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**Planning and Development Acts 2000 to 2020**

**Planning Authority: Fingal County Council**

**Planning Register Reference Number: F19A/0405**

**Appeal** by Niall and Louise Gleeson and Tony Fernandez care of O'Neill Town Planning of Oakdene, Howth Road, Howth, County Dublin and by Ciara Ní Laoi of 2a Kilrock Road, Howth, County Dublin against the decision made on the 4<sup>th</sup> day of March, 2020 by Fingal County Council to grant subject to conditions a permission to Emmet McLoughlin care of Fergus Flanagan Architects Limited of Crescent Quay, Wexford in accordance with plans and particulars lodged with the said Council:

**Proposed Development:** (1) Demolition of existing three-storey dwellinghouse, (2) construction of a new three-storey over basement apartment development consisting of eight number two bedroom apartments, and (3) new vehicular entrance, roads, footpaths, landscaping, services consisting of storm and foul water disposal, mains water supply and all associated site works at Osprey, Kilrock Road, Howth, County Dublin. Further public notices were received by An Bord Pleanála on the 4th day of November, 2020.

## **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 observations and submissions on the file,
- the planning history of the site and the pattern of development in the area,
- the location of the proposed apartment development within the land zoned RE “To provide for residential development and protect and improve residential amenity” in the Fingal County Development Plan 2017-2023,

- the location of the development within the defined buffer area of the Howth Special Amenity Area,
- the existing vacant property on the site,
- the revisions to the development (including a reduction in scale and massing) made in the plans and particulars submitted as further information to the planning authority (the 7<sup>th</sup> day of February 2020) to address potential visual and residential amenity impacts of adjoining properties,
- the additional information and Natura Impact Statement submitted by the applicant to An Bord Pleanála on the 8<sup>th</sup> day of October 2020, and
- the reports of the Planning Inspector (including the addendum report),

it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual or residential amenities of the area or of property in the vicinity, would provide a satisfactory level of residential amenity for future occupants of the apartments, 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.

## **Appropriate Assessment Screening**

The Board agreed with the screening assessment and conclusion carried out in applicant's submitted Natura Impact Statement and in the Inspector's report that the Howth Head Special Area of Conservation (Site code: 000202) is the European site for which there is a likelihood of significant effects.

## **Appropriate Assessment**

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an Appropriate Assessment of the implications of the proposed development for European Sites in view of the site's conservation objectives (Howth Head Special Area of Conservation, Site Code: 000202). The Board considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the site's conservation objectives using the best available scientific knowledge in the field.

In completing the assessment, the Board considered, in particular, the Site Specific Conservation Objectives for this European Site, the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects, and the mitigation measures which are included as part of the current proposal.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the applicant's Natura Impact Statement in respect of the potential effects of the proposed development on the aforementioned European Site.

The Board agreed with the Planning Inspector that the main likely impacts arising from the proposed development would be water quality and disturbance impacts on the Vegetated Sea Cliffs which is identified as a qualifying interest of the Special Area of Conservation. It is a conservation objective of the Howth Head Special Area of Conservation (Site Code: 000202) to maintain the favourable conservation condition of this habitat.

Having regard to the mitigation measures proposed in section 4.2 of the Natura Impact Statement, and those within the Environmental Construction Management Plan (included as Appendix B in the applicant's submitted Natura Impact Statement), including the use of a silt fence and a mesh hoarding, measures to control the spread of non-native invasive species and the identified haul route for construction traffic, the Board concluded that the proposed development would not adversely affect the favourable conservation status of the Vegetated Sea Cliffs because potential construction impacts from water pollution and disturbance had been identified and mitigated in the applicant's Natura Impact Statement.

In the overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of European sites in view of the site's conservation objectives and there is no reasonable scientific doubt as to the absence of such effects.

In deciding not to accept the Inspector's recommendation to refuse permission for the proposed development on the basis of Appropriate Assessment issues, the Board agreed with the Inspector that the use of silt fencing during construction is an established mitigation measure but did not agree that the efficacy of the measure in the case of this site was not clear. In particular, the Board had regard to the drainage design details which will ensure minimal disturbance of the existing surface water drainage culvert, to the reduced volume of imported fill required to raise ground levels in the communal open space, and to the detailed mitigation measures set out in the Natura Impact Statement (inclusive of all appendices). The Board also noted the Inspector's concerns regarding the failure of the Natura Impact Statement to address the reuse of inert materials from the demolition of existing structures but was satisfied on the basis that this material is inert and that potential water quality impacts from overall fill operations were adequately addressed in the Natura Impact Statement that this was not an issue. In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of European sites in view of the site's conservation objectives and there is no reasonable scientific doubt as to the absence of such effects.

## **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 to the planning authority on the 7<sup>th</sup> day of February 2020, and the further information received by An Bord Pleanála on the 8<sup>th</sup> day of October 2020, 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) the south facing kitchen/living area windows along the rear (southern) elevation at second floor level serving apartment number 8 shall be high level windows, and
  - (b) details of the proposed entrances to serve the building and how is it proposed to treat ground floor amenity space, shall be provided.

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 interests of visual and residential amenity.

3. The mitigation measures identified in the Natura Impact Statement received by An Bord Pleanála on the 8<sup>th</sup> day of October 2020 shall be carried out in full, except where otherwise required by conditions attached to this permission. The developer shall appoint a person with appropriate ecological and construction expertise as an environmental manager to ensure that the mitigation measures identified in the Natura Impact Statement are implemented in full.

**Reason:** In the interest of protecting the environment and in the interest of public health.

4. 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.

5. The developer shall submit to, and agree in writing with, the planning authority, details of the design and layout of the proposed entrance to the development including corner radii, lighting, footpath and kerbs and the provision of cycle parking on the site.

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

6. Prior to commencement of development, the developer shall enter into water and wastewater connection agreements with Irish Water. No apartment unit shall be made available by the developer for occupation until water and sewerage services serving the development have been installed in accordance with the connection agreements made with Irish Water.

**Reason:** To ensure that satisfactory water and wastewater arrangements are in place to serve the development.

7. The landscaping scheme as submitted to the planning authority on the 7<sup>th</sup> day of February 2020 shall be carried out within the first planting season following substantial completion of external construction works.

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 three 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 interests of residential and visual amenity.



8. Surface water drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. The surface water drainage shall comply with the Greater Dublin Regional Code of Practice for Drainage Works.

**Reason:** In the interest of proper servicing of the proposed development.

9. 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 communal open spaces, roads, footpaths, parking areas, landscaping and internal 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.

10. The areas of communal open space shown on the lodged plans shall be reserved for such use. These areas shall be soiled, seeded, and landscaped in accordance with the landscaping scheme submitted to the planning authority on the 7<sup>th</sup> day of February 2020. This work shall be completed before any of the apartments are made available by the developer for occupation.

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

11. 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 apartment.

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

12. 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 interest of visual and residential amenity.

13. The proposed car parking spaces shall be reserved for the use of the residents of the proposed development. Two of these spaces shall be provided by the developer, as part of the site development works, with functioning electric vehicle (EV) charging stations/points. Ducting shall be provided for all remaining car parking spaces to facilitate the installation of electric vehicle charging points/stations at a later date. Proposals relating to the installation of EV ducting and charging stations/points, in accordance with the above requirements, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development, and the agreed provisions shall be carried out and completed prior to the making available by the developer for occupation of any of the residential units in the proposed development.

**Reason:** To provide for and/or future-proof the development in order to facilitate the use of electric vehicles

14. Proposals for an apartment development name, unit numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. No advertisements/marketing signage relating to the name of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.

**Reason:** In the interest of urban legibility and to ensure the use of locally appropriate place names for new residential areas.

15. 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 recyclable materials 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.

16. Construction and demolition waste shall be managed in accordance with a construction waste management and demolition plan which shall be submitted to and agreed in writing with the planning authority prior to commencement of development on the site. 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 Environment, Heritage and Local Government in July 2006. The Plan shall include details of waste to be generated during site clearance and construction phases, details of the

proposed reuse of inert materials for infilling operations, and details of the methods and location to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provisions of the Waste Management plan for the Region in which the site is situated.

**Reason:** In the interest of sustainable waste management.

17. Site development and building works shall be carried out only between the hours of 0800 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.

18. 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 incorporate all mitigation measures detailed in the Natura Impact Statement submitted to An Bord Pleanála on the 8<sup>th</sup> day of October 2020, details of noise management measures and off-site disposal of construction/demolition waste and details of a construction traffic management plan including a restriction on on-street construction employee parking.

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

19. 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.

20. Prior to commencement of development, the developer shall lodge with the planning authority a bond of an insurance company in order to ensure that trees are protected and maintained in good condition throughout the course of development. The form, duration 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:** In the interest of the proper planning and sustainable development of the area.

21. 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.

22. The developer shall pay to the planning authority a financial contribution in lieu of the public open space provision 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:** In the interest of the proper planning and sustainable development of the area.

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**Maria FitzGerald**

**Member of An Bord Pleanála**

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

**Dated this            day of            2021.**