

Planning and Development Acts 2000 to 2020

Planning Authority: Dublin City Council

Planning Register Reference Number: 2395/20

Appeal by Towerview Cottages Residents care of AKM Design of Unit 4, 2009 Orchard Business Centre, Orchard Avenue, Citywest Business Campus, Dublin against the decision made on the 15th day of January, 2021 by Dublin City Council to grant subject to conditions a permission to Concept Fusion Limited care of Terry O'Flanagan Limited of Unit F1, Centrepont Business Park, Oak Road, Dublin in accordance with plans and particulars lodged with the said Council.

Proposed Development: The demolition of existing Saint Vincent's Swimming Pool (derelict single storey detached building circa 757 square metres) and the construction of five number dwellings, comprising one number two storey five bedroom dwelling, two number two storey four bedroom dwellings and one number 2.5 storey five bedroom dwelling in a single terraced block and one number 1.5 storey four bedroom detached dwelling, including all associated on and off-site development works, car parking, boundary treatment works, soft and hard landscaping on the site of circa 0.24 hectare and removal of existing circa two metres high boundary wall to create direct vehicular and pedestrian access by the extension of the existing Towerview Cottages cul-de-sac. The development will also include

the provision of a temporary construction access road (circa 90 metres long) through the adjoining Saint Vincent's School lands with vehicular access onto the Finglas Road and the temporary removal (and future reinstatement) of existing single storey building circa 57 square metres required to facilitate the temporary access, at the Swimming Pool lands and part of Saint Vincent's Christian Brothers Secondary School, Finglas Road, Glasnevin, 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 location of the site on serviced urban land, the Z15 residential land use zoning of the site under which residential development is open for consideration, the retained community use of the remaining Z15 zoned lands at this location, the derelict vacant nature of the existing swimming pool building and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the zoning provisions for the site and would not seriously injure the residential or visual amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment Screening

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024) and the North Bull Island Special Protection Area (Site Code: 004006) are the European sites for which there is a possibility of significant effects and must, therefore, be subject to Appropriate Assessment.

Appropriate Assessment

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment of the implications of the proposed development for the South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024) and the North Bull Island Special Protection Area (Site Code: 004006) in view of the sites' conservation objectives. The Board considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed



development in relation to the sites' conservation objectives using the best available scientific knowledge in the field.

In completing the assessment, the Board considered, in particular, the following

- (i) the Site Specific Conservation Objectives for these European sites,
- (ii) the current conservation status, threats and pressures of the qualifying interest features,
- (iii) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- (iv) the view of the Department of Arts, Heritage and the Gaeltacht, and
- (v) the mitigation measures (including a commitment that construction works shall not commence on site until April and that external construction works shall be completed by October) which are included as part of the current proposal,

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the implications of the proposed development on the integrity of the aforementioned European sites, having regard to the sites' conservation objectives.

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

This conclusion is based on the inclusion of detailed mitigation measures to address the potential for disturbance impacts on the wintering birds using the adjacent amenity grassland.

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 22nd day of September, 2020 and the 10th 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:

The north gable wall of proposed house number 2 shall be set back from the northern site boundary by 500 millimetres which shall be achieved by reducing the width of proposed house numbers 2, 3, 4 and 5.

Revised drawings showing compliance with this requirement shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

3. (a) Mitigation and monitoring measures set out in the Natural Impact Statement submitted with this application, shall be carried out in full.
- (b) Construction works including site clearance works, demolition of built structures and removal of existing vegetation shall not commence on site until April and external construction works shall be completed by October in order to avoid disturbance of wintering migratory birds, including Light-bellied Brent Goose.

Reason: To prevent disturbance to species scheduled under the Wildlife Act and the EU Habitats Directive and in the interest of nature conservation.

4. Works proposed to be undertaken during the bird nesting season (1st March-1st September) can only proceed subject to on-site verification by a suitably qualified ecologist, that no nesting birds are present. If a nest is found to be present, then works can only proceed subject to a licence from the National Parks and Wildlife Service.

Reason: To prevent disturbance to nesting birds and species scheduled under the Wildlife Act and in the interest of nature conservation.

5. (a) The site shall be resurveyed for the presence of bats prior to the commencement of site clearance, demolition and construction works. The results of this survey, including any actions arising, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
- (b) Bat boxes shall be installed on site in accordance with the mitigation measures identified in the Bat and Nesting Bird Survey submitted as further information to the planning authority on the 22nd day of September, 2020.

Reason: In the interest of wildlife protection.

6. (a) 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 house.
- (b) The developer shall appoint a suitably qualified ecologist to verify that the proposed lighting plan complies with the recommended mitigation measures of the Bat and Nesting Bird Survey.

Reason: In the interests of wildlife protection and public safety.

7. The developer shall appoint a suitably qualified arboriculturist to supervise site works in accordance with the recommendations of the Arboricultural Assessment of Trees and Tree Protection Measures report submitted to the planning authority on the 22nd day of September, 2020.

Reason: To ensure that site trees are not damaged or otherwise adversely affected by building operations.

8. 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. All existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

9. All of the in-curtilage car parking spaces serving the residential units shall be provided with electric connections to the exterior of the houses to allow for the provision of future electric vehicle charging points. Details of how it is proposed to comply 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 sustainable transportation.

10. The construction of the development shall be managed in accordance with a Construction 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 provide details of intended construction practice for the development including the temporary construction access, traffic management arrangements, noise management measures and off-site disposal of construction/demolition waste.

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

11. Water supply and drainage arrangements, including the 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. Prior to commencement of development, the developer shall enter into water and/or wastewater connection agreements with Irish Water.

Reason: In the interest of public health.

13. The internal road network serving the proposed development shall comply with the detailed standards of the planning authority for such road works.

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

14. Proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. 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.

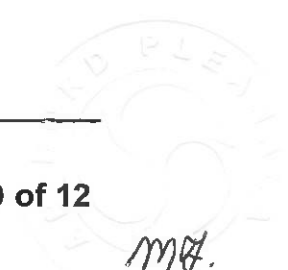
Reason: In the interest of urban legibility.

15. Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 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.

16. (a) Prior to the commencement of the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each housing unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all residential units permitted to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.
- (b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each housing unit, it is demonstrated to the satisfaction of the planning authority that it has it has not been possible to transact each of the residential units for use by individual purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.
- (c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified residential units, in which case the planning authority shall confirm in writing to the developer or any person with an interest in the land, that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.

Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

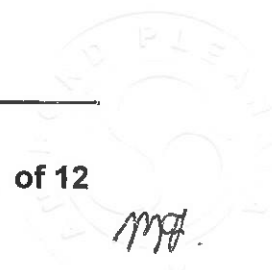


17. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, 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.

18. The developer shall pay to the planning authority a financial contribution in respect of the Luas Cross City Scheme (St. Stephen's Green to Broombridge) 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.



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.

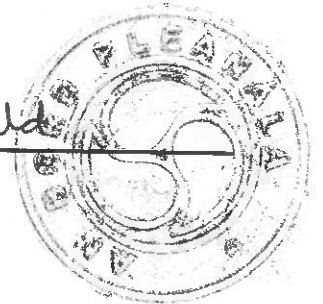
Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

DR. Maria FitzGerald

Maria FitzGerald

Member of An Bord Pleanála

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



Dated this 17th day of Dec. 2021.