



An
Bord
Pleanála

Board Order
PL 06F.248584

Planning and Development Acts 2000 to 2017

Planning Authority: Fingal County Council

Planning Register Reference Number: F16A/0511

Appeal by Niall Melvin of Spanish Point, Mart Lane, Foxrock, Dublin and by Barbara and Killian Nolan of “Baros”, Malahide Road, Kinsealy, County Dublin against the decision made on the 3rd day of May, 2017 by Fingal County Council to grant subject to conditions a permission to O’Flynn Construction Company Limited care of Tom Phillips and Associates of 80 Harcourt Street, Dublin in accordance with plans and particulars lodged with the said Council:

Proposed Development: Construction of a residential and childcare scheme to consist of the demolition of “Springfield” (197.8 square metres) and the construction of a scheme comprising: 82 number residential units (consisting of 12 number four-bed, two-storey houses (two number detached units and 10 number semi-detached units); 55 number three-bed, two-storey houses (31 number semi-detached units and 24 number terrace units); 14 number two-bed houses (seven number two-storey terrace units, five number dormer terrace units, one number semi-detached unit and one number terrace bungalow); one number one-bed terrace bungalow); and a one and part-two-storey childcare facility (measuring 178 square metres). The development will also consist of: car parking provision; vehicular and pedestrian access and egress points via Chapel Road (with associated works to Chapel Road comprising the provision of a cycle path, footpath and grass verge); provision of

internal routes; provision of a surface water drain on Chapel Road and Kinsealy Lane; partial replacement of an existing foul sewer line on Chapel Road and Kinsealy Lane; diversion of an existing foul sewer; sustainable urban drainage systems including swales/stone infiltration trenches, detention basins, permeable paving, and attenuation tanks; hard and soft landscaping works including changes in levels, boundary treatments and lighting; and all associated site excavation and development works above and below ground, all on a site of approximately 3.65 hectares at Chapel Road and Kinsealy Lane (which includes agricultural lands, a residential dwelling ("Springfield") and a strip of land along Chapel Road and Kinsealy Lane, Kinsealy, County Dublin, as revised by the further public notice received by the planning authority on the 7th day of April, 2017.

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

In coming to its decision the Board had regard to the ‘RV’ zoning of the site and to the provisions of the Fingal Development Plan 2017 – 2023, to the pattern of existing development in the area, the nature, scale and design of the proposed development, the “Urban Design Manual - A Best Practice Guide”, issued by the Department of the Environment, Heritage and Local Government in May 2009 and the “Design Manual for Urban Roads and Streets” (DMURS), issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government in March 2013.

Appropriate Assessment Screening Stage 1.

The Board noted the Appropriate Assessment Screening Report submitted by the applicant and the Appropriate Assessment Screening determination carried out by the Inspector. The Board concurred with the Inspector’s determination, and adopted her conclusions and recommendations in this regard. The Board was therefore satisfied, having regard to the nature, location and scale of the subject development, and in the light of the mitigation measures set out in the applicant’s Screening Report, which would constitute normal construction practice, that the construction of the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects would not be likely to have a significant effect on Malahide Estuary Special Area of Conservation (000205) and Special Protection Area (004025); Ireland’s Eye Special Area of Conservation (002193); Ireland’s Eye Special Protection Area (004117); North Dublin Bay Special Area of Conservation (000206); North Bull Island Special Protection Area (04006); Rockabill to Dalkey Islands Special Area of Conservation (003000); South Dublin Bay and River Tolka Estuary Special Protection Area (04024); South Dublin Bay Special Area of Conservation (000210); Rogerstown Estuary Special Area of Conservation (000208) and Special Protection Area (004015); Howth Head Special Area of Conservation (000202) and Howth Head Coast Special Protection Area (004113); and Lambay Island Special Area of Conservation (000204) and Special

Protection Area (004069) in light of the site's Conservation Objectives and that a Stage 2 Appropriate Assessment is not, therefore, required.

It is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the amenities of the area or of property in the vicinity, would respect the existing character of the area and would be acceptable in terms of traffic and pedestrian safety and convenience and public health and would not conflict with the objectives of the Fingal Development Plan 2017-2023. 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 30th day of March 2017, 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. (a) Prior to the commencement of development, the developer shall submit, for the written agreement of the planning authority, detailed proposals for the signalisation and upgrade of the junction of the Malahide Road (R107) and Chapel Lane in accordance with drawing number DOBA1536-C-017 (Option 2).

- (b) No dwelling shall be occupied on foot of this permission until such time as the signalisation of the junction of the Malahide Road (R107) and Chapel Lane is completed and operational to the satisfaction of the planning authority.

Reason: To ensure that there is an adequate level of road infrastructure to support the proposed development.

- 3. The development shall be carried out on a phased basis based on the availability of public water/waste water services.

- (a) The first phase shall consist of not more than 43 dwelling units, together with their associated site development works. Prior to commencement of any development on the overall site, details of the first phase shall be submitted to, and agreed in writing with, the planning authority.

- (b) Work on any subsequent phases shall not commence until such time as the written agreement of the planning authority is given to commence the next phase. Details of further phases shall be as agreed in writing with the planning authority.

Reason: To ensure the timely provision of services, for the benefit of the occupants of the proposed dwellings.

- 4. (a) Not more than 75 residential units shall be made available for occupation before completion of the childcare facility unless the developer can demonstrate to the written satisfaction of the planning authority that a childcare facility is not needed.

- (b) Prior to the commencement of development, the developer shall submit, for the written agreement of the planning authority details of the set-down area for the proposed childcare facility.

Reason: To ensure that childcare facilities are provided in association with residential units and in the interest of residential amenity and traffic safety.

- 5. Detailed measures in relation to the protection of bats shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. These measures shall be implemented as part of the development.

Reason: In the interest of wildlife protection.

- 6. 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) Employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works.
- (b) Should archaeological material be found during the course of monitoring, the Archaeologist may have work on the site stopped, pending a decision as to how best to deal with the archaeology. The developer shall be prepared to be advised by the Heritage and Planning Division of the Department of Arts, Heritage and the Gealtacht with regard to any necessary mitigation action (for example preservation in situ, or excavation) and should facilitate the recording of any material found.

- (c) The planning authority and the Heritage and Planning Division of the Department of Arts, Heritage and the Gaeltacht shall be furnished with a report, within four weeks of the completion of ground works, describing the results of the monitoring.

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.

7. The proposed dwellings shall be provided with noise insulation to an appropriate standard, having regard to the location of the site within the Outer Airport Noise Zone, and in accordance with the measures set out in the Noise Impact Assessment submitted with the application.

Reason: In the interest of residential amenity.

8. 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 submitted landscaping details and 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 space by the developer until taken in charge by the local authority. When the estate is taken in charge, the open spaces shall be vested in the planning authority, at no cost to the authority, as public open space.

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

9. Proposals for a street name/house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all street signs and house numbers shall be provided in accordance with the agreed scheme. 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.

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

Reason: In the interest of visual amenity.

11. Water supply and drainage arrangements, including the attenuation and disposal of surface water and provision for 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.

12. 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.

13. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.

Reason: In the interests of amenity and public safety.

14. 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 interests of visual and residential amenity.

15. Site development and building works shall be carried out only between the hours of 0800 and 1900 from Mondays to Fridays inclusive, between the hours of 0800 and 1400 on Saturdays and not at all on Sundays, Bank or 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.

16. 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.

17. 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.

18. 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.

19. 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 in respect of costs to be incurred by the planning authority in connection with the signalisation and upgrade of the junction of the Malahide Road (R017) and Chapel Road. 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.

