

An
Bord
Pleanála

Board Order
ABP-310119-21

Planning and Development Acts 2000 to 2020

Planning Authority: South Dublin County Council

Planning Register Reference Number: SD20A/0089

Appeal by The Square Management Limited care of Downey Planning of 1 Westland Square, Pearse Street, Dublin and by others against the decision made on the 8th day of April, 2021 by South Dublin County Council to grant subject to conditions a permission to Hines Real Estate Ireland Limited care of Avison Young of 4th Floor, 2-4 Merrion Row, Dublin in accordance with plans and particulars lodged with the said Council.

Proposed Development: A 10 year planning permission for a mixed use commercial, retail and leisure development at site, immediately adjacent to and southeast of the Liffey Valley Shopping Centre, Fonthill Road, Clondalkin, County Dublin. The area within the site boundary is 9.59 hectares. The development will consist of a mixed leisure, entertainment and retail extension to the existing Liffey Valley Centre organised around a large public plaza and pedestrian friendly east-west street with parapet levels varying between circa 15 metres and circa 18 metres above street level. The scheme provides for:

- (a) a two-storey commercial extension (circa 46,783 square metres gross) with plant areas at roof level to the existing Centre providing for mixed leisure and entertainment units (circa 9,247 square metres gross), food/beverage units (circa 4,052 square metres gross), retail units (circa 21,051 square

metres gross) and all ancillary space and circulation areas (circa 12,433 square metres gross). The main retail area will be anchored by two stores (comprising a total of circa 10,090 square metres gross) located on either side of the public plaza; (b) a central public plaza fronting onto the east-west street covered with a large glass canopy in the form of a curved gridshell structure. This structure will be the tallest part of the proposal at a height of circa 20 metres above street level. The food/beverage units are located around the Plaza at both ground and first floor levels; (c) car parking over two levels (circa 900 number spaces including 45 number universal access spaces and circa 200 number long stay cycle spaces with an area of circa 27,917 square metres gross) located north-east of the extension area. Circa 290 number short stay cycle spaces, 27 number short stay car parking spaces and car/taxi set down areas on the east-west street. Circa 100 number long stay cycles spaces provided within the existing car park to the adjacent to the Westend development (Vue Cinema and restaurants). Approximately 2,085 square metres of existing gross floor space is to be removed/demolished over ground and first floor to facilitate the extension. The proposal includes all associated service yards, plant and equipment, photovoltaic panels, electricity substations, all utility connections and works, street lighting, signage, landscaping and boundary treatments. The proposal includes the construction of new toucan crossing points for cyclists on Ascaill an Life (Ring Road around the Centre) at the western end of the east-west street to provide safe connection to the existing cycle network. A further public notice was received by An Bord Pleanála on the 2nd day of July, 2021.

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:

- (a) the zoning objectives for the site as a Major Retail Centre in the South Dublin County Development Plan 2016-2022,
- (b) the planning history associated with the site,
- (c) the nature and extent of existing and permitted development on the site and in the vicinity,
- (d) the proposed improvements to the road network and public transport infrastructure in the area, and
- (e) the nature, scale and design of the proposed development including the public realm provision and enhancements,

it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an appropriate form of development, would not be contrary to the retail policy as set out in the South Dublin County Development Plan 2016-2022, would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of pedestrian and traffic safety and convenience and would, therefore, be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the South Dublin Bay Special Area of Conservation (Site Code 000210), the North Dublin Bay Special Area of Conservation (Site Code 000206), 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 only European Sites for which there is a possibility of significant effects and must therefore be subject to 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 these European Sites, 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:

- (a) the site-specific conservation objectives for these European Sites,
- (b) the current conservation status, threats and pressures of the qualifying interest features,
- (c) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- (d) the view of the Department of Arts, Heritage and the Gaeltacht, and

- (e) the mitigation measures 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 the European Sites, in view of the sites' conservation objectives, and there is no reasonable scientific doubt as to the absence of such effects.

Environmental Impact Assessment

In compliance with section 172 of the Planning and Development Act 2000, as amended, the Board completed an environmental impact assessment of the proposed development, taking into account:

- (a) the nature, scale, location, and extent of the proposed development,
- (b) the Environmental Impact Assessment Report and associated documentation submitted with the application,
- (c) the submissions from the applicant, the appellants, the planning authority, and the prescribed bodies, and
- (d) the Planning Inspector's report.

The Board considered that the Environmental Impact Assessment Report (EIAR), supported by the information submitted by the applicant, identifies and describes adequately the direct, indirect and cumulative effects of the proposed development on the environment. The Board is satisfied that the information contained in the Environmental Impact Assessment Report complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU.

The Board agreed with the summary and examination, set out in the Inspector's report, of the information contained in the Environmental Impact Assessment Report and associated documentation submitted by the applicant and submissions made in the course of the application. The Board is satisfied that the Inspector's report sets out how these were addressed in the assessment and recommendation (including environmental conditions) and are incorporated into the Board's decision.

The Board completed an Environmental Impact Assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures proposed, and subject to compliance with the conditions set out above, the effects on the environment of the proposed development by itself and cumulatively with other development in the vicinity would be acceptable. In doing so, the Board adopted the report and conclusions of the reporting Inspector.

The Board considered that the main significant direct and indirect effects of the proposed development on the environment are, and will be mitigated as follows:

- (i) There are potential positive impacts for employment opportunities and retail activities. Impacts arising from noise, dust, traffic, and construction will be mitigated by a Construction Management Plan including traffic management measures. There will be no negative impacts subject to mitigation measures outlined or otherwise addressed by condition.
- (ii) Traffic and Transport – construction and operational phase impacts in the form of short term increases in the traffic on the road network are recognised and addressed in the Environmental Impact Assessment Report. The mitigation measures are reasonable and practicable. With the recommended mitigation measures in place, no significant adverse roads and traffic related environmental impacts are anticipated during the construction or operational phases of the proposed development.
- (iii) Construction phase impacts are recognised and addressed in the Environmental Impact Assessment Report. The mitigation measures are reasonable and practicable. Noise and vibration levels would be within acceptable emissions limits during normal operation.
- (iv) The proposed development entailing a series of large modern buildings would have an impact on the visual character of the area. This impact is considered acceptable given the location of the site on lands zoned Major Retail Centre.
- (v) Soils, Geology and Hydrogeology: subject to implementation of mitigation measures, no significant residual impacts expected during construction phase. Any impacts will be short term and imperceptible. Operational phase impacts will not be significant.

- (vi) Hydrology: subject to implementation of mitigation measures, no significant residual impacts expected during construction phase. Any impacts will be short term and imperceptible. Expected impacts during operation phase will be long term and imperceptible.
- (vii) Biodiversity impacts, which will be mitigated by a range of pollution prevention means to protect surface water quality during construction and operation, compensatory measures, landscaping, lighting control measures and post construction monitoring.
- (viii) Risk Management: subject to implementation of all mitigation measures as described, the level of risk identified is insignificant.
- (ix) Interactions and Potential Cumulative Impacts: the cumulative effect arising from the proposed development would create some adverse cumulative change, this would be mitigated by the implementation of appropriate mitigation measures where possible.

The Board is satisfied that this reasoned conclusion is up to date at the time of taking this decision.

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 12th day of February, 2021, 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. All environmental mitigation measures set out in the Environmental Impact Assessment Report and associated documentation submitted by the developer with the application, by way of further information and the appeal shall be implemented in full, except as may otherwise be required in order to comply with the conditions of this Order.

Reason: In the interest of clarity and to protect the environment during the construction and operational phases of the development.

3. All mitigation measures set out in the Natura Impact Statement and associated documentation submitted by the developer with the application, by way of further information and the appeal shall be implemented in full, except as may otherwise be required in order to comply with the conditions of this Order.

Reason: In the interest of clarity and to protect European Sites during the construction and operational phases of the development.

4. Prior to the occupation of the Liffey Valley Shopping Centre Extension development, the permitted Bus Interchange and bus priority measures shall be fully implemented and operational at the Liffey Valley Shopping Centre.

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

5. (a) The developer shall implement a parking charging strategy prior to the occupation and operation of this development based on the following rates:
 - (i) A standard Parking Charge of €2 per hour.

- (ii) No charge for hours 2 and 3 unless staying over 5 hours in which case there shall be no free hours (to deter long stay parking).

This parking management strategy shall be reviewed on an annual basis and any changes shall be agreed in writing with the planning authority and be subject to the results of the Parking Monitoring Report.

- (b) The developer shall submit a Parking Monitoring Report to the planning authority on an annual basis. The report shall contain origin and destination surveys using the permanent counters detailed on Figure 14 of the Transport Response Report. This report shall target a 10% reduction in car trips to the Centre based on 2019 car trip data after the implementation of the paid parking strategy. These figures shall also analyse the impact on traffic using the national road network and the two N4 slips onto the Fonthill Road and inform decisions within the annual review of parking charges.

Reason: In the interest of sustainable travel and compliance with the Council's Development Plan.

- 6. (a) A maximum total of 900 number car parking spaces shall be provided at the proposed development.
- (b) A minimum total of 90 number parking spaces shall be Electric Vehicle charging ready on the first opening of the development. The remaining spaces shall be ducted for future Electric Vehicle connections.

- (c) There shall be a total of 45 number (5% of additional) mobility impaired parking spaces provided.

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

7. The developer shall provide 350 number bicycle spaces prior to the opening of the proposed development. The number of spaces shall be increased annually over a five-year period to a minimum of 680 number spaces. Details shall be submitted to, and agreed in writing with, the planning authority prior to commencement of work on site.

Reason: In order to encourage and facilitate sustainable travel patterns in the interest of the proper planning and sustainable development of the area.

8. Prior to the commencement of development, the developer shall submit the following for the written agreement of the planning authority:
- (a) A 0.75-1.0 metre buffer zone shall be provided between the on-street parking spaces and the cycle tracks to the east of the service yard entrance, replicating that proposed on the western side of the entrance.
 - (b) Details of the proposed planting in the vicinity of the exit of the eastern service yard shall be submitted that include low level planting only or shall be omitted in order to ensure the safety of pedestrians and cyclists by providing for maximum visibility around this exit.

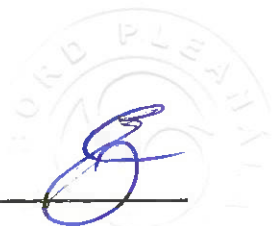
Reason: In the interests of pedestrian and cyclist safety and the proper planning and sustainable development of the area.

9. A comprehensive boundary treatment and landscaping scheme shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

- (a) details of all proposed hard surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development that accords with the specifications and requirements of the Council's Public Realm Section,
- (b) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings,
- (c) details of proposed street furniture, including bollards, lighting fixtures and seating, and
- (d) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes.

The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.

Reason: In the interest of visual amenity.



10. Prior to the commencement of development, the developer shall lodge the following for the written agreement of the planning authority:

- (a) A bat and bird survey for bat and bird usage carried out across the entire site and immediately adjoining sites to assess roosting and feeding/foraging activities and assessing potential impact on these species arising from the proposed development.
- (b) No building, structure, feature or tree/hedgerow shall be altered, destroyed or removed prior to this assessment.
- (c) The survey shall be undertaken by a suitably qualified and experienced bat surveyor (carrying professional indemnity insurance) in consultation with the Heritage Officer during the correct time of the year and under the weather conditions appropriate for a survey of such species.

If bats and/or birds are found to be present on the site or the immediate adjoining sites, no development shall take place until the necessary permission/derogation licence has been obtained from the National Parks and Wildlife Service.

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

11. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that 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 and to secure the preservation and protection of any remains that may exist within the site.

12. Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no further advertisement signs (including any signs installed to be visible through windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the development or within the curtilage of the site, unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area and in the interest of the proper planning and sustainable development of the area.

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 the proposed development.

Reason: In the interests of amenity and public safety.

14. (a) 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.
- (b) Prior to the commencement of development, a detailed SUDS scheme for the proposed development which meets the objectives of the South Dublin County Council Development Plan 2016-2022 shall be submitted to, and agreed in writing with, the planning authority.

Reason: In the interest of public health.

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

Reason: In the interest of the visual amenities of the area.



17. No external security shutters shall be erected on any of the commercial premises fronting onto public roads and public spaces, unless authorised by a further grant of planning permission. Details of all internal shutters shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

18. 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.

19. Prior to commencement of development, the developer shall submit to, and obtain the written agreement of the planning authority, a plan containing details for the management and safe disposal of all 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.

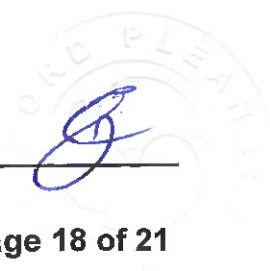
Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment

20. The construction of the development shall be managed in accordance with a Site Traffic and 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 details of intended construction practice for the development, including:
- (a) hours of construction and operation,
 - (b) location of the site and materials compound(s) including area(s) identified for the storage of construction refuse,
 - (c) location of areas for construction site offices and staff facilities,
 - (d) details of site security fencing and hoardings,
 - (e) details of on-site car parking facilities for site workers during the course of construction,
 - (f) details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site if required,

- (g) measures to obviate queuing of construction traffic on the adjoining road network,
- (h) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network,
- (i) alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development work,
- (j) details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels,
- (k) containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater.
- (l) off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil,
- (m) details of construction lighting, and
- (n) means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

Reason: In the interests of amenities, public health and safety.



21. Prior to commencement of work on site, the developer shall contact Weston and Casement Aerodromes to ensure that any crane operations necessitated during construction do not adversely impact the safety of operations.

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

22. 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.

23. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the satisfactory reinstatement of the site on cessation of the project coupled with an agreement empowering the planning authority to apply such security or part thereof to such reinstatement. 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 satisfactory reinstatement of the site.

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 as a special contribution under section 48(2) (c) of the Planning and Development Act 2000 in respect of the external junction upgrades at Fonthill Road/Coldcut, N4 eastbound off slip, Fonthill Road/Saint Lomans Road and the N4 westbound off slip and Fonthill Road and associated alignment, traffic management and sustainable transport improvements as submitted as part of this planning application. The amount of the contribution 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 for determination. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development



John Connolly

Member of An Bord Pleanála

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

Dated this 7th day of DECEMBER 2021.