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**Planning and Development Acts 2000 to 2019**

**Planning Authority: Dún Laoghaire-Rathdown County Council**

**Planning Register Reference Number: D18A/0929**

**Appeal** by Bartra Property Limited care of McGill Planning of 45 Herbert Lane, Dublin against the decision made on the 23<sup>rd</sup> day of November, 2018 by Dún Laoghaire-Rathdown County Council to refuse for the proposed development.

**Proposed Development:** Demolition of the existing two-storey dwelling 'Maple Tree House' (circa 289 square metres) and redevelopment of the overall site to provide a total of 26 number residential units, comprising 19 number apartments (four number one-bed, 14 number two-bed, and one number three-bed ranging in size from circa 67.3 square metres to circa 156.3 square metres) within three number two to four storey blocks, and seven number two to three storey houses (ranging in size from circa 110 square metres to circa 170 square metres) comprising two number two-bed, semi-detached houses and five number three-bed, terraced houses. ESB substation (circa 12 square metres), all associated site development works, services provision, car parking, cycle parking, bin stores, open space, landscaping and boundary treatment works on a site of circa 0.6 hectares comprising the former residences of 'Yonder', Ulverton Road and 'Maple Tree House', Bulloch Harbour, Dalkey, 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**

In coming to its decision, the Board had regard to the following:

- the location of the site on serviced land, within an established residential area on lands with zoning objective A, which seeks to 'To protect and/or improve residential amenity', in the Dún Laoghaire-Rathdown County Development Plan 2016-2022, and where residential development is permitted,
- the policies set out in the development plan,
- the Rebuilding Ireland Action Plan for Housing and Homelessness 2016,
- the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas and the accompanying Urban Design Manual – a Best Practice Guide, issued by the Department of the Environment, Heritage and Local Government in May 2009,

- the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued by the Department of the Housing, Planning and Local Government in March 2018,
- the Planning System and Flood Risk Management Guidelines for Planning Authorities (including the associated Technical Appendices), issued by the Department of the Environment, Housing and Local Government in November 2009,
- the Urban Development and Building Heights, Guidelines for Planning Authorities, issued by the Department of the Housing, Planning and Local Government in December, 2018,
- the Architectural Heritage Protection, Guidelines for Planning Authorities, issued by the Department of Arts, Heritage and the Gaeltacht in October, 2011,
- the nature, scale and design of the proposed development,
- the availability in the area of a wide range of social, community and transport infrastructure,
- the pattern of existing and permitted development in the area,
- the planning history within the area,
- the submissions and observations received, and
- the report of the Inspector.

It is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable infill residential development in this location, would not seriously injure the residential or visual amenity of the area, would be acceptable in terms of the residential amenity of future occupants, would not detract from the character of the area, would be acceptable in terms of 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.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board was satisfied that the proposed development would be in accordance with the zoning objective for the site, would be consistent with national and local planning policy, would subject to compliance with the conditions attached, be acceptable in terms of separation distances to site boundaries, would not seriously injure residential amenities in terms of overlooking or overbearing, and would not constitute overdevelopment of the site. Furthermore, the Board considered that the amendments proposed in the first party appeal are not material and new notices are not required to be published.

### **Appropriate Assessment Screening**

The Board completed an Appropriate Assessment Screening exercise in relation to the potential effects of the proposed development on designated European Sites, taking into account the nature, scale and location of the proposed development within a zoned and serviced urban area, the Appropriate Assessment Screening Report submitted with the application, and the Inspector's report and submissions on file. In completing the screening exercise, the Board adopted the report of the Inspector and concluded that, by itself or in combination with other development in the vicinity, the proposed development would not be likely to have a significant effect on any European

Site in view of the sites' conservation objectives, and that a Stage 2 Appropriate Assessment is not, therefore, required.

## 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 received by An Bord Pleanála on the 20<sup>th</sup> day of December, 2018, 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 as follows:
  - (a) Unit H shall be omitted, and the flat roof of single storey units type G shall be sedum green roof and shall be accessible for maintenance purposes only.
  - (b) All windows on the north and south elevations of Apartment Block A shall be fitted with obscured glass.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

3. Permission is granted for 18 apartments and six houses only.

**Reason:** In the interest of clarity.

4. The materials, colours and finishes of the authorised buildings, the treatment of surfaces and boundaries within the development and the landscaping of the site shall be in accordance with the details submitted with the application, unless variations are required to comply with the conditions of this permission or the prior written agreement of the planning authority has been obtained for minor departures from the submitted details.

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

5. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

**Reason:** In the interest of public health, flood defence and to ensure a satisfactory standard of development.

6. (a) All foul sewage and soiled water shall be discharged to the public foul sewer.  
  
(b) Only clean, uncontaminated storm water shall be discharged to the surface water drainage system.

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

7. 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 and for the ongoing operation of these facilities 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:** To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

8. Site development and building works shall be carried only out between 0800 to 1900 hours 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 amenities of property in the vicinity.

9. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site. In this regard, ducting shall be provided to facilitate the provision of broadband infrastructure within the proposed development.

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

10. 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 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.

11. Prior to commencement of development, the developer shall submit a detailed badger conservation plan to the planning authority for agreement. This shall include details of the methodology for preserving the sett within the site, preserving the access from the sett to foraging grounds, and for the prevention of disturbance during badger breeding season. A badger specialist shall be engaged by the developer to supervise the implementation of the proposed measures.

**Reason:** In the interest of wildlife protection.

12. 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 carry out site testing and monitor all site investigations and other excavation works,
- (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 (in situ or by record) of any remains that may exist within the site.

13. 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 and off-site disposal of construction/demolition waste.

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

14. Prior to commencement of development, the developer shall submit a construction and demolition waste management plan to the planning authority for agreement 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. This 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.

**Reason:** In the interest of orderly development and sustainable waste management.

15. (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.

16. 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.

17. 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, public open space and other services required in connection with the development, coupled with an agreement empowering the planning 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 the Board for determination.

**Reason:** To ensure the satisfactory completion of the development.

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

**Dated this            day of            2019.**