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**Planning and Development Acts 2000 to 2017**

**Planning Authority: Dublin City Council**

**Planning Register Reference Number: 2925/17**

**Appeal** by Jelena Vasic of 303 Blackhorse Avenue, Navan Road, Dublin and by others against the decision made on the 20<sup>th</sup> day of November, 2017 by Dublin City Council to grant subject to conditions a permission to Andre McQuaid, Claudine Healy and Edith Wynn care of Ceardean Limited of D8 Studios, 9 Dolphins Barn, South Circular Road, Dublin in accordance with plans and particulars lodged with the said Council:

**Proposed Development:** Removal of existing outbuilding structure, the construction of a four-storey apartment development, consisting of nine number two-bedroom and two number three-bedroom apartments, which include balconies to the north, south east and west elevations with 14 number car parking spaces, covered bike storage areas, refuse store, new vehicular access from Blackhorse Avenue, entrance gates and amendment to the existing wall to allow for entrance, pedestrian access and associated landscaping and site works, all at Blackhorse Avenue, bounding the wall of Phoenix Park (a protected structure), 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**

Having regard to the zoning objective, the pattern of development in the area, the design, layout and scale of the development, and the historic setting and boundary with the Phoenix Park, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

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 screening assessment and conclusion carried 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 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 European Site Number 000206 (North Dublin Bay Special Area of Conservation), Number 004006 (North Bull Island Special Protection Area), Number 004024 (South Dublin Bay and River Tolka Estuary Special Protection Area), Number 000210 (South Dublin Bay Special Area of Conservation), or any other European Site, in view of the sites' Conservation Objectives.

## **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 24th day of October 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. The proposed development shall be amended by the omission of an intermediate floor so that it is a three-storey building. Prior to commencement of development, revised drawings reflecting this requirement shall be submitted to, and agreed in writing with, the planning authority.

**Reason:** In the interests of visual amenity and the residential amenity of nearby properties.

3. Details of revised external finishes consisting of brick, stone and glazing which respect the local character and distinctiveness of this site adjacent to the Phoenix Park including details of the materials, colours and textures of all external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. A panel of the proposed finishes shall be placed on site to enable the planning authority to adjudicate on the proposals.

**Reason:** In the interests of orderly development and the visual amenities of the area.

4. The developer shall employ a suitably qualified archaeologist prior to the commencement of development to assess the site and monitor all site development works, to advise in relation to construction methodology, as it pertains to the wall of the Phoenix Park, and to make appropriate recommendations in relation to mitigation. If, during the course of site works, archaeological material is discovered, the City Archaeologist shall be notified immediately. It is obligatory under the National Monuments (Amendment) Act 1994 that such is brought to the attention of the National Monuments Service, Department of Culture, Heritage and the Gaeltacht, and the National Museum of Ireland. In the event of an archaeological find on site, the City Archaeologist (in consultation with the National Monuments Service, Department of Culture, Heritage and the Gaeltacht) shall determine the further archaeological resolution of the site.

**Reason:** In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

5. 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 include details for the protection of the boundary wall of the Phoenix Park during construction, and details of intended construction practice for the development, including noise management measures and off-site disposal of construction/demolition waste.

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

6. The developer shall comply with the requirements of the planning authority in relation to works on the public road and the developer shall submit the following:
- (a) a project traffic management plan for all stages of construction traffic, which shall be agreed in writing with the planning authority before demolition, excavation and construction commences. The plan shall detail access arrangements for labour, plant and materials and shall indicate the locations of plant and machine compound,
  - (b) a minimum of seven number Sheffield style cycle parking stands shall be provided within the site. Cycle parking shall be secure, conveniently located, sheltered and well lit, and
  - (c) the design of the proposed new boundary wall and railing along the frontage of the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

**Reason:** In the interests of traffic safety and orderly development.

7. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. In addition, the following measures shall be complied with:
- (a) All proposed flood risk mitigation measures and recommendations as outlined in a Flood Risk Assessment Report dated October 2017 by Tygro Consulting Engineers Limited shall be implemented.

- (b) There are existing public sewers running through the site. A clear distance of three metres shall be maintained between sewers and all structures on site. The exact location of this pipeline must be accurately determined on site prior to commencement of construction. No additional loading shall be placed on this sewer. Any damage shall be repaired at the developer's expense.

**Reason:** In the interest of public health.

8. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

**Reason:** To protect the residential amenities of property in the vicinity and the visual amenities of the area.

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

10. (1) 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 waste shall be managed in accordance with the agreed plan.
- (2) 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:** In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

11. 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.

12. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company, or by the local authority in the event of the development being taken in charge. Detailed proposals in this regard shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To ensure the satisfactory completion and maintenance of this development.

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 of roads, footpaths, watermains, drains, 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 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 of the development.

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.

15. The developer shall pay to the planning authority a financial contribution in lieu of open space 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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**John Connolly**

**Member of An Bord Pleanála**

**duly authorised to authenticate  
the seal of the Board.**

**Dated this            day of            2018.**