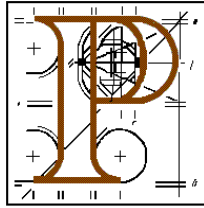


# An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2016

**Dún Laoghaire–Rathdown County**

**Planning Register Reference Number: D16A/0465**

An Bord Pleanála Reference Number: PL 06D.247267

**APPEAL** by Mount Merrion Residents Association care of Doyle Kent Planning Partnership Limited of 71 Carysfort Avenue, Blackrock, County Dublin and by Balark Investments Limited care of Brock McClure of 63 York Road, Dún Laoghaire, County Dublin against the decision made on the 22<sup>nd</sup> day of August, 2016 by Dún Laoghaire-Rathdown County Council to refuse permission to the said Balark Investments Limited for the proposed development.

**PROPOSED DEVELOPMENT:** Demolition of the former Oatlands Monastery building (circa 1,682 square metres) and other derelict buildings on the site (circa 101 square metres), demolition of the existing single storey dwelling at number 2 Cherrygarth (circa 157 square metres), and the construction of 63 residential units. The development will be accessed through a new entrance at number 2 Cherrygarth.

Residential development will comprise nine houses, 24 duplexes and 30 apartments. These are broken down as follows: one three-bed detached two-storey dwelling (circa 8.3 metres in height) to replace the demolished dwelling at number 2 Cherrygarth, eight number 2.5 storey 4/5 bed detached units (between circa 9.9 to 10.13 metres in height), 12 number two-bed duplex units and 12 number three-bed duplex units of three storeys (circa 12.8 to 15.8 metres in height) with terraces and balconies on the north and south elevations, two apartment blocks of four storeys (circa 13.5 metres in height) with four number one-bed units, 20 number two-bed units and six number three-bed units with balconies on the north, east and south elevations.

The development will also include 18 on-curtilage car parking spaces associated with the detached dwelling units, 43 at-grade car parking spaces associated with the duplex units, 47 car parking spaces at basement level of the apartment block (circa 1,808 square metres), 2,929 square metres of open space including a children's play area and all associated site development works above and below ground including site services, all on a site of circa 1.12 hectares at Oatlands Monastery, to the rear of Oatlands College, Mount Merrion, Blackrock, County Dublin and at number 2 Cherrygarth, Mount Merrion, Blackrock, County Dublin.

## **DECISION**

**GRANT permission for the above proposed development in accordance with the plans and particulars lodged with the said council, 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

In coming to its decision the Board had regard, inter alia, to:

- The relevant national planning and transport guidance documents including, inter alia:
  - Guidelines for Planning Authorities on ‘Sustainable Residential Development in Urban Areas (Department of Environment, Heritage and Local Government, May 2009),
  - Design Manual for Urban Roads and Streets (Department of Transport, Tourism and Sport, and Department of Environment, Communications and Local Government, April 2013), and
  - Rebuilding Ireland, Action Plan for Housing and Homelessness, (Department of Housing, Planning, Community and Local Government, July 2016);
- The provisions of the Dún Laoghaire-Rathdown County Development Plan 2016-2022 including, inter alia:
  - the ‘A’ zoning objective on the site which seeks to ‘protect and improve residential amenity’ and where residential development is open to consideration;
  - Policy RES 3 in which it is stated “where a site is located circa 1 kilometre pedestrian catchment of a rail station, LUAS line, BRT, Priority 1 Quality Bus corridor and/or 500 metres of a Bus Priority Route, and/or 1 kilometre of a Town or District Centre, higher densities at a minimum of 50 units per hectare will be encouraged”;
  - Policy RES 5 regarding institutional lands in which it is stated that ‘in the development of such lands, average net densities should be in the region of 35-50 units per hectare. In certain instances, higher densities will be allowed where it is demonstrated they can contribute towards the objective of retaining the open character and/or residential amenities of the lands’;

- the objective to 'protect and preserve Trees and Woodlands' at this location; and
- the Height Strategy set out in Appendix 9 which sets out the circumstances in which tall buildings could be accommodated within the built environment;
- the design, nature and extent of the proposed development as submitted to the planning authority;
- the location of the site within comfortable walking distance of the N11 Quality Bus Corridor and the Stillorgan Shopping Centre (a Town and District Centre);
- the pattern of development in the area;
- all submissions and documentation on file; and
- the report of the planning Inspector.

### **Appropriate Assessment Screening**

The Board noted that the proposed development is not directly connected with or necessary to the management of a European Site.

In completing the screening for Appropriate Assessment, the Board accepted and adopted the Inspector's screening assessment and conclusion, as set out 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 the potential likely significant effects of the proposed development, either individually or in combination with other plans or projects, on these European sites in view of the sites' Conservation Objectives. The Board did not consider that there were any significant differences between the scheme amended at appeal stage and the original scheme for the purposes of carrying out a screening for Appropriate Assessment and is satisfied that the development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on any European site, in view of the sites' Conservation Objectives.

## **Environmental Impact Assessment Screening**

The Board had regard to the nature and extent of the development proposed, the documentation on file including submissions from the parties, the planning authority reports and the report of the Board's Inspector.

The Board examined the proposal in light of Schedule 5 of the Planning and Development Regulations 2000, as amended, and decided that no mandatory Environmental Impact Statement was required. The Board further assessed the proposed development in light of the criteria set out in Schedule 7 of the said Regulations and considered:

- the characteristics of the proposed development including the size of the housing scheme which is significantly sub-threshold (63 residential units versus a threshold of 500 dwelling units under Infrastructure Projects 10(b)(i) Part 2, Schedule 5, 'Development for the Purposes of Part 10') and considered that the development would not be likely to have significant effects on the environment in combination with other proposed development;
- the location of the proposed development on existing zoned and serviced land outside and removed from any designated European Site; and
- the characteristics of the potential impacts of the proposed development which would principally arise from noise and traffic at demolition and construction stage and from potential impacts on residential amenity and the amenities of the area at operational stage;

and concluded that the proposed development would not be likely to have significant effects, direct or indirect, on the environment alone or in cumulation with other proposed plans or projects. The Board concluded that the preparation of an environmental impact statement is not required.

## **Proper Planning and Sustainable Development Conclusion**

It is considered that, subject to compliance with the conditions set out below, the proposed development would deliver an acceptable standard and density of residential development in close proximity to local retail services, facilities and a public transport corridor, would not seriously injure the visual or residential amenities of the area, would deliver a satisfactory level of public and private open space to future residents of the development, would be acceptable in terms of traffic safety and convenience, would not be prejudicial to public health, would not seriously injure the built or sylvan character of the area, and would not seriously injure or interfere with the character of any protected structure or historic monument. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

The Board considered the Inspector's report and her recommendation to refuse permission for the 'Revised Design Option' submitted at appeal stage on the grounds that she was not satisfied that there was;

'sufficient information in relation to proposals to alter the ground levels within the site in order to meet the drainage requirements of Dún Laoghaire-Rathdown County Council available on file in relation to sources, nature and type of infill material to be used together with haulage routes to adequately assess the impact of this application'.

In deciding not to accept the Inspector's recommendation in respect of the 'Revised Design Option', the Board, in considering the original 63 unit development and all relevant associated documentation, was satisfied that there was enough information on proposed site levels to adequately assess the scheme. The Board considered that the proposed approach to filling on the site, which arises from the need to connect to the nearest foul public sewers with capacity to accommodate the development, was acceptable. The Board further considered that the materials required to raise ground levels, including the source, nature and type of infill material to be used together with haulage routes, are matters that could be adequately addressed by means of a construction management plan condition. The Board considered that the level of fill required would give rise to limited additional short term localised impacts during construction stage, which is not unusual for a scheme of this nature, and would be acceptable.

In considering the planning authority's reason for refusal of planning permission the Board did not concur that the proposed development would materially contravene an objective of the Plan, that is, 'to preserve Trees and Woodlands'. In coming to this conclusion the Board noted the numerous tree protection symbols on Map 2 of the County Development Plan in the area of the site and considered that the objective lacked specificity in respect of the number, quality and location of trees to be preserved. The Board also had regard to the applicant's general compliance with the requirements set out in Section 8.2.8.6, 'Trees and Hedgerows', of the Development Plan, which included the submission by the applicant of an arboricultural assessment and proposals for commensurate replacement planting.

Notwithstanding the Board's conclusion that no material contravention arises the Board went on, in the interests of completeness, to consider the provisions of Section 37(2)(b) of the Planning and Development Act 2000 and considered that:

- Having regard to the objectives to preserve trees and protect and/or improve residential amenity and policies in respect of densification in appropriate locations (policy Res 3) and densities on institutional lands (policy Res 5) that there are conflicting objectives in the development plan and the objectives are not clearly stated insofar as the development is concerned; and
- Permission for the proposed development should be granted having regard to the 'Guidelines for Planning Authorities' on Sustainable Residential Development in Urban Areas' (Department of Environment, Heritage and Local Government, May 2009) which are supportive of the principles of increased residential density in appropriate locations.

The Board concluded, therefore, having regard to Section 37(2)(b)(ii) and (iii) of the Act, that it was not constrained from granting planning permission in this case.

## 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. Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

3. The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs, shall comply with the detailed standards of the planning authority for such road works.

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

4. 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 unit.

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



5. 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.

6. 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. No advertisements/marketing signage relating to the names of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed names.

**Reason:** In the interest of urban legibility.

7. The areas of public open space shown on the lodged plans shall be reserved for such use and shall be levelled, contoured, soiled, seeded, and landscaped in accordance with the detailed requirements of the planning authority.

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

8. 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.

- 9. 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 hours of working, noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interests of public safety and residential amenity.

- 10. 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.

11. (a) The communal open spaces, including hard and soft landscaping, car parking areas and access ways, communal refuse/bin storage and 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 management company contract, and drawings/particulars describing the parts of the development for which the 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.

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

12. 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.

13. 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 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.

14. 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.

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

**Dated this            day of            2017.**