

An
Bord
Pleanála

Board Order ABP-312070-21

Planning and Development Acts 2000 to 2022

Planning Authority: Dún Laoghaire-Rathdown County Council

Application for permission under section 4 of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended, in accordance with plans and particulars, lodged with An Bord Pleanála on the 26th day of November 2021 by Ted Living Limited care of Brock McClure Planning and Development Consultants, 63 York Road, Dún Laoghaire, County Dublin.

Proposed Development comprises of the following:

Construction of a new development of 146 number units (34 number studio apartment units, 77 number one-bed apartment units and 35 number two-bed apartment units) and associated ancillary residential tenant amenities (circa 468 square metres) including a gym, atrium and reception area and sky lounge. A retail unit (circa 290 square metres) addressing Old Dun Leary Road and Cumberland Street is also proposed. It is proposed to adapt and incorporate an existing four storey building "Dun Leary House" (a proposed Protected Structure) on site into the development to provide co-working office suites (circa 247 square metres).

The proposed development has overall heights ranging from six storeys (with setbacks from 4th and 5th storey) addressing Dun Leary Hill, to five and eight storeys (with set back from 7th storey) addressing Old Dun Leary Road and six to seven storeys (with setbacks at 8th storey) addressing Cumberland Street.

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Extensive residential amenity facilities are proposed (with a combined area circa 468 square metres) including a gym and associated ancillary facilities at Level 01G (circa 120 square metres), multifunctional atrium and reception amenity areas at Level 01G (circa 251 square metres); residential amenity (sky lounge facility approximately 97 square metres) with external terrace at Level 7.

Private open space for the apartment units is proposed by way of balconies and shared landscaped terraces. Communal open space is provided in the form of a landscaped courtyard including a play area (circa 482 square metres) and landscaped roof terraces and external areas (circa 392 square metres overall) with visibility from public areas.

A part double height retail unit (circa 290 square metres) addressing Old Dun Leary Road and the corner of Cumberland Street. One number signage zone (circa 6675 millimetres by circa 640 millimetres;) on the façade addressing Old Dun Leary Road; one number signage zone addressing corner Old Dun Leary Road and Cumberland Street (circa 800 millimetre by 6000 millimetres) and two number signage zones (one number backlit horizontal sign (circa 6000 millimetre by 700 millimetre) and one number backlit vertical sign (circa 5160 millimetre by 800 millimetre) along Cumberland Street main entrance.

The refurbishment, partial removal and adaptation of a four storey building on site known as "Dun Leary House" (a proposed Protected Structure) to provide co-working office suites (circa 247 square metres) at Levels 01, 02 and 03. The works will include partial removal of original walls and floors, removal of non-original extensions to Dun Leary House, repointing and repair of brickwork and granite fabric, reinstatement of timber sash windows, removal of existing roof, removal; alteration and reinstatement of internal floor layouts, reinstatement of entrance point on Dun Leary Hill, removal of non-original Level 00 and linking the existing building to the new development from Level 00 to Level 03 with the construction of three new floors of development (with set back at roof level) above the existing building. It is proposed to repair, reinstate and improve the existing boundary treatment to Dun Leary House.

Provision of 52 number car parking spaces in total: 44 number car parking spaces provided at Level 00. At Cumberland Street 11 number existing on-street car parking spaces will be removed and eight number on street car parking spaces provided. Provision of 277 number bicycle parking spaces (94 number bicycle parking spaces accommodated in bicycle stands and 183 number long term bicycle parking spaces within a secure storage area) and four number motorbike parking spaces, all at Level 00. Level 00 will be accessed via a new gated vehicular entrance and gated dedicated bicycle path off Old Dun Leary Road.

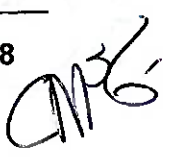
All associated ancillary plant areas, switch rooms, Electricity Supply Board substation, waste management and storage areas to be provided at Level 00, with provision of green roofs (circa 1,157 square metres) at roof areas on Levels 01, 06,07 and 08.

Significant Public Realm improvements including the provision of footpath upgrades, a signalised junction on Old Dun Leary Road and Cumberland Street including pedestrian crossings on all arms, landscaping and 32 number bicycle parking spaces (located to the front of the proposed retail unit and at the corner of Cumberland Street), the inclusion of car parking spaces (as referenced above) on Cumberland Street and new public lighting.

All associated ancillary site development works including:

- Demolition of open fronted shed (371.7 square metres) located at the north-eastern corner of the site with works including replacement of part of the boundary wall adjoining Clearwater Cove,
- all associated landscape and boundary treatment proposals,
- all associated ancillary water and drainage works (including the diversion of existing sewer at Cumberland Street

all located at the former Ted Castles site and Dun Leary House (a proposed Protected Structure), Old Dun Leary Road, Cumberland Street and Dun Leary Hill, Dún Laoghaire, County Dublin.

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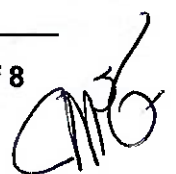
Decision

Refuse permission for the above proposed development based on the reasons and considerations set out below.

Reasons and Considerations

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

1. Having regard to the extensive works, as originally proposed, to Dunleary House, a Protected Structure, including the extensive removal of the original fabric internally and the removal of the roof form, the Board is of the view that the proposal essentially involves partial façade retention. It is also considered that the three-storey roof extension to the proposed Protected Structure would appear as a dominant and overbearing addition to the building, with subsequent negative impacts on the character and appearance of the structure, and would result in significant negative impacts on the visual amenity of the area. The Board is also of the view that the proposed works to Dunleary House would not constitute renovation and rehabilitation as required by Specific Local Objective 37 of Dún Laoghaire-Rathdown County Development Plan 2022-2028. Furthermore, the Board considered that the alternative design proposal presented by the applicant to the limited agenda oral hearing held on the 22nd day of June 2022, would continue to involve removal of elements of part of the Protected Structure (albeit to a lesser extent) and would continue to propose a design and form of new build at and immediately adjoining the Protected Structure which would overwhelm the existing structure, by reason of scale, form, mass and immediate proximity. The proposed development, even in its alternative design, would not adequately address the conservation issue raised by An Bord Pleanála under item 3 of the oral hearing agenda as set out in its correspondence dated 17th day of May 2022 to all parties. In this regard, it is considered that the proposed development, both as originally proposed and as set out in the alternative design proposal, would be contrary to guidance set out in the



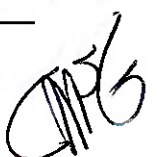
Architectural Heritage Protection – Guidelines for Planning Authorities (2011) and would be inconsistent with Specific Local Objective 37 and Policy Objective HER8 of the Dún Laoghaire-Rathdown County Development Plan 2022-2028. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the form and layout of the proposed development, including the proportion of units without private amenity space, the proportion of single aspect units, and also including 25 units (referred to at paragraph 10.56.24 of the Inspector's report dated 24th day of March 2022) which are described as dual aspect, but which on full examination of the totality of the documentation submitted and noting also the relevant provisions of paragraph 12.3.5.1 of the Dún Laoghaire-Rathdown County Development Plan 2022-2028, are considered by the Board to constitute in effect single aspect units and to provide a poor form of aspect amenity in terms of actual layout, it is considered that the proposed development would result in a substandard form of development which would be seriously injurious to the residential amenity of prospective occupants. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to grant permission, the Board in the first instance, agreed with the recommendation of the Inspector, as set out in his first report, dated 24th day of March 2022, that the proposed development as originally lodged with An Bord Pleanála should be refused permission by reason of adverse impact on Dunleary House, in terms of direct intervention to the fabric of the building and the dominant and overbearing effect of the three storey roof extension. The Board further noted the issues raised by the Board as items for consideration at the limited agenda oral hearing held on the 22nd day of June 2022, specifically item 3, which states, *'The proposed works to the proposed Protected Structure involve the removal of substantial elements of the form, and the introduction of extensions that have the potential to overwhelm the existing structure. The applicant is requested to provide further elaboration or justification in respect of the*

removal of the roof of the proposed Protected Structure, and the appropriateness (in full or in part) of the proposed three additional floors above, in particular having regard to the Development Plan Policy and Architectural Heritage Guidelines.'

However, upon full examination and consideration of all submissions made to the oral hearing, including the alternative design proposal as submitted by the applicant, and the addendum report of the Inspector, dated 5th day of December 2022, the Board determined that this alternative design did not adequately address the issue set out above. Specifically, the Board did not share the opinion of the Inspector that the alternative proposal '*eliminates the overbearing nature of the originally submitted proposal*'. The judgement of the Board is that the alternative proposal continues to constitute a dominant and overbearing design form at and immediately adjoining the protected structure and continues to overwhelm it. This judgement is made on the totality of the documentation on file including the presented details as submitted to the oral hearing and is affirmed by a reading of the relevant provisions of the Dún Laoghaire-Rathdown County Development Plan 2022-2028, including SLO 37 and policy objective HER8. In this regard the Board determined that the scale, mass, form and positioning of the proposed development, both in its original form and in other alternative design proposal, would be inconsistent with objective SLO 37 which refers to Dunleary House being retained in situ and refers to the positive contribution which the building makes to the character and appearance of the streetscape at this location. The Board determined that the proposed development, even in its alternative design form, would overwhelm the protected structure in such a manner as to materially adversely affect the positive contribution the building makes to the streetscape at this location. Furthermore, the Board determined that the proposed development, including the alternative design proposal, by reason of design, form, mass and positioning, would be inconsistent with Policy objective HER8, specifically with regard to the refusing of planning permission for inappropriate development within the curtilage and attendant grounds that would adversely impact on the special character of the protected structure. The Board also determined that the substantive issue underpinning reason number 1 for refusal, is in effect, scale, mass, form of design and intervention at and immediately in proximity to the



protected structure. This issue is considered fully relevant as a reason for refusal, regardless of the statutory development plan in place at the time of the decision, noting that the relevant provisions of both the Dún Laoghaire-Rathdown County Development Plans 2016-2022 and 2022-2028, could reasonably be applied to the reason for refusal and that the relevant provisions of the 2022-2028 Plan were ventilated at the oral hearing.

In relation to reason number 2 for refusal, the Board fully acknowledged the commentary of the Inspector on the issue of dual aspect, both at paragraph 10.6.24 of the first report dated 24th day of March 2022 and paragraphs 4.3.34 and 4.3.35 of the addendum report dated 5th day of December 2022. In overview, the Board noted the inspector's referencing of 25 units which he described as not '*standard*' dual aspect and his separate referencing of paragraph 12.3.5.1 of the Dún Laoghaire-Rathdown County Development Plan 2022-2028. On the latter point, the Board considered the full wording of the development plan which states that '*a dual aspect apartment is designed with openable windows on two or more walls, allowing for views in more than just one direction.... The use of windows, indents or kinks on single external elevations, in apartment units which are otherwise single aspect apartments is not considered acceptable and/or sufficient to be considered dual aspect and these units will be assessed as single units*'.

The Board considered that the Inspector did not engage fully with this section of the development plan in conjunction with an assessment of the implications of this policy by reference to the form and layout of the relevant apartments as submitted. While the Inspector considered that the 25 units were acceptable, he noted that they might not be considered as standard dual aspect units. The Board determined, subsequent to a substantive assessment of the relevant drawings and by reference to paragraph 12.3.5.1 of the development plan, that they should more readily be judged as in effect single aspect. In any case, the Board determined that this significant number of poor aspect units, when considered in addition to those fully acknowledged by the applicant as being single aspect, constitutes an overall substandard form of future residential amenity contrary to the proper planning and sustainable development of this site. This issue is compounded by a related concern as to the number of proposed units in the overall scheme without any



private amenity space, such that the Board did not share the opinion of the Inspector regarding the overall quality of the proposed development.



Chris McGarry

Member of An Bord Pleanála

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

Dated this  day of  2024