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**Planning and Development Acts 2000 to 2019**

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

**Planning Register Reference Number: D18A/0763**

**Appeal** by Terry and Ernie Richardson and others care of 10 Watermint, Old Bray Road, Cabinteely, Dublin and by the Cabinteely and District Residents Association of Cedar Lodge, Brennanstown Road, Dublin against the decision made on the 24<sup>th</sup> day of May, 2019 by Dún Laoghaire-Rathdown County Council to grant subject to conditions a permission to Brennanstown Co-Ownership care of IMG Planning Limited of 75 Fitzwilliam Lane, Dublin in accordance with plans and particulars lodged with the said Council:

**Proposed Development:** Construction of a 34 number unit residential development comprising a terrace of 10 number three-storey three bedroom houses (ranging from 124.58 to 125.17 square metres) with two number surface car parking spaces each; 13 number two bedroom apartments (ranging from 71.7 to 120 square metres) and 11 number duplex apartments (one number two bedroom [88 square metres] and 10 number three bedroom [ranging from 121 to 146.7 square metres]) in two number blocks - a three-storey block along the Old Bray Road frontage and a two/three-storey block along the Brennanstown Road frontage; the provision of a landscaped courtyard incorporating internal access routes, communal open space, children's play area, 24 number surface car parking spaces (including two

number accessible parking spaces), 84 number covered cycle parking spaces, two number motorcycle parking spaces, an electricity substation and bin storage building; the construction of a new vehicular and pedestrian access to the site from Old Bray Road and one number pedestrian entrance from Brennanstown Road and all other site works above and below the ground required to facilitate the development, including the installation of photovoltaic panels on the apartment block and houses and the formation of eight number openings in the existing boundary wall on the Old Bray Road and Brennanstown Road frontages, all on a 0.55 hectare site on the western side of the junction of Old Bray Road and Brennanstown Road, Cabinteely Village, Dublin. The proposed development was revised by further public notices received by the planning authority on the 4th day of December, 2018 and the 29th day of April, 2019.

## **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 provisions of the Dún Laoghaire-Rathdown County Council County Development Plan 2016-2022 and the zoning of the site for residential purposes, to the location of the site in an established residential area and to the nature, form, scale and design of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area. 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 4<sup>th</sup> day of December, 2018 and by the clarification of further information, plans and particulars received on the 29<sup>th</sup> day of April, 2019, 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. This permission is for 34 number residential units in the form of 10 number three-storey houses, 13 number two bedroom apartments and 11 number duplex apartments. The apartment block addressing the Old Bray Road shall be set back by one metre from the eastern boundary as indicated on drawing number CAB-P-003 -Rev A – Proposed Site Layout Plan and drawing number CAB-P-005 – Rev K – Proposed Ground Floor Plan both received by the planning authority on the 7<sup>th</sup> day of August, 2018.

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

3. Prior to commencement of development, full details of the proposed external design/finishes in the form of samples and on-site mock ups shall be submitted to and agreed in writing with, the planning authority. These details shall include photomontages, colours, textures and specifications.

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

4. Prior to commencement of development, the following details shall be submitted to and agreed in writing with, the planning authority:
  - (a) Full details with regard to the proposed road works to be carried out on the Brennanstown Road and Old Bray Road. These works shall include improvements to the public footpath, any resurfacing works and any required relocation/adjustment of services, cabling, chamber covers, signage and street furniture. Any existing natural stone kerbing that forms part of the existing footpath shall be salvaged and shall be incorporated into resurfaced and/or widened section of public footpath.

- (b) All works to be carried out on the public road/footpath shall be at the developer's expense to meet the Dún Laoghaire-Rathdown County Council's 'Taking-in-Charge' requirements and all to the satisfaction of the Municipal Services Department.
- (c) Full details of measures necessary to ensure the protection of the boundary wall along the Brennanstown Road. Such details shall be prepared by a suitably qualified conservation specialist.

**Reason:** In the interest of traffic and pedestrian safety, and in the interest of conservation.

- 5. The developer shall ensure that the proposed access gate to the pedestrian entrance onto the Brennanstown Road is set back a minimum of two metres from the existing road edge kerb line.

**Reason:** In the interest of pedestrian safety.

- 6. Prior to commencement of development, the developer shall carry out a Structural/Condition Survey of the demesne wall along its length and which shall include:
  - (a) Elevational survey drawings which clearly indicate any areas of change to composition/structural stability, any areas of deterioration/loss of mortar, analysis of the method of construction (that is, material, bonding) and mortar analysis.
  - (b) A method statement for any necessary repairs. Any repairs shall be undertaken with regard to best practice as set out in Pat McAfee's book, 'Irish Stone Walls – History, Building, Conservation'.

Full details of the above and details of the lime-based render finish to the existing demesne wall shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

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

7. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

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

8. Prior to commencement of development, the developer shall enter into water and/or waste water connection agreement(s) with Irish Water.

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

9. The developer shall ensure that all cycle parking areas and facilities be designed and provided in accordance with the Dún Laoghaire-Rathdown County Council – Standards for Cycle Parking and associated Cycling Facilities for New Developments (January 2018).

**Reason:** In the interest of sustainable development, and in the interest of proper planning.

10. The developer shall ensure provision of two number parking spaces within the proposed development shall be reserved for use by disabled persons in accordance with Section 8.2.4.5 of the Dún Laoghaire-Rathdown County Development Plan, 2016-2022. Parking bay widths suitable for disabled parking bays shall be a minimum of 2.4 metres wide, with a 1.2 metres buffer on both sides and six metres in depth.

**Reason:** In the interest of proper planning and sustainable development.

11. 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.

12. 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, management measures and off-site disposal of construction/demolition waste, and shall also indicate measures for dealing with:

- (a) Traffic management plan including Construction vehicular access to site in particular to avoid conflict between construction activities and traffic on Bray Road and Brennanstown Road.
- (b) How it is intended to avoid conflict between construction activities and pedestrian movements on Bray Road during construction works.
- (c) Where it is intended to provide for site staff car parking during construction as it is not acceptable to have long term parking in the nearby residential areas.

- (d) Proposed measures to minimise/eliminate nuisance caused by noise and dust, proposed measures to minimise/prevent transfer of dirt to the public road with associated measures to clean the public roads/gully's in the vicinity of the site and continuing replacement of roads line markings resulting therefrom.

**Reason:** In the interest of the proper planning and sustainable development of the area.

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

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

14. 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 dwelling unit.

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

15. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

- (a) A plan to scale of not less than 1:500 showing –
  - (i) The species, variety, number, size and locations of all proposed trees and shrubs, which shall comprise predominantly native species such as mountain ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech or alder, which shall not include prunus species.
  - (ii) Details of screen planting, which shall not include cupressocyparis x leylandii.
  - (iii) Details of roadside/street planting, which shall not include prunus species.
  - (iv) Hard landscaping works, specifying surfacing materials, furniture, play equipment, and finished levels.
- (b) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment
- (c) A timescale for implementation, including details of phasing.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with

others of similar size and species, unless otherwise agreed in writing with the planning authority.

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

16. To ensure full implementation of the proposed landscape plan, the developer is required to retain the services of a Landscape Consultant throughout the life of the site development works. A completion certificate is to be signed off by the Landscape consultant when all works are completed and in line with the submitted landscape drawings. This completion certificate shall be submitted to the planning authority for written agreement upon completion of works.

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

17. All mitigation measures relating to Biodiversity, outlined in the Ecology Report and Planning documents submitted as part of the application and appeal shall be implemented.

**Reason:** To address any potential impacts on Biodiversity.

18. Vegetation clearance and tree removal shall take place outside the bird breeding season (March 1st to August 31st).

**Reason:** To protect birds and bird breeding habitats during the nesting season.

19. In relation to bats and having regard to the bat surveys carried out to date, the following shall be undertaken:
- (a) All mature trees proposed for felling shall be re-examined prior to felling by a bat specialist for evidence of bats. The bat specialist's recommendations shall be adhered to during this process.
  - (b) Prior to commencement of development, the developer shall submit to the planning authority a letter from their bat consultants, that they are satisfied that the final design of the external illumination proposed for the development, will be to the required specification recommended by the bat specialist and that they are satisfied that proposed roosts and important bat corridors are not illuminated. The developer shall also submit a report from the bat specialist to the planning authority after the installation of the external lighting, at the proposed development, confirming that it is operating according to specification.

**Reason:** To avoid the death or injury of female bats and young, which are afforded a regime of special protection under the European Habitats Directive and to mitigate the potential impact of increased nocturnal illumination at the proposed development on bats, which are afforded a regime of special protection under the European Habitats Directive.

20. In relation to badgers, the following shall be undertaken:
- (a) An application for a wildlife licence shall be submitted to the National Parks and Wildlife Service with the relevant ecological information from the detailed badger survey by a badger specialist. This shall be completed prior to the commencement of site clearance and taking account of the timelines for obtaining a licence. Any conditions attached to the licence shall be implemented. A copy of the licence and the proposed programme for the sett closure shall be provided to the planning authority for agreement in advance of works.
  - (b) If the sett becomes active the National Parks and Wildlife Service shall be consulted and their requirements implemented under licence. A copy of the licence shall be provided to the planning authority for agreement in advance of works.

**Reason:** To mitigate any potential impacts on badgers and their sett which are protected under the provisions of the Wildlife Act, 1976, and the Wildlife Amendment Act, 2000.

21. Prior to commencement of development, the developer shall submit to the planning authority a letter from their ecological consultants, confirming that they are satisfied that the hedgehog nest boxes have been installed and that the native trees have been planted as per the landscape plan and planting details submitted as part of this planning application, and the conditions of this order.

**Reason:** To mitigate any potential impacts on local biodiversity.

22. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which 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, and
- (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

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 area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

23. 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.

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

25. 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.

26. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of public open spaces, roads and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

27. 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.

28. Development described in Classes 1 or 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, shall not be carried out within the curtilage of any of the proposed dwelling houses without a prior grant of planning permission.

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

29. 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 amenity of property in the vicinity and the visual amenity of the area.

30. 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 and to ensure the use of locally appropriate place-names for new residential areas.

31. All of the communal parking areas serving the residential units shall be provided with functional electric vehicle charging points, and all of the in-curtilage car parking spaces serving residential units shall be provided with electric connections to the exterior of the houses to allow for the provision of future electric vehicle charging points. Details of how it is proposed to comply 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 sustainable transportation.

32. 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.

33. The developer shall pay to the planning authority a financial contribution in respect of ‘the extension of Luas Line B1 – Sandyford to Cherrywood’ in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 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 Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

34. The developer shall pay the sum of €68,000 (sixty eight thousand euro) (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), to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, in lieu of the provision of public open space. The contribution will be used to fund improvements to Cabinteely Park which is adjacent to the subject site. This contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition 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.

**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.

35. 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 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.

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**Stephen Bohan**

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

**Dated this            day of            2019.**