed development.
- **Built Heritage** – There is potential for a negative impact on the setting of the Castle Gate, on St. Mary's Church and on the Howth Castle ACA due to the urbanising impact of the proposed development. The site is zoned for development and the proposal is not expected to involve the introduction of new or uncharacteristic features into the local or wider landscape character setting, relative to what exists and is under construction in the immediate and wider area. Taking account of the incorporated design mitigation, no significant adverse operational phase effects are predicted as a result of the proposed development.

The Board is, therefore, satisfied that the proposed development would not have any unacceptable direct, indirect, or cumulative effects on the environment.

Conclusions on Proper Planning and Sustainable Development:

The Board considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the provisions of the Fingal Development Plan 2023 – 2029 , the proposed development would constitute an acceptable density of development in this serviced urban location, would not seriously injure the residential or visual amenities of the area, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of pedestrian and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

- 1) The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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 mitigation measures contained in the submitted Environmental Impact Assessment Report (EIAR), shall be implemented.

Reason: To protect the environment.

- 3) The mitigation measures contained in the submitted Natura Impact Statement (NIS), shall be implemented.

Reason: To protect the integrity of European Sites.

- 4) The disposal of surface water shall comply with the requirements of the planning authority for such works and services. Prior to the commencement of development, the developer shall submit details for the disposal of surface water from the site for the written agreement of the planning authority.

Reason: In the interest of public health.

- 5) Prior to the commencement of development the developer shall enter into a Connection Agreement with Uisce Éireann to provide for a service connection to the public water supply and/or wastewater collection network.

Reason: In the interest of public health and to ensure adequate water/wastewater facilities.

- 6) Prior to the commencement of development on site the applicant is required to engage with DAA/Dublin Airport and with the Irish Aviation Authority to agree any proposals for crane operations (whether mobile or tower crane).

Reason: To maintain safe air navigation.

- 7) Public lighting shall be provided in accordance with a scheme which shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. The scheme shall include lighting along pedestrian routes through open spaces and shall take account of the agreed landscaping plan. Such lighting shall be provided prior to the making available for occupation of any residential unit.

Reason: In the interest of amenity and public safety.

- 8) 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.

- 9) A Construction and Environmental Management Plan (CEMP) shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. The CEMP shall include but not be limited to construction phase controls for dust, noise and vibration, waste management, protection of soils, groundwaters, and surface waters, site housekeeping, emergency response planning, site environmental policy, and project roles and responsibilities.

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

- 10) Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Friday 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.

- 11) 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 for each apartment unit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the agreed waste facilities shall be maintained and waste shall be managed in accordance with the agreed plan. This plan shall provide for screened communal bin stores, the locations and designs of which shall be included in the details to be submitted.

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

- 12) Prior to commencement of development, 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) shall be prepared and submitted to the planning authority for written agreement. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness. 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 reducing waste and encouraging recycling.

- 13) A detailed construction traffic management plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The plan shall include details of arrangements for routes for construction traffic, parking during the construction phase, the location of the compound for storage of plant and machinery and the location for storage of deliveries to the site.

Reason: In the interest of sustainable transport and safety.

- 14)(a) The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths, and kerbs, and the underground car park shall comply with the detailed construction standards of the planning authority for such works and design standards outlined in Design Manual for Urban Roads and Streets (DMURS).

(b) Footpaths shall be dished at road junctions in accordance with the requirements of the planning authority. Details of all locations and materials to be used shall be submitted to, and agreed in writing with the planning authority prior to the commencement of development.

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

- 15)(a) The detail and security arrangement, and management arrangements for the proposed bicycle parking provision, including that of the bicycle lockers, shall be agreed in writing with the planning authority prior to commencement of development.

(b) The development management shall ensure that the cycle parking areas are subject of a funded maintenance regime that ensures that facilities are kept clean, free of graffiti, well-lit and the parking equipment will be properly maintained.

(c) No objects, structures or landscaping shall be placed or installed within the visibility triangle at the vehicular entrance onto the public road, exceeding a height of 900mm; which would interfere or obstruct (or could obstruct over time) the required visibility envelopes.

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

16)(a) The landscaping scheme as submitted to the planning authority shall be carried out within the first planting season following substantial completion of external construction works. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development or until the development is taken in charge by the local authority, whichever is the sooner, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

(b) A suitably qualified Arboricultural Consultant shall be appointed and shall be responsible for tree protection during the course of construction works and to advise the Site Manager. Prior to works commencing the Arborist shall liaise with the Planning Authority to arrange a site visit to inspect tree protection measures and at key project stages thereafter.

(c) Play spaces shall be installed and open for use prior to the occupation of the adjoining apartment blocks under construction.

Reason: In the interest of residential and visual amenity.

17)The developer shall engage a suitably qualified licence eligible archaeologist (licensed under the National Monuments Acts) to carry out pre-development archaeological testing in areas of proposed ground disturbance and to submit an archaeological impact assessment report for the written agreement of the planning authority, following consultation with the National Monuments Service, in advance of any site preparation works or groundworks, including site investigation works/topsoil stripping/site clearance/dredging/underwater works and/or construction works. The report shall include an archaeological impact statement and mitigation strategy. Where archaeological material is shown to be present,

avoidance, preservation in-situ, preservation by record [archaeological excavation] and/or monitoring may be required. Any further archaeological mitigation requirements specified by the planning authority, following consultation with the National Monuments Service, shall be complied with by the developer. No site preparation and/or construction works shall be carried out on site until the archaeologist's report has been submitted to and approval to proceed is agreed in writing with the planning authority. The planning authority and the National Monuments Service shall be furnished with a final archaeological report describing the results of any subsequent archaeological investigative works and/or monitoring following the completion of all archaeological work on site and the completion of any necessary post-excavation work. All resulting and associated archaeological costs shall be borne by the developer.

Reason: To ensure the continued preservation [either in situ or by record] of places, caves, sites, features or other objects of archaeological interest.

- 18) The development hereby permitted shall be carried out and completed at least to the construction standards set out in the Planning Authority's Taking in Charge Policy. Following completion, the development shall be maintained by the developer, in compliance with these standards, until taken in charge by the planning authority.

Reason: To ensure that the development is carried out and completed to an acceptable standard of construction.

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

20) 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 on the land in accordance with the requirements of section 94(4) and section 96(2) and 96(3) (b), (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate has been granted under section 97 of the Act, as amended. Where such an agreement cannot be reached between the parties, the matter in dispute (other than a matter to which section 96(7) applies) shall 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 for the area.

21) 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 acceptable to the planning authority, to secure the reinstatement of public roads which may be damaged by the transport of materials to the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory reinstatement of the public road. 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 that the public road is satisfactorily reinstated, if necessary.

22)(a) The Howth SAAO levy as per Objective 1.6 and Policy 1.6.1 of the Howth SAA Order shall apply. This levy for the proposed development of 135 no. units shall be paid by the developer to Fingal County Council prior to the commencement of construction works.

(b) There is a shortfall in the quantum of public open space generated through the development works of 3,413m² (2,560m² Class 1 and 853m² Class 2). Prior to the commencement of construction works, the developer is required to make up this shortfall by way of a financial contribution in lieu of the Objectives of the Fingal Development Plan (DMSO53).

(c) As street trees are required to be removed for sightline purposes, prior to commencement the Council will calculate and agree a compensation amount with the developer for its removal and to plant a replacement street tree within the local area, as per Fingal's tree policy the 'Forest of Fingal'.

(d) A tree bond of €150,000 shall be lodged with the Council prior to the commencement of development to ensure that all retained trees included in the submitted Arboricultural Report are protected and maintained in good condition throughout the course of development. This bond will be held by Fingal County Council for a period of three years post-construction, which may be extended in the event of possible construction-related defects.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority in respect of public services, which are not covered in the Development Contribution Scheme or the Supplementary Development Contribution Scheme and which will benefit the proposed development.

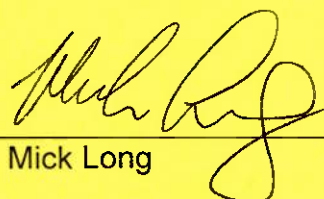
23) The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the 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) Prior to commencement of development the developer shall pay a financial contribution to the planning authority as a special contribution under Section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of works to remove infiltration in the network on approximately 55m of existing wastewater network at Dungriffin Road, Howth, Co Dublin to facilitate the wastewater connection for the proposed development and which specifically benefits the proposed development. The amount of the contribution 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 for determination.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority in respect of public services, which are not covered in the Development Contribution Scheme or the Supplementary Development Contribution Scheme and which will benefit the proposed development.

Board Member


Mick Long

Date: 06/12/2024