

Planning and Development Acts 2000 to 2020

Planning Authority: Dublin City Council

Planning Register Reference Number: 3740/20

Appeal by JM Dunluce Limited care of Hughes Planning and Development Consultants of 70 Pearse Street, Dublin and by Niamh and TJ Farrelly of 255 Mount Prospect Avenue, Clontarf against the decision made on the 19th day of January, 2021 by Dublin City Council in relation to an application by the said JM Dunluce Limited for permission for (i) demolition of two number existing dwellings and outbuildings, (ii) construction of two number residential apartment buildings accommodating 51 number residential apartments. Block A will be of five storey height with a setback penthouse level and will contain 31 number apartments (seven number one-bedroom, 22 number two-bedroom and two number three-bedroom) and Block B will be of four storey height and will contain 20 number apartments (18 number two-bedroom and two number three-bedroom). Each apartment will be served by a private balcony/terrace; (iii) removal of the north-western vehicular entrance and alterations to the north-eastern vehicular entrance and provision of two number pedestrian entrances; (iv) provision of bicycle parking spaces and 52 number car parking spaces, including two number disabled car parking spaces and (v) communal amenity space, children's play area, internal access roads, landscaping, tree removal and planting, boundary treatment, SuDS drainage and all ancillary works necessary to facilitate the development, all at 257-259 Mount Prospect Avenue, Clontarf, Dublin in accordance with the plans and particulars lodged with the said Council (which decision was to

grant subject to conditions permission for Block A and to refuse permission for Block B).

Decision

GRANT permission for Block A in accordance with the said plans and particulars based on the reasons and considerations marked (1) under and subject to the conditions set out below. REFUSE permission/outline permission for Block B based on the reasons and considerations marked (2) under.

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.

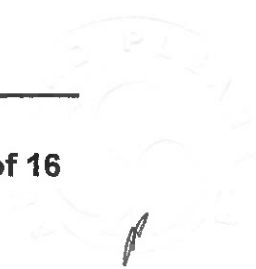
Reasons and Considerations (1)

Having regard to the provisions of:

- (a) the Dublin City Development Plan 2016-2022, including the zoning and policy objectives applicable to the site,
- (b) the National Planning Framework, particularly National Policy Objectives 3b, 11, 13, 33 and 35,
- (c) the Urban Development and Building Heights Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in December 2018,

- (d) the Guidelines for Planning Authorities on Sustainable Residential Developments in Urban Areas (Cities, Towns & Villages) issued by the Department of the Environment, Heritage and Local Government in May 2009,
- (e) the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued by the Department of the Housing, Planning and Local Government in March 2018, and the update to these Guidelines published in December 2020,
- (f) the nature, scale and design of the proposed development and the existing character and pattern of development in the area,
- (g) the developed nature of part of the site and its location within a built-up urban area in proximity to social and transportation infrastructure, and
- (h) the documentation on the appeal file, including all submissions and observations received,

it is considered that, subject to compliance with the conditions set out below, the proposed development would respect the existing character of the site and the surrounding area and would provide an appropriate quantum and quality of development, would not seriously detract from the character or setting of Saint Anne's Conservation Area and surrounding Protected Structures, would not seriously injure the amenities of property in the vicinity, would provide an acceptable form of residential amenity for future occupants and would be acceptable in terms of traffic safety and convenience. 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, 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. Block B shall be omitted from this application with its approximate development footprint, associated car parking and circulation areas allocated to an amended and agreed landscape plan.

Reason: In the interest of orderly development.

3. The proposed development shall be amended as follows:
 - (a) Block A's fifth floor penthouse level shall be set back at least two metres from the north-western gable elevation.
 - (b) The north-west boundaries of the balconies/terraces serving units 7, 14, 15, 22, 23, 28 and 29 in Block A shall be fitted with 1.8 metre high privacy screening.

Proposals in respect of the above shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of protecting the residential amenity of existing and proposed properties.

4. The development shall not be gated at its vehicular entrance whether or not it would be exempted development.

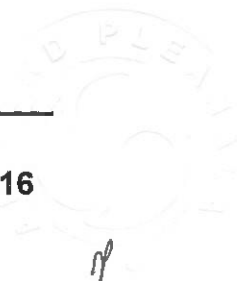
Reason: In the interest of residential amenity.

5. Prior to commencement of any development on site, the developer shall submit for the written agreement of the planning authority, details showing the number of existing trees and planting to be retained on site maximised and accounting for the recommended omission of Block B and any associated reduction in new proposed hardstanding in terms of surface parking etc. Details shall also be provided of additional compensatory planting for the loss of existing trees.

Reason: In the interests of amenity, ecology and sustainable development of the area.

6. The development shall not commenced until a landscape scheme prepared by a suitably qualified person comprising full details of the size, species and location of all trees and shrubs to be planted and the treatment of all external ground surfaces, has been submitted to, and agreed in writing with, the planning authority and implemented in the first planting season following completion of the development and any trees and shrubs which die or are removed with three years of planting shall be replaced in the following planting season.

Reason: In the interests of amenity, ecology and sustainable development of the area.

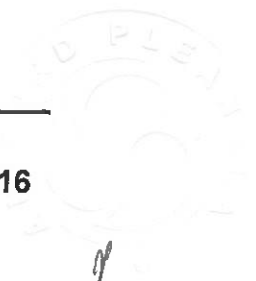


7. All trees shown to be retained on the site shall be adequately protected during the period of construction as per BS 5837, such measures to include a protection fence beyond the branch spread, with no construction work or storage carried out within the protective barrier.

Reason: In the interests of amenity, ecology and sustainable development of the area.

8. The following wildlife protection measures shall be complied with:
- (a) No trees or hedgerows shall be cleared, and no demolition works shall be carried out, between the months of March to August (inclusive).
 - (b) The proposed development, including the removal of trees and demolition works, shall be carried out in accordance with the recommendations of 'Guidelines for the treatment of bats during the construction of National Road Schemes', and 'Guidelines for the treatment of badgers prior to the construction of National Road Schemes' as published by the National Roads Authority.
 - (c) The developer shall comply in full with the methodologies and mitigation measures included in the 'Bat fauna assessment' submitted to the planning authority on the 16th day of November, 2020.
 - (d) Site boundary treatments shall maintain access for badgers from neighbouring properties, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of wildlife protection.



9. Details of the materials, colours and textures of all the external finishes to the proposed development, including the landscaping details for the 'living wall' to the front of Block A, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

10. The construction of the development shall be managed in accordance with a 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 details of intended construction practice for the development, including noise and dust management measures, environmental protection measures and traffic management arrangements.

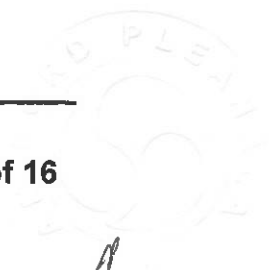
Reason: In the interests of public safety, environmental protection, and residential amenity.

11. 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 wastewater connection agreement(s) with Irish Water.

Reason: In the interest of public health.



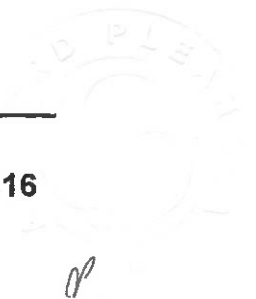
13. The developer shall facilitate the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:
- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
 - (b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and
 - (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site area and to secure the preservation and protection of any archaeological remains that may exist within the site.

14. 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 comply with the mitigation measures for bats and shall be provided prior to the making available for occupation of any apartment.

Reason: In the interests of amenity and public safety.



15. Proposals for a development name, 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 apartment 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/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 place names for new residential areas.

16. Communal waste storage areas shall be designed and managed in accordance with an Operational Waste Management Plan, which shall contain 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 for the ongoing operation of these facilities for each apartment unit. Details of this plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

17. (a) 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 facilitating the installation of electric vehicle charging points/stations at a later date. 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.
- (b) The car parking spaces shall be for the sole use of resident/visitor parking and shall not be sold, sublet or leased to third parties.

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

18. Prior to the occupation of the development, a Mobility Management Plan (including an interim or temporary strategy reflecting any requirements or adjustments relating to Covid-19 movement and travel patterns) 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 interim or temporary strategy, where applicable, should reflect the requirements of the Design Manual for Urban Roads and Streets Interim Advice Note – Covid Pandemic Response (May, 2020). The mobility plan shall be prepared and implemented by the management company for all units within the development.

Reason: In the interest of encouraging the use of sustainable modes of transport and reflecting the needs of pedestrians and cyclists during Covid-19 pandemic.

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19. 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 commencement of development.

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

20. 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.

21. Opaque glazing to the side elevations of Block A shall be implemented as indicated in the drawings submitted to the planning authority on the 16th day of November, 2020.

Reason: In the interests of privacy and residential amenity.

22. The following requirements shall be provided for and adhered to in the development:
- (a) Alterations to the public road and footpath including the interface between the footpath and private property shall be in accordance with the requirements of the planning authority.
 - (b) All repairs to the public road and services that may be required shall be carried out to the satisfaction of the planning authority at the developer's expense.
 - (c) The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs shall comply with the detailed standards of the planning authority for such road works.

Reason: In the interests of clarity, public safety and amenity.

23. 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.

24. Prior to the commencement of development, the developer shall submit for the written agreement of the planning authority, drawings showing all development works to be taken in charge designed to meet the standards of the planning authority.

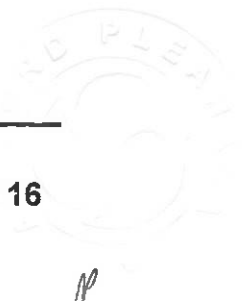
Reason: In the interest of the proper planning and sustainable development of the area.

25. No additional development, including lift motor enclosures, air handling equipment, storage tanks, ducts or external plant, or telecommunication antennas, shall be erected at roof level other than those shown on the plans and particulars lodged with the application. All equipment such as extraction ventilation systems and refrigerator condenser units shall be insulated and positioned so as not to cause noise, odour or nuisance at sensitive locations.

Reason: In the interests of visual and residential amenities.

26. Hours of work shall be confined to 0700 to 1900 Mondays to Fridays inclusive, excluding bank holidays, and 0800 to 1400 hours on Saturdays. Deviation from these times will only be allowed in exceptional circumstances subject to the prior written agreement of the planning authority.

Reason: In the interest of residential amenities of surrounding properties and in the interest of clarity.



27. Boundary treatment shall be in accordance with the requirements of the planning authority, details of which shall be submitted for the written agreement of the planning authority prior to commencement of development.

Reason: In the interests of visual and residential amenity.

28. Prior to commencement of 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.

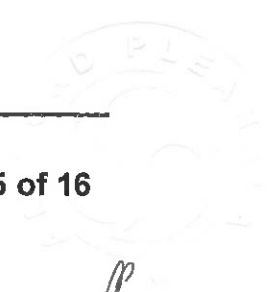
Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

29. 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 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.

30. 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.



Reasons and Considerations (2)

Having regard to the layout and siting of the proposed development and to the provisions of the Dublin City Development Plan 2016-2022, in particular Sections 16.3 'Landscaping' and 16.3.3 'Trees', it is considered that the extent of the loss of existing planting of mature trees, in this instance primarily non-native Holm Oaks, due to the works needed to enable the development of Block B, would be excessive and would seriously injure the visual amenities of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to grant permission for Block B, the Board did not agree that any visual impact as a result of tree loss would not be seriously injurious when viewed from the public viewpoints of the site. Instead, it considered the loss to be serious and to have a serious impact on the visual amenities of the area. Likewise, the Board did not concur with the Inspector that that the proposed development would adequately retain the historical association between the trees on site and the surrounding heritage assets.



Terry Prendergast

Member of An Bord Pleanála

duly authorised to authenticate

the seal of the Board.

Dated this *20th* day of *August* 2021.