

Planning and Development Acts 2000 to 2021

Planning Authority: Dublin City Council

Planning Register Reference Number: 3705/20

Appeal by Darryl Jones of 297 Blackhorse Avenue, Dublin and by Joe and Lisa Fernandez of 299 Blackhorse Avenue, Dublin against the decision made on the 19th day of July, 2021 by Dublin City Council to grant subject to conditions a permission to Mabel Grace Development Limited care of Simon Clear and Associates of 3 Terenure Road West, Terenure, Dublin in accordance with plans and particulars lodged with the said Council.

Proposed Development: The development will consist of the following: demolition of the existing building and yard on site; construction of a four-storey apartment development with undercroft car parking and a setback at third floor level consisting of 17 number units with associated balconies, comprising of six number one-bed units and 11 number two-bed units; new vehicular and pedestrian access from Blackhorse Avenue; 16 number car parking spaces, bicycle parking, motorcycle parking and refuse storage at undercroft level; two number visitor car parking spaces and bicycle parking at surface level; internal communal amenity space including a gym and multi-purpose room at ground floor level with direct access to the external communal amenity space; plant at roof level, landscaping, boundary treatment and all associated site works and services at Blackhorse Avenue, Dublin. The

site bounds the wall of the Phoenix Park, which is a protected structure (Reference 6781).

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

Having regard to: -

- (a) the residential zoning objective as set out in the Dublin City Development Plan 2016-2022,
- (b) the design, layout and scale of the proposed development,
- (c) the existing pattern of development in the vicinity,
- (d) the historic setting and boundary with the Phoenix Park and to the totality of the assessment including the departmental reports on the planning authority's file,
- (e) the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities issued by the Department of Housing, Local Government and Heritage in December 2020, and
- (f) the Architectural Heritage Protection: Guidelines for Planning Authorities issued by the Department of Arts, Heritage and the Gaeltacht in October 2011,

it is considered that, subject to compliance with the conditions set out below, the proposed development would appropriately introduce residential use onto this suitably located infill site, would not detrimentally impact on the architectural heritage of the area including the adjacent Protected Structure, would be acceptable in terms of design, height, layout and scale of the

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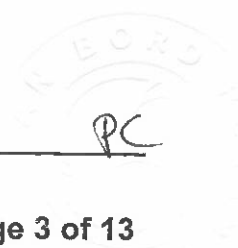
proposed development, would provide a suitable level of accommodation and amenity for future occupants, would not seriously injure the amenities of the area or of properties in the vicinity or of the Phoenix Park, would be acceptable in terms of traffic safety/parking provision and would comply with the provisions of the Dublin City Development Plan 2016-2022, the Sustainable Urban Housing: Design Standards for New Apartments Guidelines and the Architectural Heritage Protection Guidelines. 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 submitted on the 22nd day June 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 proposed development shall be amended as follows:
 - (a) the second-floor plan and front elevation shall be amended to rectify the discrepancy in the window positioning of the main bedroom windows in Unit 206,
 - (b) the boundary fencing, to a height of 1.8 metres high where it abuts adjacent open space areas, shall be installed along the site's north-western boundary,



- (c) one number visitor car parking space shall be omitted to facilitate a permanent clearance area for service vehicle set down. The revised layout shall include detailed demarcation of the site visitor and servicing parking forecourt area and turning areas within the forecourt including signage, hatching and any amendments to landscaping proposals, and
- (d) the width of the vehicular access to the undercroft car parking area shall be reduced to 6.5 metres and suitable design measures shall be adopted to provide pedestrian along the adjacent stretch of footpath.

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

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

- 3. Prior to the commencement of development, details of the materials, colours and textures of all the external finishes including samples, shall be submitted to, and agreed in writing with, the planning authority. This shall include details of the metal balustrades to the proposed balconies.

Reason: In the interests of orderly development and the visual amenities of the area.

- 4. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall encapsulate the recommendations outlined in the Ecological Survey submitted with the further information request response and include the following:

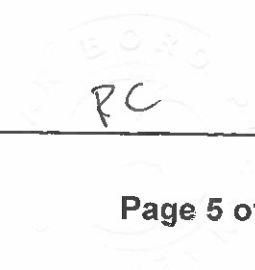
- (a) A plan to scale of not less than 1:500 showing –

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- (i) existing trees, hedgerows, stone walls, specifying which are proposed for retention as features of the site landscaping,
 - (ii) the measures to be put in place for the protection of these landscape features during the construction period,
 - (iii) the species, variety, number, size and locations of all proposed trees and shrubs,
 - (iv) details of screen planting,
 - (v) details of roadside/street planting, and
 - (vi) hard landscaping works, specifying surfacing materials, furniture and finished levels.
- (b) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment
- (c) A timescale for implementation.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interests of residential and visual amenity.



5. Prior to the commencement of development, the developer shall retain the professional services of a qualified Landscape Architect as a Landscape Consultant and a qualified Arboriculturist, throughout the life of the site development works and shall notify the planning authority of these appointments in writing. The developer shall engage the Landscape Consultant to procure, oversee and supervise the landscape contract for the implementation of the permitted landscape proposals. When all landscape works are inspected and completed to the satisfaction of the Landscape Consultant, he/she shall submit a Practical Completion Report to the planning authority for written agreement, as verification that the approved landscape plans and specification have been fully implemented. The Arboriculturist shall oversee tree removal and protection on and adjacent to the site.

Reason: To ensure full and verifiable implementation of the approved landscape design proposals for the permitted development, to the approved standards and specification.

6. (a) Prior to commencement of development, all trees, groups of trees, hedging and shrubs which are to be retained shall be enclosed within stout fences not less than 1.5 metres in height. This protective fencing shall enclose an area covered by the crown spread of the branches, or at minimum a radius of two metres from the trunk of the tree or the centre of the shrub, and to a distance of two metres on each side of the hedge for its full length and shall be maintained until the development has been completed.



(b) No construction equipment, machinery or materials shall be brought onto the site for the purpose of the development until all the trees which are to be retained have been protected by this fencing. No works shall be carried out within the area enclosed by the fencing and, in particular, there shall be no parking of vehicles, placing of site huts, storage compounds or topsoil heaps, storage of oil, chemicals or other substances, and no lighting of fires, over the root spread of any tree to be retained.

Reason: To protect the trees and planting during the construction period in the interest of visual amenity.

7. 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 accepted by the planning authority to secure the protection of the existing trees to be retained on site, the trees adjacent to the site in the Phoenix Park and to make good any damage caused by construction, coupled with an agreement empowering the planning authority to apply such security, or part thereof, to the satisfactory protection of any tree or trees on the site or the replacement of any such trees which die, are removed or become seriously damaged or diseased within a period of three years from the substantial completion of the development with others of similar size and species. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of an agreement, shall be referred to An Bord Pleanála for determination.

Reason: To secure the retention of existing trees to be retained on the site.

8. Prior to commencement of development, detailed structural drawings and a construction methodology statement (including the results of detailed condition/structural surveys of the protected structure) indicating the means proposed to ensure the protection of the structural stability and fabric of the retained structures shall be submitted to, and agreed in writing with, the planning authority. These details shall include demonstrating the methods proposed for demolition and excavation arrangements, the proposed foundation system and underpinning, structural bracing and support and method of construction.

Reason: In the interest of preserving the architectural integrity and heritage value of the retained structures.

9. 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.

10. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise management measures and off-site disposal of construction/demolition waste.

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

11. (a) 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 for each apartment unit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.
- (b) This plan shall provide for screened communal bin stores, the locations and designs of which shall be included in the details to be submitted.

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

12. 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.

13. 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.

14. Proposals for apartment 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 apartment numbers, shall be provided in accordance with the agreed scheme. 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.

15. 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.

16. A minimum of 10% of all communal car parking spaces shall be provided with functioning EV charging stations/points, and ducting shall be provided for all remaining car parking spaces, including in-curtilage spaces, facilitating the installation of EV charging points/stations at a later date. Where proposals relating to the installation of EV ducting and charging stations/points has not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted to, and agreed in writing with, the planning authority prior to the occupation of the development.

Reason: To provide for and/or future proof the development such as would facilitate the use of Electric Vehicles.

17. Electric charging facilities shall be provided for cycle parking and proposals shall be submitted to, and agreed in writing with, the planning authority prior to the occupation of the development.

Reason: In the interest of orderly development and to provide for and future proof the development as would facilitate the use of electric cycles.

18. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

19. 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, particularly the Phoenix Park Conservation area.

20. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

21. 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.

22. 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.

Patricia Calleary

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Member of An Bord Pleanála

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



Dated this 05 day of May 2022.