

Planning and Development Acts 2000 to 2021

Planning Authority: Fingal County Council

Planning Register Reference Number: F21A/0442

Appeal by Calabash Investments Limited care of Hughes Planning and Development Consultants of 85 Merrion Square, Dublin against the decision made on the 5th day of October, 2021 by Fingal County Council to refuse permission for the proposed development.

Proposed Development: (i) Demolition of existing two number dwellings, which include two-storey dormer dwelling 'Levanda' (with single storey out-house structure) and 'Elsfield', a single storey dwelling, (ii) construction of 12 number three-bedroom, three storey, terraced dwellings (House Types A, B, C and D), each dwelling is provided with private amenity space to the rear and one number car parking space (12 number car parking spaces in total), (iii) widening of existing vehicular entrance to provide a new pedestrian footpath and two-way vehicular access road (accessed via Yellow Walls Road), (iv) a new 445 square metres public open space to be provided, including a detailed landscape proposal and new boundary treatments, and (v) new SuDs and foul drainage and all associated works necessary to facilitate the development on lands at 'Levanda' and 'Elsfield', 14 and 14a Yellow Walls Road, Malahide, County Dublin.

Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Reasons and Considerations

Having regard to the residential zoning of the site, the infill nature of the development, and the pattern of existing development in the area, it is considered that the proposed development, subject to compliance with the conditions set out below, 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 would not conflict with the objectives of the Fingal Development Plan 2017-2023. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board considered that the proposed development within a serviced and zoned residential and established built-up area, subject to compliance with the conditions set out below, is an appropriate infill development with adequate separation distances that would not have a significant adverse effect on the residential amenity of adjoining properties, with acceptable private open space for future occupants of the proposed dwelling units within an area of high quality public outdoor spaces such as Malahide Castle and Gardens, Malahide Beach and Bridgefoot GAA pitches within easy reach of the proposed development.

The Board was also satisfied that adequate car parking space is provided and, having regard to the existing access currently serving two residential dwellings, the existing pattern of development in this built-up area, the extent of existing dwellings served by individual driveways onto the Yellow Walls Road, within a posted speed limit of 50km/h, the proposed development of 12 units would not add significantly to the intensification of traffic. The proposed development therefore would not endanger public safety by reason of a traffic hazard. Furthermore, given that the majority of trees for removal are class C and U, the Board considered that the sylvan character of the area is protected by the imposition of conditions on tree preservation and protection and the proposed development would not seriously injure the visual amenities of the area or conflict with Objective DMS77 and Objective PM64 of the current development plan for the area. 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 1st day of November 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. Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

3. 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.

4. 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.

5. 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 house 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.

6. 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 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.

7. The developer shall comply with the following arboricultural requirements:
 - (a) The recommendations contained in the Arboricultural Report submitted with the application shall be fully implemented.
 - (b) Prior to commencement of development, all trees, shall be enclosed within the root and crown spread by tree protective fencing and shall be maintained in place in accordance with the details submitted in the Arboricultural Report through the construction period during which no works or storage shall take place within the enclosed space in consultation with the planning authority.
 - (c) Excavations in preparation for foundations and drainage, shall be carried out under the supervision of a specialist arborist, in a manner that will ensure that all major roots are protected and all branches are retained.

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

8. A comprehensive 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,
 - (b) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings, and
 - (c) details of proposed street furniture, including bollards, lighting fixtures and seating.

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

Reason: In the interest of visual amenity.

9. The recommendations contained in the Bat Fauna Survey shall be fully implemented. Bat and bird boxes shall be installed in the proposed development, prior to the occupation of the residential units. The number, type and location of the boxes shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Reason: To promote biodiversity.

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 management measures for noise, dust and dirt, and construction traffic management proposals.

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

11. 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.

12. 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.

13. Each of the 12 units shall be provided with functioning electric vehicle charging stations/points. Where proposals relating to the installation of electric vehicle charging stations/points have not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted 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.

14. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.

Reason: In the interests of amenity and public safety.

15. 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.

16. The internal road network serving the proposed development, turning bays, junctions, parking areas, footpaths and kerbs, shall be in accordance with the detailed construction standards of the planning authority for such works and design standards outlined in DMURS.

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

17. Details of the location, design and construction method of any retaining walls, shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of visual amenity and public safety.

18. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company, or by the local authority in the event of the development being taken in charge. Detailed proposals in this regard shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure the satisfactory completion and maintenance of this development.

19. 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.

20. Prior to the commencement of any house or duplex unit in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, as amended, that restricts all houses and duplex units permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.

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

21. 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 in writing by the planning authority, to secure the protection of the trees on site and to make good any damage caused during the construction period, 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 agreement, shall be referred to An Bord Pleanála for determination.

Reason: To secure the protection of the trees on the site.

22. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.


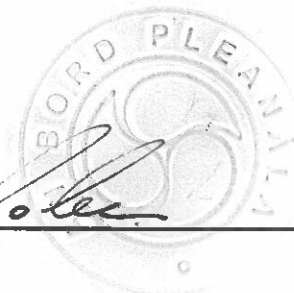
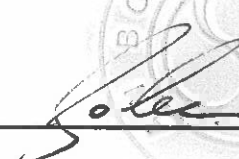
Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

23. The developer shall pay to the planning authority a financial contribution in lieu of the public open space shortfall that arises based on the standards set out in Objectives DMS57 and Objective DMS57B of the development plan and 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.

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.

Stephen Bohan
Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.

Dated this *17th* day of *May* 2022.