



An
Bord
Pleanála

Board Order
ABP-310204-21

Planning and Development Acts 2000 to 2021

Planning Authority: Dublin City Council

Planning Register Reference Number: 2244/21

Appeal by Red Rock Donnybrook Limited care of John Spain Associates of 39 Fitzwilliam Place, Dublin against the decision made on the 14th day of April, 2021 by Dublin City Council to refuse permission for the proposed development.

Proposed Development: Demolition of the existing structures on site and construction of a 12 storey (circa 39.5 metres) over basement building (circa 8,930 square metres total gross floor area including basement of circa 877 square metres) with retail and café/restaurant use (circa 570 square metres) at ground floor level and "Build to Rent" residential use at first to 11th floor levels (circa 7,428 square metres. including ground floor entrance). The proposed development will comprise:

- Demolition of the existing petrol filling station and associated structures on site circa 58 square metres,
- Construction of 84 number 'Build-to-Rent' apartment units over 12 number storeys with a dwelling mix of one number studio unit, 51 number one bed units, 32 number two bed units;
- Provision of private open space in the form of balconies/terraces to all individual units;

- Provision of one number retail unit and one number cafe/restaurant unit at ground floor level circa 570 square metres gross floor area with pedestrian access from the northern and eastern elevations;
- Provision of outdoor communal terraces at first and second floor level on the south-western elevation of the building, at eighth floor level to the south of the building and at 11th floor level to the west of the building;
- Additional setbacks at seventh floor level from the south-west elevation and eighth floor from the eastern elevation of the building;
- Provision of six number car parking spaces (one number accessible space, two number shared Go Car spaces and three number residential spaces), 190 number bicycle parking spaces and two number motorcycle parking spaces at basement level;
- Separate vehicular and bicycle lifts accessed via Brookvale Road to provide access to the proposed basement;
- New pedestrian access to the residential element from the northern elevation;
- Provision of internal communal residential amenities and facilities;
- Provision of bin storage, switch room and substation at ground floor level of the western elevation, plant at roof level concealed by the building's parapet, hard and soft landscaping and all associated works to facilitate the development, all on lands (circa 0.11 hectares) at the junction of Donnybrook Road and Brookvale Road, Donnybrook, Dublin. The subject site is currently occupied by the "Circle K" petrol filling station and is bound by Brookvale Road to the north and west, Donnybrook Road to the east and an existing motor garage to the south.

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.



Reasons and Considerations

In coming to its decision, the Board had regard to the following:

- (a) the location of the site in the established urban area of Dublin City in an area zoned Z4 District Centres,
- (b) the policies and objectives of the Dublin City Development Plan 2016-2022,
- (c) Project Ireland 2040 National Planning Framework and particularly objectives 13 and 35,
- (d) Rebuilding Ireland - Action Plan for Housing and Homelessness 2016 and particularly Pillar 4,
- (e) Regional Spatial and Economic Strategy (RSES) for the Eastern and Midland Region 2019 – 2031,
- (f) Guidelines for Sustainable Residential Developments in Urban Areas and the accompanying Urban Design Manual – a Best Practice Guide, issued by the Department of the Environment, Heritage and Local Government in May 2009,
- (g) Urban Development and Building Heights Guidelines for Planning Authorities, prepared by the Department of Housing, Planning and Local Government in December 2018,

- (h) Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government in December 2020 and particularly Specific Planning Policy Requirements 7 and 8,
- (i) Design Manual for Urban Roads and Streets (DMURS) issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government in March 2013,
- (j) Architectural Heritage Protection- Guidelines for Planning Authorities 2011,
- (k) the nature, scale and design of the proposed development and the availability in the area of a wide range of social, transport and water services infrastructure,
- (l) the established and emerging pattern of development in the area,
- (m) the planning history within the area,
- (n) the submissions and observations received, and
- (o) the report of the inspector.

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 be acceptable in terms of urban design and height, would make a positive contribution to the legibility of the wider area and the urban neighbourhood and streetscape and would successfully integrate with existing development in the vicinity and the changing context of Donnybrook Village, would contribute

positively to the mix of uses and building typologies in the neighbourhood, would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would not detract from the character and setting of protected structures, and would be acceptable in terms of pedestrian and traffic safety and convenience. 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 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 potential significant effects of the proposed development, either individually or in combination with other plans or projects, on these European Sites in view of the sites' Conservation Objectives.

The Board was satisfied that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on European Sites: North Dublin Bay Special Area of Conservation (Site Code 000206), North Bull Island Special Protection Area (Site Code 004006), South Dublin Bay Special Area of Conservation (Site Code 000210), South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code 004024), and Poulaphouca Reservoir Special Protection Area (Site Code 004063), or any other European Site, in view of the sites' Conservation Objectives.

The Board noted that, while the Inspector's report had not referred to Poulaphouca Reservoir Special Protection Area (Site Code 004063) as a European Site which occurs within the vicinity of the proposed development, or referred to it in the Appropriate Assessment conclusion, the report correctly identified this site as a European Site which could potentially be affected, and the site was included in the assessment of potential significant effects of the proposed development, either individually or in combination with other plans or projects, on European Sites in view of the sites' Conservation Objectives. The Board also noted the Inspector's report had incorrectly referred to Glenasmole Valley Special Area of Conservation (as Glenasmole Reservoir Special Area of Conservation) but cited the correct site code (001209).

In deciding not to accept the Inspector's recommendation to refuse permission, the Board was satisfied that the applicant had satisfactorily demonstrated that the proposed development, as amended on appeal, would successfully integrate into and enhance the public realm of the area, having regard to the prevailing heights in the surrounding area, and would make a positive contribution to place-making and respond in a positive way to adjoining developments. In particular, the Board considered that the proposed development, as amended on appeal, would successfully integrate with existing development in the vicinity and the changing context of Donnybrook Village, and would comply with the advice on development management criteria given in section 3.2 of Urban Development and Building Height – Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in December 2018.

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 and would not constitute overdevelopment of the site, would be acceptable in terms of urban design and height and would not be out of character with the pattern of existing, permitted and emerging development in

the vicinity, would make a positive contribution to the legibility of the wider area and the urban neighbourhood and streetscape and would successfully integrate with existing development in the vicinity, would contribute positively to the mix of uses and building typologies in the neighbourhood, would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would not detract from the character and setting of protected structures, and would be acceptable in terms of pedestrian and 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, as amended by the further plans and particulars received by An Bord Pleanála on the 11th day of May, 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. 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 issued by the Department of the Housing, Planning and Local Government in March, 2018 and shall be used for long term rentals only. No portion of this development shall be used for short term lettings.

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



3. 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 15 years shall be from the date of occupation of the first apartments within the scheme.

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

4. 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.

5. Details of the materials, colours and textures of all the external finishes to the development shall be as submitted with the application unless otherwise submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.



6. The landscaping scheme, as revised on appeal, shall be implemented fully in the first planting season following completion of the development, and any trees or shrubs which die or are removed within three years of planting shall be replaced in the first planting season thereafter 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.

7. Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority comprehensive details of the design of the loading bay, parking spaces and footpaths along Brookvale Road, including any works to the public footpath.

Reason: In the interest of orderly development.

8. 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: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

9. 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 amenities of property in the vicinity and the visual amenities of the area.

10. Prior to commencement of development, and in consultation with the National Transport Authority, the developer shall submit to, and agree in writing with, the planning authority details in respect of the following:

- (a) the development interface with the BusConnects proposals, which shall be clearly depicted and made available in Irish Transverse Mercator (ITM) coordinates,
- (b) demonstration of how the building construction, operation and maintenance will be managed in relation to the overhang along Donnybrook Road with consideration towards safety and any proposed disruption to public space, bus, cycle and pedestrian movements,
- (c) the footpath under the overhang, which shall be maintained free from all obstruction, such as advertising, seating or signs,
- (d) the substratum under the proposed overhang, which shall be free from construction such as underground services, columns, pillars or any other obstruction, and
- (e) the provision of adequate public lighting.

Reason: In the interests of ensuring compatibility of the proposed development with BusConnects, and amenity and public safety.



11. No external security shutters shall be erected unless authorised by a further grant of planning permission. Details of any 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.

12. 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 occupation of the development.

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

13. Details of any alterations to the road and pedestrian network serving the proposed development, including loading areas, footpaths and kerbs shall be in accordance with the design standards outlined in the Design Manual for Urban Roads and Streets.

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

14. 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 surface water management

15. The developer shall enter into water and waste water connection agreements with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

16. Construction and demolition waste shall be managed in accordance with a construction and demolition waste 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.

17. The construction of the development shall be managed in accordance with a final 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) location of the site and materials compound(s),
 - (b) location of areas for construction site offices and staff facilities,
 - (c) details of site security fencing and hoardings. Hoardings shall include a one square metre area on each road frontage detailing site management contact details,

- (d) details of car parking facilities for site workers during the course of construction,
- (e) 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,
- (f) measures to obviate queuing of construction traffic on the adjoining road network,
- (g) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network,
- (h) 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 works,
- (i) details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels,
- (j) 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,
- (k) off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil,
- (l) means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains,
- (m) 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 interest of amenities, public health and safety.



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

19. The developer shall facilitate the archaeological appraisal of the site and shall provide for 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, and
- (b) employ a suitably qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works. The assessment shall address the following issues:
 - (i) the nature and location of archaeological material on the site, and
 - (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning

authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

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 area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

20. Proposals for a development name and commercial units' identification, 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.

Reason: In the interest of urban legibility and visual amenity.

21. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Any relocation of utility infrastructure shall be agreed with the relevant utility provider. 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.

22. Prior to commencement of development, the developer 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.

23. 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 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.



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.



John Connolly

Member of An Bord Pleanála

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

Dated this 10th day of August 2022.

