

An
Bord
Pleanála

Board Order ABP-308366-20

Planning and Development Acts 2000 to 2020

Planning Authority: Fingal County Council

Application for permission under section 4 of the Planning and Development (Housing) and Residential Tenancies Act 2016 as amended, in accordance with plans and particulars, lodged with An Bord Pleanála on the 8th day of October 2020 by MKN Property Group care of John Spain Associates of 39 Fitzwilliam Place, Dublin 2.

Proposed Development comprises of the following:

- Construction of a mixed-use development ranging in height from five number storeys to nine number storeys from street level.
- The development will have a total of 278 number apartment units (125 number one-bedroom units, 146 number two-bedroom units and seven number three-bedroom units) internal amenity space (218.8 square metres), one number creche facility (354.4 square metres) and one number retail unit (262 square metres);
- The proposed development is set out in three number Blocks. Each block will contain the following:
 - Block A – ranges in height between six to nine storeys and contains 13 number one-bedroom units, 45 number two-bedroom units and seven number three-bedroom units and internal amenity space, a retail unit and a creche facility at ground floor level;

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- Block B – ranges in height between five to six storeys (over basement level) containing 56 number one-bedroom units and 48 number two-bedroom units.
- Block C – ranges in height between six to seven storeys (over basement level) in height containing 56 number one-bedroom units and 53 number two-bedroom units;
- The proposed development will also include the provision of public, communal and private open space including courtyard areas, terraces, balconies and playground areas;
- A section of the proposed public open space consists of temporary open space which will be developed on in future phases;
- Public realm improvements including the provision of footpaths, road widening, cycle infrastructure and landscaping works to the Forest Road;
- Provision of a new link road from the Forest Road to provide access to the proposed development and adjoining lands. The new link road will also include a pedestrian and cycle route to the Dublin Road/R132;
- Parking at basement level for 104 number cars and at surface level for 102 number cars to serve the residential element of the proposed development. Five number car parking spaces will be provided at surface level to serve the creche;
- 214 number bicycle parking spaces will be provided at basement level and 162 number external spaces at ground level throughout the site;
- All hard and soft landscaping, boundary treatments and all associated site development works, signage, services, substations, green roofs, photovoltaic panels at roof level and plant all located at Phase 1 lands at the townlands of Fosterstown North and Cremona, Swords, County Dublin. The site is bound by the Forest Road to the west.

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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 an established urban area, in an area zoned for residential;
- (b) The policies and objectives of the Fingal County Development Plan 2017-2023;
- (c) The provisions of Rebuilding Ireland Action Plan for Housing and Homelessness 2016;
- (d) the provisions of Project Ireland 2040 National Planning Framework which identifies the importance of compact growth;
- (d) The provisions of 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;
- (e) The provisions of the Urban Development and Building Heights Guidelines for Planning Authorities, prepared by the Department of Housing, Planning and Local Government in December 2018 and particularly Specific Planning Policy Requirement 3;

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- (f) The provisions of the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities issued by the Department of the Environment, Community and Local Government in December 2020;
- (g) The provisions of 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 2019, as amended;
- (h) The provisions of the Planning System and Flood Risk Management for Planning Authorities (including the associated Technical Appendices), issued by the Department of the Environment, Heritage and Local Government in 2009;
- (i) The provisions of the Architectural Heritage Protection, Guidelines for Planning Authorities, issued by the Department of Arts, Heritage and the Gaeltacht in October 2011;
- (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 provisions of section 37(b)(2) of the Planning and Development Act 2000, as amended, whereby the Board is not precluded from granting permission for a development which materially contravenes a Development Plan or a Local Area Plan;
- (m) The submissions and observations received;
- (n) The Chief Executive Report from Fingal County Council; and
- (o) The report of the planning Inspector.

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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, 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 Sites 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 EIA Screening Statement submitted by the developer, 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 required in this case.

Conclusions on Proper Planning and Sustainable Development

The Board considered that, subject to compliance with the conditions set out below that 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. The Board considered that, while a grant of permission for the proposed Strategic Housing Development would not materially contravene a zoning objective of the statutory plans for the area, a grant of permission could materially contravene Objective SWORDS 27 of the Fingal Development Plan 2017-2023, as it relates to building heights in the Fosterstown Masterplan Area, and could materially contravene Objective DM113 of the Fingal Development Plan 2017-2023, as it relates to car parking standards for new developments. The Board considers that, having regard to the provisions of section 37(2) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention of the Fingal Development Plan 2016-2022 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 current application has been lodged under the Strategic Housing legislation and the proposal is considered to be strategic in nature. National policy as expressed within Rebuilding Ireland Action Plan on Housing and Homelessness 2016 and the Project 2040 Ireland National Planning Framework fully support the need for urban infill residential development, such as that proposed on this site.

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

The Eastern and Midland Regional Assembly Regional Spatial and Economic Strategy 2019-2031, seeks to increase densities on appropriate sites within Dublin City and Suburbs. In relation to Section 28 Guidelines of particular relevance are the Urban Development and Building Height Guidelines for Planning Authorities.

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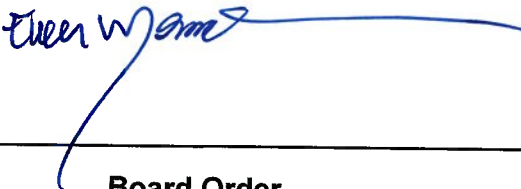
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prepared by the Department of Housing, Planning and Local Government in December 2018 which state that inter alia that building heights must be generally increased in appropriate urban locations, subject to the criteria as set out in Section 3.2 of the Guidelines. The proposal has been assessed against the criteria therein. The 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, support increased densities in appropriate locations and the proposal has been assessed in relation to same. The proposal has also been assessed against the relevant criteria in the associated Urban Design Manual. In relation to car parking, the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities issued by the Department of the Environment, Community and Local Government in December 2018, seek to reduce car parking standards in central and accessible urban locations sites and it is the Board's view that the quantum of parking proposed by the application is in line with these Section 28 Guidelines.

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Conditions

1. The 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 and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement, such issues may be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. The period during which the development hereby permitted may be carried out shall be five years from the date of this Order.

Reason: In the interests of proper planning and sustainable development.

3. The proposed development shall be amended as follows:
 - (a) The height of Block A shall be reduced to a maximum of 8 storeys. In this regard, Units A-8.1, A-8.2 and A.8.3 shall be omitted from the scheme.
 - (b) Block B shall be amended to form two distinct blocks. In this regard, Units B-1.9, B-1.10, B-2.10, B-2.11, B-3.10, B-3.11, B-4.10, B-4.11, B-5.10 and B5-11 shall be omitted from the scheme.

Amended plans and particulars detailing the above amendments shall be submitted to and agreed in writing with the planning authority prior to commencement of the development.

Reason: In the interests of urban design and in the interests of visual amenity.

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4. Prior to the commencement of development, a revised or annotated site layout plan detailing those features as referenced in Section 3.1 'Design Parameters' of the Design Manual for Urban Roads and Streets Compliance Statement shall be submitted and agreed in writing with the planning authority prior to the occupation of the development.

Reason: In the interests of traffic, cyclist and pedestrian safety and to protect residential amenity.

5. The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs, [access road to the service area] and the underground car park shall be in accordance with the detailed construction standards of the planning authority for such works and design standards outlined in DMURS. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of amenity and of traffic and pedestrian safety.

6. Prior to the commencement of development, detailed plans and particulars shall of the proposed pedestrian and cycle route from the termination of the proposed Link Road to the R132 shall be submitted to, and approved in writing by, the planning authority. This route shall be designed in accordance to take account of the BusConnects proposals along the R132.

Reason: In the interest of proper planning and development.

7. The developer shall comply with all requirements of the planning authority in relation to roads, access, cycling infrastructure and parking arrangements. In particular:

- (a) The roads and footpaths shall be constructed in accordance with the Council's standards for taking in charge.

- (b) The north-south spine road running from the new Fosterstown Link Road to the southern boundary of the proposed development shall facilitate the provision of a future road access to the lands south of the proposed development that form part of the Masterplan lands. In this regard the proposed boundary treatment should not bias the delivery of this future access road.
- (c) The developer shall submit a schedule of Road Safety Audits to be carried out as part of the proposed development at the relevant stages as outlined in the current edition of Transportation Infrastructure Ireland Guidelines GE-STY-1027.
- (d) The southern cycle lane on the proposed Link Road shall be provided as an off-road facility in line with best practice of the National Cycle Manual.
- (e) Each apartment unit shall be assigned separate secure bicycle compartments serving two number bicycles at basement level. Each compartment shall have separate secure access gates.
- (f) The design of the basement car park shall comply with the current edition of 'Design Recommendations for Multi-Storey and Underground Car-Parks' published by the Institution of Structural Engineers.

Reason: In the interests of traffic, cyclist and pedestrian safety and to protect residential amenity

8. The car parking facilities hereby permitted shall be reserved solely to serve the proposed development. The 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.

Reason: To ensure that adequate parking facilities are permanently available to serve the proposed residential units.

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9. A minimum of 10% of all car parking spaces shall be provided with functioning electric vehicle charging stations or points, and ducting shall be provided for all remaining car parking spaces facilitating the installation of electric vehicle charging points or stations at a later date. Where proposals relating to the installation of electric vehicle ducting and charging stations or 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.

10. Proposals for the development name and dwelling numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all signs, and dwelling 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 or 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 placenames for new residential areas.

11. 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.

Reason: In the interest of visual amenity.

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12. The areas of public open space and communal open spaces, as shown on the lodged plans shall be landscaped in accordance with the landscape scheme submitted to An Bord Pleanála with this application, unless otherwise agreed in writing with the planning authority. The landscape scheme shall be implemented fully in the first planting season following completion of the development, and any trees or shrubs which die or are removed within three years of planting shall be replaced in the first planting season thereafter. This work shall be completed before any of the dwellings are made available for occupation. Access to green roof areas shall be strictly prohibited unless for maintenance purposes.

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

13. 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.

Reason: In the interests of amenity and public safety.

14. 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.

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

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

Reason: In the interest of public health.

16. 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 for each apartment unit shall be submitted to, and agreed in writing with, the planning authority not later than six months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

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

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

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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. The construction of the development shall be managed in accordance with a Final Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. This plan shall provide inter alia: details of proposals as relates to soil importation and exportation to and from the site; details and location of proposed construction compounds, details of intended construction practice for the development, including noise management measures, details of arrangements for routes for construction traffic, parking during the construction phase, and off-site disposal of construction and demolition waste and or by-products.

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

20. The site development and construction works shall be carried out in such a manner as to ensure that the adjoining roads are kept clear of debris, soil and other material, and cleaning works shall be carried on the adjoining public roads by the developer and at the developer's expense on a daily basis.

Reason: To protect the residential amenities of property in the vicinity.

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21. 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.

Reason: In the interest of sustainable waste management.

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

23. The following requirements shall be adhered to:

- (a) The recommendations as set out in Section 4, 5 and 6 of the 'Inward Noise Impact Assessment' shall be implemented in full.
- (b) The developer shall engage with Dublin Airport Authority to ensure that any crane operations do not impact on flight procedures and air safety. The developer shall also contact the Irish Aviation Authority and daa of intention to commence crane operations with a minimum of 30 days notification of their erection.

Reason: In the interest of residential amenity and aircraft safety.

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24. All service cables associated with the proposed development such as electrical, telecommunications and communal television shall be located underground. Any relocation of utility infrastructure shall be agreed with the relevant utility provider. 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.

25. All items and areas for taking in charge shall be undertaken to a taking in charge standard. Prior to development the developer shall submit construction details of all items to be taken in charge. No development shall take place until these items have been agreed.

Reason: To comply with the Councils taking in charge standards.

26. 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.

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27. 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 reinstatement of public roads which may be damaged by the transport of materials to the site, to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of the development.


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28. 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 for Dublin City Council 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.



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

Board Order Quashed
By order of the High Court

Dated this 3rd day of February 2021

Dated 22/08/2021

Signed: Secretary 