

An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2015

Fingal County

Planning Register Reference Number: F15A/0362

An Bord Pleanála Reference Number: PL 06F.246151

APPEAL by Christian Morris of Seagrove, 9 Claremont Road, Howth, Dublin, by Glenkerrin Homes Limited care of McGill Planning Limited of 1st Floor, 7 Fitzwilliam Street Upper, Dublin and by others against the decision made on the 22nd day of January, 2016 by Fingal County Council to grant subject to conditions a permission to the said Glenkerrin Homes Limited in accordance with plans and particulars lodged with the said Council.

PROPOSED DEVELOPMENT: Demolition of existing industrial/commercial buildings (circa 8,162 square metres gross floor area (GFA)). Construction of a mixed-use development as follows: 200 number residential units comprising 145 number apartments within five number blocks (18 number one-bed units; 106 number two-bed units; and 21 number three-bed units, ranging in size from circa 55 square metres to circa 170 square metres). 51 number three to four bed houses ranging in size from circa 180 square metres to circa 258 square metres, four number houses for the traveller community each circa 117 square metres, six number commercial units (retail, restaurants/café, gym) ranging in size from circa 65 square metres to circa 615 square metres (with optional subdivisions) and crèche (circa 227 square metres). Community Centre (circa 1,878 square metres) comprising a sports hall, changing rooms, meeting rooms, coffee shop, gym/studio, crèche, ancillary areas and outdoor sports facilities. Building heights range from one to six storeys (plus mezzanine). 487 number car parking spaces of which 390 are basement/undercroft spaces. 332 number bicycle spaces. Five number vehicular entrances. Two number ESB substations and one number Bord

Gais DRI (circa 39.2 square metres in total). A range of public and semi-public open spaces including a public park, public plaza, residential courtyards and public pedestrian/cyclist routes. De-culverting of the "Bloody Stream" through the site with new riparian strip. All associated site development, services provision, landscaping and boundary treatment works. Total gross floor area of the proposed development is circa 34,500 square metres with circa 13,706 square metres of basement/undercroft area. An EIS (Environmental Impact Statement) and NIS (Natura Impact Statement) will be submitted to the planning authority with the application. All on a site of circa 4.4 hectares comprising the former Techrete and Teeling Motor Company sites, Baltray Park and the pumping station/maintenance depot site, Howth Road, Howth, County Dublin.

DECISION

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

REASONS AND CONSIDERATIONS

The Board had regard, inter alia, to the following:

- (a) the provisions of the Planning and Development Act, 2000, as amended,
- (b) the provisions of the Fingal County Development Plan, 2011 - 2017,
- (c) the Environmental Impact Statement submitted with the application and the EIS addendum submitted in response to the request for further information from the planning authority;
- (d) the Natura Impact Statement submitted with the application and further information response,
- (e) the report of the Board's Inspector, including in relation to potential significant impacts on the environment,
- (f) the planning history of the site,
- (g) the pattern of development in the area, and
- (h) the nature and scale of the development the subject of this application.

Environmental Impact Assessment

The Board considered the Environmental Impact Statement submitted with the application, supported by the further information submitted to the planning authority including the document referred to as EIS addendum and the report, assessment and conclusions of the Inspector with regard to this file and other submissions on file, including the appellant and observers. The Board considered that this information was adequate in identifying and describing the direct and indirect impacts of the proposed development. The Board completed an Environmental Impact Assessment, and agreed with the Inspector in her assessment of the likely significant impacts of the proposed development, and generally agreed with her conclusions on the acceptability of the mitigation measures proposed and residual impacts. The Board adopted the report of the Inspector. The Board concluded that, subject to the implementation of the mitigation measures proposed, the proposed development would not be likely to have significant impacts on the environment.

Appropriate Assessment

The Board agreed with the screening assessment carried out and conclusion reached in the Inspector's report that the European site for which there is a likelihood of significant effects is the Baldoyle Bay Special Area of Conservation and Special Protection Area (site code numbers 0199 and 04016) and concurred with the inspector that the development would not be likely to have a significant effect on the other European sites. The Board considered the Natura impact statement and all other relevant submissions, including the Response to Further Information and the documentation submitted by the appellants and observers, and carried out an appropriate assessment of the implications of the proposed development for this European site in view of the site's Conservation Objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment.

In completing the assessment the Board considered, in particular:-

- (i) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects in the area;
- (ii) the mitigation measures which are included as part of the current proposal;
- (iii) the conservation objectives for the European site set out above.

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 site, having regard to the site's conservation objectives. In overall conclusion, the Board was satisfied that subject to compliance with the mitigation measures proposed the proposed development would not adversely affect the integrity of the European site in view of the site's Conservation Objectives.

Conclusion

It is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the character of the area or the amenities of property in the vicinity, would not have unacceptable impacts on ecology, water quality or the landscape and would be acceptable in terms of traffic safety and convenience. 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, as amended by the further plans and particulars submitted on the 16th day of December, 2015, 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. Notwithstanding the submitted details, prior to commencement of development, the developer shall submit to and agree in writing with the planning authority, full details including drawings, plans and particulars of the following:
 - (a) The footbridge to be provided over the Bloody Stream.
 - (b) Screening to the terraced areas of residential units addressing the eastern elevation of Block 1.
 - (c) The omission of the all-weather pitches from the development;

Reason: In the interest of clarity and orderly development

3. The mitigation measures submitted with the application shall be fully complied with. Prior to any works taking place on site, the developer shall submit to and agree in writing with the planning authority a detailed Construction Management Plan and a Stage 3 Corrective Action Implementation and Aftercare Assessment. Within any submitted plan particular attention shall be made to detailing how the Bloody Stream shall be protected prior to any demolition activity on site and preparatory site clearance work, works to de-culvert and re-align the Stream and works to protect the integrity of the Stream during such works and thereafter, including footbridge construction and works necessary to ensure the stability of the banks.

Reason: To protect against environmental pollution and flooding.

4. Details, including samples as appropriate, of the materials, colours and textures of all the external finishes to the proposed buildings, civic platform and viewing platform shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Variations in the surface texture and palette of the external stone finishes to be employed shall be proposed.

Reason: In the interest of visual amenity.

5. The proposed Retail Units numbers 1a, 1b, 1c, 1d and 2 shall be restricted to that use identified in Class 1, Part 4 of the Planning and Development Regulations, 2001, as amended. No other use shall take place without the prior grant of planning permission by the planning authority or An Bord Pleanála on appeal. None of the units shall be used for the sale of hot food for consumption off the premises.

Reason: To protect the amenities of the area and in the interest of the proper planning and sustainable development of the area.

6.
 - (a) The proposed retail units shall not exceed daily opening hours from 0700 to 2200 hours Monday to Saturdays and between 0800 and 2200 hours on Sundays and Public Holidays.
 - (b) The proposed restaurants shall be open only from 1000 to 2400 hours Mondays to Saturdays and between 1000 and 2300 hours Sundays and Public Holidays.
 - (c) The proposed crèche shall be open only from 0700 to 1900 hours Mondays to Fridays and shall not be open on Saturdays, Sundays or Public Holidays.
 - (d) The proposed gym shall be open only from 0600 to 2200 hours Mondays to Saturdays and from 0900 to 2000 hours on Sundays and Public holidays.
 - (e) Goods deliveries to all commercial uses shall not be permitted between the hours of 2200 and 0700.

Reason: In the interest of residential amenity.

7. The site shall be landscaped in accordance with the details received by the planning authority on the 16th day of December, 2015. All planting, seeding and earthworks shown on the said plan shall be carried out in the first planting season following completion of development.

Reason: In the interest of visual amenity.

8. Notwithstanding the phasing details submitted, prior to the commencement of any development on site, a detailed and comprehensive Development Phasing Plan clearly detailing the proposed phasing of the development, reflecting any amendments by way of condition, and including demolition, construction and operation phases shall be submitted to and agreed in writing, with the planning authority, Such a plan shall incorporate the following elements within the phasing:

- (a) Social Housing Units, which shall be delivered in accordance with the provisions of the Part V agreement entered into, may precede other phases of development subject to the necessary enabling and ancillary works and facilities being in place. Where it is not proposed to provide block 7, these social housing units shall be provided as part of the first phase elsewhere within the development.
- (b) The development shall proceed strictly in accordance with the approved Development Phasing Plan, unless otherwise agreed in writing with the planning authority.

Reason: To ensure the development of the site proceeds in an orderly and co-ordinated manner”

- 9. Water supply and drainage arrangements, including the attenuation and disposal of surface water and provision for existing foul sewer connections within the site, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

- 10. The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs and the underground car park shall be in accordance with the detailed standards of the planning authority for such works and the requirements of the Transportation Planning Section shall be agreed in writing with the planning authority in respect of the basement car park, set-down parking and delivery bays and pedestrian crossing and island.

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

11. Public Lighting shall be provided in accordance with a scheme, (which shall include lighting along pedestrian routes through open spaces), details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. 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.

12. 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. All existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interest of visual and residential amenity.

13. Proposals for an estate/street name, house/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 house/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 placenames for new residential areas.

14. The areas of public open space shown on the lodged plans shall be reserved for such use. These areas shall be levelled, soiled, seeded and landscaped in accordance with the detailed requirements of the planning authority. This work shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open spaces by the developer until taken in charge by the local authority.

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

15. Prior to commencement of development:

- (a) A management company shall be established by the developer and membership of this company shall be compulsory for all persons owning property in the development (whether or not there is a single owner of the entire development or individual owners of the residential units).
- (b) A separate management company shall also be established by the developer at this stage regarding the operation of the apartment units identified in Block 3. Membership of this company shall be compulsory for all persons owning property in Block 3 (whether or not there is a single owner or the entire Block or individual owners of the residential units).

Details of both companies and/or any other management company necessary to ensure appropriate management of the development shall be submitted to, and approved in writing by the planning authority prior to first occupation of any units within the development.

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

16. The developer, landowner and/or management company as appropriate, shall at any time facilitate and ultimately provide for any subsequent works to allow for a direct pedestrian/cycle link to be made between the proposed foot and cycle path at the north-east corner of the site to the existing footpath that links to the Bloody Stream Public House to the east of the site.

Reason: To further enhance permeability and links between the development and centre of Howth.

17. Prior to the first occupation of the development, the developer shall agree following consultation with the planning authority, a timetable for and details of a suitable piece of public art to be installed at an agreed location on site.

Reason: In the interest of public amenity.

18. Prior to the opening of the development, a Mobility Management Strategy shall be submitted to and agreed in writing with the planning authority. This shall provide incentives to encourage the use of public transport, cycling, walking and car pooling by staff employed in the development and reduce and regulate the extent of staff parking. The mobility strategy shall be prepared and implemented by the management company for all businesses within the development. Details to be agreed with the planning authority shall include the provision of centralised facilities within the development for bicycle parking, shower and changing facilities associated with the policies set out in the strategy.

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

19. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 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.

20. The construction of the development shall be managed in accordance with a Construction 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 noise management measures, railway safety and offsite disposal of construction/demolition waste including any excess soil arising from the proposed excavation of the site.

Reason: In the interest of public safety and residential amenity.

21. A plan containing details of 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 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: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

22. 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. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

23. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that 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,
 - (b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and
 - (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

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

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

24. 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.

25. 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.

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

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

27. The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2) (c) of the Planning and Development Act 2000, as amended, in respect of the shortfall in open space proposed on site and the provision of the proposed community centre. 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. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

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

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this day of 2016.