

An
Bord
Pleanála

Board Order
ABP-308424-20

Planning and Development Acts 2000 to 2020

Planning Authority: Dublin City Council

Planning Register Reference Number: 2370/20

Appeal by Blackhorse Avenue Partnership of Thornton O'Connor Town Planning of Number 1 Kilmacud Road Upper, Dundrum, Dublin against the decision made on the 17th day of September, 2020 by Dublin City Council to refuse a permission for the proposed development.

Proposed Development: The development will principally consist of: the demolition of the existing three number warehouse structures (1,863 square metres) on site and the provision of a Build-to-Rent residential development comprising 90 number apartments (24 number studios, 36 number one bed apartments and 30 number two bed apartments) with heights principally ranging from part four - part seven storeys over part basement/lower ground in addition to a single unit spanning over lower ground and ground level. The scheme which has a gross floor space of 6,781 square metres in addition to a part basement measuring 1,579 square metres principally providing car parking, bin storage and plant also includes an external screened gantry access/walk-way facing east extending from first to seventh floor levels (598 square metres) and internal communal amenity facilities (300 square metres). The development also proposes vehicular and pedestrian access from Blackhorse Avenue; 38 number car parking spaces including two number car

club spaces at basement level; two number car club parking spaces and a set down area at grade; bicycle parking; balconies/terraces facing west and south; roof garden facing west and south (screening provided to east and north); boundary treatments; hard and soft landscaping; lighting; plant; sedum roofs; PV panels; ESB substations and switchrooms; lighting; and all other associated site works above and below ground, all on a 0.3086 hectare site at Number 1 – 3 Blackhorse Industrial Estate, Blackhorse Avenue, Dublin.

Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

Having regard to the land-use zoning objectives for the site, as set out in the Dublin City Development Plan 2016-2022 and to the nature, scale and design of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density in this urban location, would be acceptable in terms of layout, height, scale and design, would provide a suitable level of amenity for future residents, would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and convenience, would be served by adequate parking and environmental services, and would comply with the provisions of the Dublin City Development Plan 2016-2022, the 'Urban Development and Building Heights Guidelines for Planning Authorities' issued by the Department of Housing, Planning and Local Government in December 2018 and the updated 'Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities' issued by the Department of Housing, Local Government and Heritage issued in December 2020. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment Screening

The Board noted that the proposed development is not directly connected with or necessary to the management of a European Site. In completing the screening for Appropriate Assessment, the Board accepted and adopted the screening assessment and conclusion carried out in the Inspector's report in respect of the identification of the European Sites which could potentially be



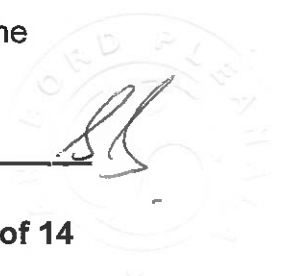
affected, and the identification and assessment of the potential likely significant effects of the proposed development, either individually or in combination with other plans or projects, on these European Sites in view of the site's conservation objectives and that a Stage 2 Appropriate Assessment is not, therefore, required.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 21st day of August 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. Prior to commencement of any works on site, revised details shall be submitted to, and agreed in writing with, the planning authority with regard to the following:
 - (a) Omission of the 5th and 6th floors of the 7 storey section of the rear (western) block, which would include the removal of apartments L5-01, L5-02, L5-03, L5-04, L5-05, L5-06, L6-01, L6-02, L6-03, resulting in a block height of 5 storeys.
 - (b) Omission of the 2-storey section of the rear (western) block, which would include the removal of apartment L1-18 and the



residents bicycle storage. The residents bicycle storage shall be incorporated into the basement.

- (c) Omission of the 4-storey section of the rear (western) block, which would include the removal of apartments PL-15, PL-16, L1-16, L1-17, L2-15, L2-16, L3-15, L3-16.
- (d) Reduce the 5-storey section of the rear (western) block to 4-storey, which would include the removal of apartments L4-12 and L4-13.

Reason: In the interests of proper planning and sustainable development and to safeguard the amenities of future resident and the residential amenity of properties in the surrounding area.

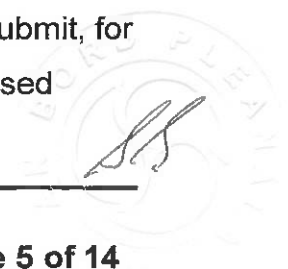
- 3. The number of residential units permitted is 68 (sixty-eight).

Reason: In the interest of clarity.

- 4. The development hereby permitted shall be for build to rent units which shall operate in accordance with the definition of Build-to-Rent developments as set out in the 'Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities' (December 2020) and be used for long term rentals only. No portion of this development shall be used for short term lettings.

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

- 5. Prior to commencement of development, the developer shall submit, for the written consent of the planning authority, details of a proposed



covenant or legal agreement which confirms that the development hereby permitted shall remain owned and operated by an institutional entity for a minimum period of not less than 15 years and where no individual residential units shall be sold separately for that period. The period of fifteen years shall be from the date of occupation of the first apartments within the scheme.

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

6. Prior to expiration of the 15-year period referred to in the covenant, the developer shall submit ownership details and management structures proposed for the continued operation of the entire development as a Build to Rent scheme. Any proposed amendment or deviation from the Build to Rent model as authorised in this permission shall be subject to a separate planning application.

Reason: In the interests of orderly development and clarity.

7. Three number bat boxes shall be fitted in the areas outlined on site and the recommendations of the Bat Assessment report including the installation of suitable bat friendly lighting shall be carried out on the site unless otherwise agreed in writing with the planning authority.

Reason: To ensure the protection of the natural heritage on the site.

8. Details of the materials, colours and textures of all the external finishes to the proposed building including samples of the translucent glazing to be used on the gantry screening shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.



Reason: In the interest of visual amenity.

9. A revised landscaping scheme shall be submitted to the planning authority for agreement and the subsequent agreed scheme shall be carried out within the first planting season following substantial completion of the external construction works.

All planting shall be adequately protected from damage until established. Any plants that 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.

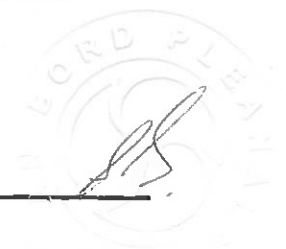
Reason: In the interest of residential and visual amenity.

10. Each apartment shall be used as a single dwelling unit only and shall not be sub-divided in any manner or used as two or more separate habitable units.

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

11. 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 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.



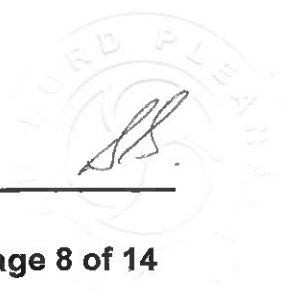
12. A minimum of 10% of all car parking spaces should be provided with EV charging stations/points, and ducting shall be provided for all remaining car parking spaces facilitating the installation of EV charging points/stations at a later date. Where proposals relating to the installation of EV ducting and charging stations/points has not been submitted with the application, in accordance with the above noted requirements, the development shall submit such proposals shall be submitted to, 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.

13. 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 public health and to ensure a satisfactory standard of development.

14. 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.

15. Prior to commencement of the development, the developer shall enter into water and wastewater connection agreements with Irish Water.

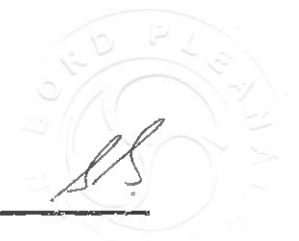
Reason: In the interest of public health.

16. 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.

17. Proposals for a naming and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of the development. Thereafter, all signs, and apartment numbers, shall be provided in accordance with the agreed scheme. The proposed name 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 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.



18. 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.

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 the 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. This plan shall provide, inter alia, details and location of the proposed construction compound, details of intended construction practice for the development, including hours of working, noise and dust management measures, measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network, details of arrangements for routes for construction traffic, parking during the construction phase and off-site disposal of construction/demolition waste. The plan shall include details of waste to be generated during site clearance and construction phases, which shall be carried out in full, 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 the environment and sustainable waste management.

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

21. Prior to the commencement of development, the developer shall contact Iarnród Éireann to ensure an agreed safe system of work in accordance with Guidelines RSC-G-010A. Any works associated with the proposed development shall ensure that the integrity of the railway is maintained

Reason: To protect the railway and public safety.

22. 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.

23. Prior to commencement of the 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.

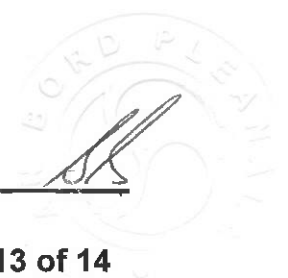
24. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the 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.



25. The developer shall pay to the planning authority a financial contribution in lieu of public open space 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.



26. The developer shall pay to the planning authority a financial contribution in respect of the Luas Cross City extension 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.

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



Dated this *31st* day of *May* 2021