



Planning and Development Acts 2000 to 2019

Planning Authority: Dublin City Council

Application for permission under section 4 of the Planning and Development (Housing) and Residential Tenancies Act 2016, in accordance with plans and particulars, lodged with An Bord Pleanála on the 20th day of May 2020 by Derryroe Limited care of Stephen Little and Associates, 26/27 Upper Pembroke Street, Dublin 2.

Proposed Development

A planning permission for a strategic housing development at a site (circa 0.5 hectares), at numbers 36, 38 and 40 Herbert Park and 10 Pembroke Place, Ballsbridge, Dublin 4. The site is principally bounded by Herbert Park (road) to the west, Herbert Park (public park) to the south, the Herbert Park Hotel to the east, and Pembroke Place to the north.

The proposed residential development, at numbers 36, 38 and 40 Herbert Park, comprises an apartment building (circa 10,465 square metres gross floor area), at modulating height of four, six, eight and 12 storeys, over a basement (three split levels), accommodating: 105 number dwellings (37 number one-bed, 66 number two-bed and two number three-bed apartment units), all with private balconies; and, internal residential amenity space (circa 210 square metres gross floor area) at basement Level -01. Ancillary external amenity open space is at ground level and at sixth floor roof garden (total circa 1,852 square metres).

The proposed commercial development (circa 600 square metres gross floor area), at 10 Pembroke Place, comprises 10 number aparthotel bedroom suites (circa 440 square metres), guests' common room and lobby (circa 160 square metres), accommodated in two number new floors to the existing permitted aparthotel building, resulting in a six-storey aparthotel building (over podium) with fifth floor set back. And, all associated and ancillary site development works, hard and soft landscaping, external lighting and boundary treatment works, to serve the proposed residential development, including:

- demolition of existing detached house at number 40 Herbert Park;
- modification of one number existing vehicular site entrance, at number 40 Herbert Park, to access proposed residential basement car park;
- incorporation of two number existing pedestrian entrances on the western Herbert Park (road) site boundary;
- 84 number residential car parking spaces (three number at surface level and 81 number at basement levels);
- 130 number residential bicycle parking spaces at surface level;
- one number Electricity Supply Board substation and switch room;
- ancillary plant, bin storage and stores at basement levels;
- ancillary plant and telecommunications antennae at roof level (Level 12);
- ancillary public realm and surface water drainage infrastructure works including in the public road at Herbert Park, Pembroke Place and Ballsbridge Terrace.

The demolition of the buildings at numbers 36 and 38 was carried out under planning permission (An Bord Pleanála Ref:300976; Dublin City Council Register Reference 3970/17) and the current application seeks to amend that permission by proposing to complete the development of the site in accordance with the plans and particulars lodged with this application in the context of the proposed development as set out above.

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:

- (a) the location of the site in the established urban area of Dublin City;
- (b) the policies and objectives in the Dublin City Development Plan 2016-2022 including the fact that the proposed development is on lands zoned residential and for mixed use development;
- (c) the Rebuilding Ireland Action Plan for Housing and Homelessness 2016;
- (d) 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 (and Interim Advice note Covid 19 May 2020).
- (e) the Guidelines for Sustainable Residential Developments 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;
- (f) the Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government in March 2018;

- (g) the Urban Development and Building Heights Guidelines for Planning Authorities 2018;
- (h) the Planning System and Flood Risk Management (including associated Technical Appendices);
- (i) the Architectural Heritage Protection Guidelines for Planning Authorities;
- (j) the nature, scale and design of the proposed development and the availability in the area of a wide range of social, transport and water services infrastructure;
- (k) the pattern of existing and permitted development in the area;
- (l) the planning history of the site (including extant permission) and within the area;
- (m) the Chief Executive Report from the planning authority;
- (n) the submissions and observations received, and
- (o) the report and recommendation of the Inspector.

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 site, the information for the Appropriate Assessment Screening Report submitted with the application, 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 conservation objectives of such sites, and that a Stage 2 Appropriate Assessment is not, therefore, required.

Environmental Impact Assessment Screening

The Board completed an environmental impact assessment screening of the proposed development and considered that the Environmental Impact Screening Report submitted by the applicant, identifies and describes adequately the direct, indirect, secondary, and cumulative effects of the proposed development on the environment.

Having regard to:

- (a) the nature and scale of the proposed development on an urban site served by public infrastructure,
- (b) the absence of any significant environmental sensitivities in the area, and
- (c) the location of the development outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),

the Board concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment.

The Board decided, therefore, that an environmental impact assessment report for the proposed development was not necessary in this case.

Conclusions on Proper Planning and Sustainable Development:

The Board considered that the proposed development is, apart from the building height parameters, broadly compliant with the current Dublin City Council Development Plan 2016-2022 and, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable quantum and density of development in this accessible urban location, would not seriously injure the residential or visual amenities of the area, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of pedestrian safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area. In coming to this conclusion, specific regard was had to the Chief Executive Report from the planning authority.

The Board considers that, while a grant of permission for the proposed strategic housing development would not materially contravene a zoning objective of the Development Plan, it would materially contravene the Plan with respect to building height limits. The Board considers that, having regard to the provisions of section 37(2)(b)(i) and (iii) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention of the development plan would be justified for the following reasons and considerations:

In relation to section 37(2)(b) (i) of the Planning and Development Act 2000 (as amended):

The proposed development is considered to be of strategic or national importance by reason of its potential to contribute to the achievement of the Government's policy to increase delivery of housing set out in Rebuilding Ireland – Action Plan for Housing and Homelessness issued in July 2016, and to facilitate the achievement of greater density and height in residential development in an urban centre close to public transport and centres of employment.

In relation to section 37(2)(b) (iii) of the Planning and Development Act 2000 (as amended):

Permission for the development should be granted having regard to guidelines under section 28 of the Act, specifically Specific Planning Policy Requirement 3 of the Building Height Guidelines which states that where a development complies with the Development Management Criteria in section 3.2, it may be approved, even where specific objectives of the relevant development plan or local area plan may indicate otherwise and also having regard to national policy in Project Ireland 2040 National Planning Framework (in particular objectives 13 and 35). An assessment of the proposed development was carried out to determine that the proposed development conforms with the development management criteria in section 3.2 of those guidelines.

In accordance with section 9(6) of the 2016 Act, the Board considered that the criteria in section 37(2)(b)(i) and (iii) of the 2000 Act were satisfied for the reasons and considerations set out in the decision.

Conditions

1. The proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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, or as otherwise stipulated by conditions hereunder, and the proposed development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:
 - (a) The northern and eastern elevations of the proposed tower element shall be amended at level 10 and 11 to provide for increased articulation and detailing. The non-structural metal framing elements shall be omitted on all elevations at these levels. The detailing shall take account of the prominence of these elevations on medium range views within the local area.
 - (b) The four-storey section at the northern end of the proposed apartment block (over the basement ramp) shall be reduced to three storeys. This shall result in the omission of unit AT02A4 and unit AT02C at third floor level and a reconfiguration of units AT02A2 and AT02A at third floor level.
 - (c) Privacy screening shall be provided on the northern end of balconies and terraces and roof gardens at the northern end of the block at first to sixth floor levels.
 - (d) Provision for a secondary entrance / egress to the southern residential access core from the rear of the block shall be provided.

- (e) Provision shall be made for vehicular access to the proposed Electricity Supply Board substation.

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 residential amenity and visual amenity.

- 3. (a) Details of the materials, colours and textures of all the external finishes to the proposed buildings shall be as submitted with the application, unless otherwise agreed in writing with, the planning authority prior to commencement of development. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.
- (b) Details of a wayfinding through the site to ensure clear and legible access to the principle doorways, parking area, and open spaces.

Reason: In the interest of residential amenity.

- 4. All mitigation measures identified in the Ecological Impact Assessment, Construction Management Plan, Basement Impact Assessment, Flood Risk Assessment and Architectural Heritage Report shall be implemented in full by the applicant except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity and to protect the environment during the construction and operational phases of the development.

- 5. The developer shall enter into water and wastewater connection agreements with Irish Water, prior to commencement of development.

Reason: In the interests of clarity and public health.

6. Details of works to the public road to facilitate the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. All works to the public roads / footpaths shall be completed to the satisfaction of the planning authority.

Reason: In the interests of traffic, cyclist and pedestrian safety and sustainable travel.

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.
 - (a) The development shall comply with the Greater Dublin Regional Code of Practice for Drainage Works Version 6.0.
 - (b) The outfall manhole from the development must be constructed in accordance with the Code of Practice for Development Works – Drainage.
 - (c) Permanent discharge of groundwater to the drainage network is not permitted.
 - (d) All internal basement drainage must be lifted, via a pumping station, to a maximum dept of 1.5 metres below ground level before being discharged to gravity from the site to the public sewer.
 - (e) All surface water discharges from the development shall be attenuated to two litres per second per hectare.
 - (f) The flood mitigation measures outlined in the Flood Risk Assessment prepared by JBA Consulting shall be implemented in full.

Reason: In the interests of public health and surface water management.

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

9. The site shall be landscaped (and earthworks carried out) in accordance with the detailed scheme of landscaping, which shall be submitted to and agreed in writing with the planning authority prior to commencement of development. The scheme shall include provisions for hard and soft landscaping within the site, boundary treatments and includes measures for the protection of trees within and adjoining the site.

Reason: In order to ensure the satisfactory completion of the development.

10. A total of 130 number secure bicycle parking spaces shall be provided within the development. 120 number spaces shall be provided within a secure cycle compound to the rear of the apartment block and 10 number surface spaces shall be provided to the front of the apartment block. Spaces at surface level shall consist of Sheffield stands. Design details for the cycle spaces and the compound shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure that adequate bicycle parking provision is available to serve the proposed development, in the interest of sustainable transportation.

11. The car parking facilities hereby permitted shall be reserved solely to serve the proposed development. 81 number clearly identified car parking spaces shall be assigned permanently for the residential development and shall be reserved solely for that purpose. These residential spaces shall not be utilised for any other purpose, including for use in association with any other uses of the development hereby permitted, unless the subject of a separate grant of planning permission. The spaces at surface level shall provide for set down only.

Reason: To ensure that adequate parking facilities are permanently available to serve the proposed residential units and also to prevent inappropriate commuter parking.

12. Prior to the opening/occupation of the development, a Mobility Management Strategy shall be submitted to and agreed in writing with the planning authority. This shall provide for incentives to encourage the use of public transport, cycling, walking and carpooling by residents/ occupants/ staff employed in the development and to reduce and regulate the extent of parking. The mobility strategy shall be prepared and implemented by the management company for all units within the development. Details to be agreed with the planning authority shall include the provision of centralised facilities within the commercial element of the development for bicycle parking, shower and changing facilities associated with the policies set out in the strategy.

Reason: In the interest of encouraging the use of sustainable modes of transport.

13. A minimum of 10% of all communal car parking spaces shall be provided with functioning electric vehicle charging stations/points, and ducting shall be provided for all remaining car parking spaces, including in-curtilage spaces, facilitating the installation of electric vehicle charging points/stations at a later date. Where proposals relating to the installation of electric vehicle ducting and charging stations/points has not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted and agreed in writing with the planning authority prior to the occupation of the development.

Reason: To provide for and/or future proof the development such as would facilitate the use of electric vehicles.

14. Proposals for a development naming and unit identification and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all such names and numbering shall be provided in accordance with the agreed scheme.

Reason: In the interest of urban legibility.

15. 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 installation of lighting. Such lighting shall be provided prior to the making available for occupation of any residential unit.

Reason: In the interests of amenity and public safety.

16. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. The cables shall avoid roots of trees and hedgerows to be retained in the site. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity.

17. A plan containing details for the management of waste within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, 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.

18. 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 occupation of the development.

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

19. 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.

20. 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:

- (a) Location of the site and materials compounds including areas identified for the storage of construction refuse; areas for construction site offices and staff facilities; site security fencing and hoardings; and car parking facilities for site workers during the course of construction;
- (b) The timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site; measures to obviate queuing of construction traffic on the adjoining road network; and measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- (c) Details of the implementation of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;

(d) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains. The measures detailed in the construction management plan shall have regard to the matters outlined in the submission received from Inland Fisheries Ireland.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

Reason: In the interest of amenities, public health and safety.

21. Site development and building works shall be carried out only between 0700 to 1900 hours Mondays to Saturdays inclusive, 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.

22. During the operational phase of the development refuse collection vehicles shall be excluded from entering the site between 2300 and 700 hours.

Reason: In order to safeguard the residential amenities of property in the vicinity.

23. 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.

24. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company or such other security as may be accepted in writing by the planning authority, to secure the protection of the trees on and adjoining the site and to make good any damage caused during the construction period, coupled with an agreement empowering the planning authority to apply such security, or part thereof, to the satisfactory protection of any tree or trees on the site or the replacement of any such trees which die, are removed or become seriously damaged or diseased within a period of three years from the substantial completion of the development with others of similar size and species. 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 secure the protection of the trees on the site.

25. Prior to commencement of development, the developer 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.

26. 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 lieu of the provision of public open space within the site. 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.

