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**Planning and Development Acts 2000 to 2021**

**Planning Authority: Dublin City Council**

**Planning Register Reference Number: 2704/21**

**Appeal** by Barbara Rafferty of 13 Pembroke Park, Ballsbridge, Dublin and by others against the decision made on the 14<sup>th</sup> day of December, 2021 by Dublin City Council to grant subject to conditions a permission to The Pembroke Road Partnership care of John Spain Associates of 39 Fitzwilliam Place, Dublin in accordance with plans and particulars lodged with the said Council:

**Proposed Development:** The proposed development will consist of: (1) demolition of non-original extensions to Saint Mary's Home and ancillary structures on site; (2) alterations to and change of use of the existing building (Saint Mary's Home) from nursing home to Build to Rent (BTR) residential use, including internal and external alterations, elevational alterations, and the replacement of the existing roof structure providing for an additional storey, to provide 23 number Build To Rent residential units (Block A), along with resident support facilities, and resident services and amenities located at ground floor level; (3) construction of a new part three and part four storey building to the north of and connected to the existing building, to provide 22 number Build To Rent residential units (Block B); (4) construction of a new three storey building to the east of the existing building, to provide for 16

number Build To Rent residential units (Block C); (5) construction of three number new two storey Built To Rent duplex units to the south of the existing building (Block D); (6) the proposed development will provide a total of 64 number Build to Rent residential apartment units comprising 19 number studio apartments, 41 number one bedroom apartments (including the three number duplex units within Block D) and four number two bedroom apartments; (7) the development will comprise a total gross floor area (GFA) of circa 4,302 square metres; (8) the development includes all associated site development works, car and bicycle parking spaces, solar panels at roof level, bin stores, bicycle store, plant, hard and soft landscaping, boundary treatments, widening of vehicular access from Pembroke Park, pedestrian access points from Clyde Lane and Pembroke Park, foul and surface water drainage, and all other ancillary works, including temporary site hoarding and marketing signage, all at Saint Mary's Home, Pembroke Park and 28A Clyde Lane, 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 nature and scale of the proposed development, the pattern of development in the vicinity, the relevant provisions of the Dublin City Development Plan 2022-2028 including policy QHSN41 and QHSN42 and associated policies relating to build to rent and housing provision generally, the Sustainable Urban Housing: Design Standards for New Apartments (2022) prepared by the Department of Housing, Local Government and Heritage, and the associated Circular Letter NRUP 07/2022 dated the 22<sup>nd</sup> December 2022, which accompanied the guidelines, and the totality of the documentation submitted with the application and appeal, including the submissions of the applicant, third party appellants and observer subsequent to the further information request to the applicant dated the 16<sup>th</sup> January, 2023 and the circulation to all parties and observers of the response received, it is considered that, the proposed development would be in accordance with the relevant Ministerial Guidelines, the relevant provisions of the Dublin City 2022-2028 and that, subject to compliance with the conditions set out below, the proposed development would be sufficiently integrated into the existing community, would not detract from the character of the area, would not seriously injure the amenities of adjacent residential neighbourhoods or of the property in the vicinity, would not be prejudicial to public and environmental health, would not cause flooding or be at risk of flooding, would be acceptable in terms of pedestrian and traffic safety and would constitute an appropriate design, form and scale of residential development at this zoned and serviced site. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## Conditions

1. The proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application, amended by the further plans and particulars submitted on the 17<sup>th</sup> 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 or as otherwise stipulated by conditions hereunder, and the proposed 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 Housing, Planning and Local Government in December 2020, and be used for long term rentals only. No portion of this development shall be used for short term lettings.

**Reason:** In the interest of clarity.

3. Prior to the commencement of any development works on site, the applicant 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 or rented separately for that period.

**Reason:** In the interest of clarity.

4. Prior to the commencement of development, the owner shall submit, for the written agreement of the planning authority, details of a proposed covenant or legal agreement binding on it and its successors confirming, for a minimum term of 15 years after the first occupational letting in the development:

- (a) no separate sales or equivalent disposals of any individual residential units shall take place, and
- (b) the residential development shall be owned and operated by a single institutional entity.

Such covenant or agreement shall contain such details as to ensure to the satisfaction of the planning authority the effectiveness of the foregoing requirements.

**Reason:** In the interest of clarity.

5. Prior to the expiration of the 15 year period referred to in the covenant, the owner shall submit for the written agreement of the planning authority, 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 application.

**Reason:** In the interest of clarity.

6. The landscaping scheme shown on drawing number L1-100 (received by the planning authority on the 30<sup>th</sup> day of April, 2021) as amended by drawing number L1-803 (received by the planning authority on the 17<sup>th</sup> day of November, 2021) and the Tree Impacts Plan (March 2021) shall be carried out within the first planting season following substantial completion of external construction works. 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 interest of clarity.

7. (a) Prior to commencement of development, and on appointment of a main contractor, a Construction Management Plan shall be submitted to the planning authority for written agreement. This plan shall provide details of intended construction practice for the development, including traffic management, hours of working, noise management measures and off-site disposal of construction/demolition waste.
- (b) A Construction Traffic Management Plan shall be submitted and this shall clearly detail vehicular access proposals, management and mitigation measures, mobility management measures for construction staff including onsite cycle parking provision. Vehicular construction access via Clyde Lane should be restricted, as far as possible, and any access requirements clearly detailed.

- (c) At the vehicular access/exit point to the development, the public footpath shall be continued at a raised level across the site entrance and exit, but shall be ramped and dropped as necessary (e.g. 32 millimetres kerb over carriageway) to facilitate car-entry/exit. Measures shall be implemented, including contrasting materials, signing, and road marking, etc. to ensure that vehicles entering/leaving the development are aware that pedestrians/cyclists have priority across the site entrance and that vehicles must yield right-of-way. Details shall be submitted to, and agreed in writing with, the planning authority prior to commencement of the development.
- (d) Two number parking spaces shall be allocated to car share and two number parking spaces shall be allocated to loading/set-down. Electrical Charging facilities shall be provided for both car share spaces.
- (e) Cycle parking shall be secure, conveniently located, sheltered and well lit. Electric bike charging facilities shall be provided. Key/fob access shall be required to bicycle compounds. Cycle parking design shall allow both wheel and frame to be locked.
- (f) All costs incurred by Dublin City Council, including any repairs to the public road and services necessary as a result of the development, shall be at the expense of the developer.

**Reason:** In the interest of clarity.

- 8. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services and all surface water shall be treated within the site.

**Reason:** In the interest of public health.

9. Prior to commencement of development, the developer shall enter into water and wastewater connection agreements with Uisce Éireann.

**Reason:** In the interest of public health.

10. (a) The developer shall comply with the Greater Dublin Regional Code of Practice for Drainage Works Version 6.0 (available from [www.dublincity.ie](http://www.dublincity.ie) Forms and Downloads).
- (b) The drainage for the proposed development shall be designed on a completely separate foul and surface water system with a combined final connection discharging into Uisce Éireann's combined sewer system. Dead leg for future surface water connection shall be provided.
- (c) The development shall incorporate Sustainable Drainage Systems in the management of surface water. Full details of these shall be agreed in writing with Drainage Division prior to commencement of construction.
- (d) All surface water discharge from this development shall be attenuated in accordance with the requirements of the Greater Dublin Regional Code of Practice for Drainage Works Version 6.0. Surface water attenuation calculations shall be submitted to planning authority's Drainage Division prior to commencement of construction.
- (e) Flood mitigation measures outlined in the Site Specific Flood Risk Assessment by OCSC Consulting Engineers shall be fully implemented, including maintaining a 1.5 metre wide, ground level, overland flow route across the site.
- (f) The outfall surface water manhole from this development must be constructed in accordance with the Greater Dublin Regional Code of Practice for Drainage Works Version 6.0.



- (g) All private drainage such as downpipes, gullies, manholes, Armstrong junctions, etc. are to be located within the final site boundary. Private drains should not pass through property they do not serve.

**Reason:** In the interest of environmental protection.

11. (a) **Noise Control and Air Quality Control - Demolition and Construction Phase:**

- (i) A Construction Management Plan shall be prepared on behalf of the developer and contractor. This Construction Management Plan shall be submitted to, and agreed in writing, with the planning authority prior to commencement of development. This plan shall be developed with reference to the Code of Practice for Construction and Demolition produced by the Air Quality Monitoring and Noise Control Unit of Dublin City Council. The development for this purpose shall be deemed to be medium to high risk.
- (ii) The hours of operation during the demolition and construction phase shall be restricted to 0700 to 1800, Monday to Friday, and 0800 to 1400 on Saturdays. Permission to work outside of these hours must be subject to the approval of the planning authority.

**Noise Control – General:**

- (b) The LAeq level measured over 15 minutes (daytime) or 5 minutes (night-time) at a noise sensitive premises when plant is operating shall not exceed the LA90 (15 minutes day or 5 minutes night), by 5 decibels or more, measured from the same position, under the same conditions and during a comparable period with no plant in operation.

Air Quality Control - General

- (c) No emissions, including odours, from the activities carried on at the site associated with the development shall result in an impairment of, or an interference with amenities or the environment beyond the site boundary or any other legitimate uses of the environment beyond the site boundary.

**Reason:** In the interest of environmental protection and to protect residential amenities.

12. 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 visual amenities.

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

**Reason:** In the interest of clarity.



14. Prior to the commencement of any development works on site, the applicant shall submit, for the written consent of the planning authority, the following details:
- (a) a 1:20 drawing showing details of all proposed railings and gates,
  - (b) full drawing survey including photographic record of all existing boundary walls,
  - (c) detailed schedules of any repair and reinstatement works that are required to the walls. A method statement for the raking out and re-pointing of the stonework and associated repair details. Details of the historic stone coursing, sizes of stone as well as mortar composition and colour, and
  - (d) full details of all proposed new elements, such as tothing-in and repair work that may be required. All new elements shall match the historic walls.

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

15. 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 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.

16. Proposals for a naming and numbering scheme for the proposed development 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. The proposed name 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 of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.

**Reason:** In the interest of urban legibility and to ensure the use of locally appropriate place names for new residential areas.

17. 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.

**Reason:** In the interest of sustainable waste management.

18. Gates shall not be erected at the entrances from Pembroke Park or from Clyde Lane.

**Reason:** To facilitate pedestrian movement through the site and encourage integration into the existing community.

19. 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 taking in charge by a Management Company or by the Local Authority of roads, footpaths, watermains, drains, 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 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.

20. 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.

21. 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.



**Chris McGarry**

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

Dated this 15<sup>th</sup> day of May 2023.