

Planning and Development Acts 2000 to 2020

Planning Authority: Dublin City Council

Planning Register Reference Number: 3301/20

Appeal by John and Mary Maher of 11 Vernon Grove, Rathgar, Dublin and by Domhnach Limited care of John Spain Associates of 39 Fitzwilliam Place, Dublin and by others against the decision made on the 13th day of January, 2021 by Dublin City Council to grant subject to conditions a permission to the said Domhnach Limited in accordance with plans and particulars lodged with the said Council:

Proposed Development: The application site is bound by Donnybrook Road to the south-west, Mulberry Lane to the north-west and Pembroke Cottages to the east. The proposed development will consist of the demolition of all existing buildings on site (comprising the former Kiely's public house and outbuildings) and the construction of a mixed-use building of part three to part seven storeys in height, above basement level. The development comprises a café/restaurant unit (gross floor area of 92 square metres) at ground floor level and Build to Rent Shared Accommodation comprising 100 number single occupancy shared living units (ranging from 18.2 square metres to 27 square metres), associated reception/concierge area and communal amenities and facilities, from basement to sixth floor level. The shared accommodation scheme includes resident support facilities including laundry,

concierge/reception, management offices and bin storage area at basement and ground floor level, a multifunctional communal area at ground and first floor level and communal amenity space (kitchen/living/dining area) at each level to serve the shared living units. External open space is located within the courtyard at ground floor level and the roof terrace at fifth floor level. The developments includes plant rooms, storeroom facilities and 152 number bicycle parking spaces at basement level and a screened plant area at roof level. The development proposes relocating the existing ESB substation and switch room within the site from the Pembroke Cottages boundary to Mulberry Lane. The proposal includes foul and surface water drainage, signage, landscaping, and all associated site development and infrastructural works; all at 22-24 Donnybrook Road (former Kiely's Public House), Donnybrook, 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 following:

- (a) the policies and objectives set out in the Dublin City Development Plan 2016- 2022,
- (b) Housing for All - a New Housing Plan for Ireland' issued by the Department of Housing, Local Government and Heritage in September 2021,
- (c) Urban Development and Building Heights Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in December 2018,
- (d) the Design Manual for Urban Roads and Streets (DMURS), 2013,
- (e) the Sustainable Residential Development in Urban Areas (Cities, Towns and Villages) Guidelines for Planning Authorities issued by the Department of Environment, Heritage and Local Government in May, 2009,
- (f) the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued by the Department of Housing, Local Government and Heritage in December 2020 (updated),
- (g) the Planning System and Flood Risk Management Guidelines for Planning Authorities (including the associated Technical Appendices) issued by the Department of the Environment, Heritage and Local Government in November 2009,
- (h) Architectural Heritage Protection Guidelines for Planning Authorities issued by the Department of Arts, Heritage and the Gaeltacht in 2011,
- (i) the nature, scale and design of the proposed development,
- (j) the availability in the area of a wide range of social, community and transport infrastructure,

- (k) the pattern of existing and permitted development in the area, and
- (l) the planning history within the area,

it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density in this village centre 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 and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Environmental Impact Assessment

The Board completed an environmental impact assessment screening of the proposed development and considered that the Environmental Impact Assessment 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, and
- (b) the absence of any significant environmental sensitivities in the area,

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 broadly compliant with the Dublin City Council Development Plan 2016-2022 and concurs with the analysis and decision of the planning authority and considers that a grant of permission for the proposed development would not materially contravene the Development Plan with respect to building height. Therefore, the Board did not consider it necessary to invoke Section 37 (2) (b) of the Planning and Development Act 2000, as amended.

Furthermore, the Board considered that, 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 and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, and as amended by the further plans submitted to the planning authority on the 8th day of December, 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 development is to be set back from the adjoining residential property at 1 Pembroke Road to provide a more appropriate transition by omitting the following bedrooms (5 units) from the development:
 - First floor bedroom K-01-06,
 - Second floor bedrooms K-02-07 and K-02-08,
 - Third floor K-03-07,
 - Fourth Floor K-04-07.
 - (b) The storage rooms at the end of each of these corridors adjoining the bedrooms are to be repositioned to be in line with the revised floor plans.

Revised plans and particulars 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 interest of providing a satisfactory standard of residential amenity for occupants of the development and to improve overlooking of pedestrian routes through the site.

3. The shared accommodation units hereby permitted 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 issued by the Department of Housing, Local Government and Heritage in December 2020 (updated).

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

4. Prior to the commencement of development, the developer shall submit 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 15 years shall be from the date of occupation of the first 'shared living units' within the scheme.

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

5. 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 shared accommodation scheme. Any proposed amendment or deviation from the shared accommodation model as authorised in this permission shall be subject to a separate planning application.

Reason: In the interests of orderly development and clarity.

6. Prior to commencement of development on site, the developer shall submit to, and agree in writing with, the planning authority details of the management company established to manage the operation of the development together with a detailed and comprehensive Shared Accommodation Management Plan which demonstrates clearly how the proposed shared accommodation scheme will operate.

Reason: In the interests of orderly development and the proper planning and sustainable development of the area, and in the interest of residential amenity.

7. Details of the materials, colours and textures of all the external finishes to the proposed buildings and of public realm finishes shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

8. All plant including extract ventilation systems and refrigerator condenser units shall be sited in a manner so as not to cause a nuisance at sensitive locations due to odour or noise. All mechanical plant and ventilation inlets and outlets shall be sound insulated and or fitted with sound attenuators to ensure that noise levels do not pose a nuisance at noise sensitive locations.

Reason: In the interest of residential amenity.

9. No additional development shall take place above roof parapet level of the shared accommodation buildings, 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, and to allow the planning authority to assess the impact of any such development through the planning process.

10. 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 interests of visual and residential amenity.

11. 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.

12. 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 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: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

13. 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 provisions of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

14. 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 a demolition management plan, together with details of intended construction practice for the development, including a detailed traffic management plan, noise management measures and off-site disposal of construction and demolition waste.

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

15. 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.

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

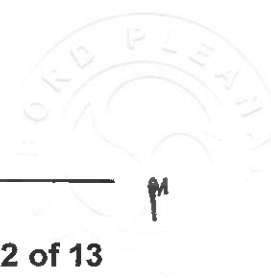
Reason: In order to safeguard the residential amenities of property in the vicinity.

17. 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.

18. 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.

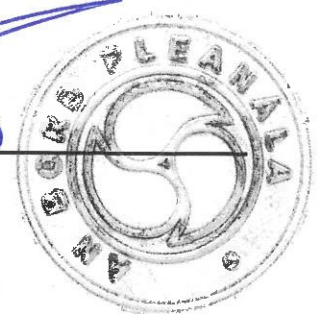


19. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the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


Paul Hyde

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



Dated this 3rd day of December 2021.