



Planning and Development Acts 2000 to 2022

Planning Authority: Fingal 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 19th day of April 2022 by Birchwell Developments Limited care of Downey Planning of 29 Merrion Square, Dublin.

Proposed Development comprises of the following:

Demolition of the former rugby clubhouse structure on site and the construction of a total of 415 number residential units (252 number houses, 135 number apartments, and 28 number duplex units); with one number childcare facility and ancillary residential amenity facilities to be provided as follows:

- 252 number residential houses (192 number three-bedroom units, 48 number four-bedroom units, 12 number five-bedroom units) in detached, semi-detached, mid-terraced and end-terraced houses ranging from two to three storey in height;
- Apartment Blocks A and B are connected at ground and first floor level sharing an undercroft car park at ground floor level and a landscaped podium garden at first floor level, and contain a total of 110 number units in two number buildings ranging from one to five storeys in height, with Apartment Block A containing a total of 54 number units comprising of 14 number one-bedroom units, 39 number two-bedroom units, and one number three-bedroom unit, and Apartment Block B containing a total of 56 number units comprising of 14

number one-bedroom units, 40 number two-bedroom units, and two number three-bedroom units, with all units provided with private balconies/terraces; internal bicycle stores, bin stores and plant rooms at ground floor level; and on-street car parking and bicycle parking. Ancillary residential amenity facilities are also proposed including concierge/reception, meeting room, gym, and multi-purpose room;

- Apartment Block C containing a total of 25 number units comprising of 9 number one-bedroom units, 14 number two-bedroom units and two number three-bedroom units, with all units provided with private balconies/terraces, in a building four storeys in height; with on-street car parking and bicycle parking; with access to a communal bin store and bike store;
- Duplex Block D containing a total of 12 number units comprising of six number two-bedroom units and six number three-bedroom units, with all units provided with private balconies/terraces, with a communal bin store and bike store; and one number childcare facility with outdoor play area, all in a building ranging from one to three storeys in height; with residential on-street car parking; and childcare on-street drop-off area, car parking and bicycle parking;
- Duplex Block E containing a total of eight number units comprising of four number one bed units and four number two-bedroom units, with all units provided with private balconies/terraces; in a three-storey building; with a communal bin store and bike store, and on-street car parking;
- Duplex Block F containing a total of eight number units comprising of four number one-bedroom units and four number two-bedroom units, with all units provided with private balconies/terraces; in a three-storey building; with a communal bin store and bicycle store, and on-street car parking.

The development will provide for a total of 721 number car parking spaces within the scheme; a total of 227 number bicycle spaces serving the apartments, duplexes and childcare facility; proposed use of the existing vehicular access off Back Road (proposed vehicular access via Ashwood Hall and Brookfield) and proposed use of the existing vehicular access off Kinsealy Lane (proposed vehicular access via Hazelbrook); proposed upgrades to public

realm including footpaths, landscaping including play equipment, boundary treatments, and public lighting; and all associated engineering and site works necessary to facilitate the development including proposed upgrade of part of the existing foul drainage network in Hazelbrook, and proposed connection and associated works to the existing foul network along Kinsealy Lane which will be upgraded under planning permission Register Reference F21A/0451. The northern lands are generally bound by Ashwood Hall to the west, and the southern lands are generally bound by Hazelbrook to the west and Brookfield to the north all located at Back Road and Kinsealy Lane, Kinsaley, Broomfield, Malahide, County Dublin.

Decision

GRANT permission for 87 residential units in the southern section of the site in accordance with the said plans and particulars based on the reasons and considerations marked (1) under and subject to the conditions set out below.

REFUSE permission for the proposed development located in the northern section of the site based on the reasons and considerations marked (2) under.

Reasons and Considerations (1)

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

- The National Planning Framework issued by the Department of Housing, Planning and Local Government in February 2018;
- Housing for All – A New Housing Plan for Ireland, 2021;
- The Climate Action Plan, 2024
- The Regional Spatial and Economic Strategy for the Eastern and Midland Region, 2020;
- The Sustainable Residential Developments and Compact Settlement Guidelines for Planning Authorities

- The 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 and revised in 2019;
- Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government in December 2023 ;
- The Urban Development and Building Heights Guidelines for Planning Authorities 2018;
- The Planning System and Flood Risk Management' (including the associated 'Technical Appendices') 2009;
- The site's location on lands with zoning objective 'RA', to *'Provide for new residential communities subject to the provision of the necessary social and physical infrastructure'*;
- The policies and objectives as set out in the Fingal Development Plan 2023 – 2029;
- The location of the site within the Outer Public Safety Zone of Dublin Airport;
- The nature, scale and design of the proposed development;
- The planning history of the site;
- The Chief Executive's Report;
- The Inspector's report; and
- The submissions and observations received.

It is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the area or of property in the vicinity, would not interfere with protected views, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of traffic and pedestrian safety and convenience and would provide for suitable connections to Hazelbrook, Brookfield and Ashwood Hall Estates. The proposed development would not give rise to a risk of flooding upstream or downstream of the site. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.



Appropriate Assessment: Stage 1:

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on designated European Sites, taking into account the nature, scale and location of the proposed development within a zoned and serviced urban area, the Appropriate Assessment Screening document submitted with the application, the Inspector's report, and submissions on file. In completing the screening exercise, the Board adopted the report of the Inspector and concluded that, by itself or in combination with other development in the vicinity, the proposed development would not be likely to have a significant effect on any European Site in view of the conservation objectives of such sites, other than the Baldoyle Bay Special Area of Conservation (Site Code 000199) and Baldoyle Bay Special Protection Area (Site Code 004016) which are European Sites for which there is a likelihood of significant effects.

Appropriate Assessment: Stage 2:

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an Appropriate Assessment of the implications of the proposed development for the Baldoyle Bay Special Area of Conservation (Site Code 000199) and Baldoyle Bay Special Protection Area (Site Code 004016) in view of the sites' conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment.

In completing the appropriate assessment, the Board considered, in particular, the following:

- (a) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- (b) the mitigation measures which are included as part of the current proposal, and
- (c) the conservation objectives for the European Sites.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Sites, having regard to the sites' conservation objectives. In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of European Sites in view of the sites' conservation objectives. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable scientific doubt as to the absence of adverse effects.

Environmental Impact Assessment

The Board completed, in accordance with section 172 of the Planning and Development Act 2000, as amended, an environmental impact assessment of the proposed development, taking into account:

- (a) The nature, scale and extent of the proposed development;
- (b) The Environmental Impact Assessment Report and associated documentation submitted in support of the application;
- (c) The submissions from the applicant, planning authority, observers and the prescribed bodies in the course of the application; and
- (d) The Planning Inspector's report.

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, adequately identifies and describes the direct, indirect, secondary and cumulative impacts of the proposed development on the environment.

The Board agreed with the examination set out in the Inspector's report, in particular at section 13 of that report, of the information contained in the Environmental Impact Assessment Report and associated documentation submitted by the applicant and the submissions made in the course of the planning application.

Reasoned Conclusions on the Significant Effects

The Board concluded that the main significant direct, indirect, secondary and cumulative effects of the proposed development on the environment would be:

- Significant direct positive effects with regard to population and material assets due to the increase in the housing stock that it would make available in the urban area.
- A significant direct effect on land by the change in the use and appearance of these greenfield lands to residential. Given the location of the site, its zoning and the public need for housing in the region, this would not have a significant negative impact on the environment.
- Potential significant effects on soil during construction, which will be mitigated by the re-use of material on the site and the removal of non-hazardous material from the site, and the implementation of measures to control emissions of sediment to water and dust to air during construction.
- Potential effects on water which will be mitigated during the occupation of the development by the proposed system for surface water management and attenuation with respect to stormwater runoff and the drainage of foul effluent to the public foul sewerage system, and which will be mitigated during construction by appropriate management measures to control the emissions of sediment to water.
- Potential effects arising from noise and vibration during construction which will be mitigated by appropriate management measures. Potential effects during operation having regard to noise from the railway line and aircraft noise. This will be mitigated by the use of appropriate insulation, fenestration and ventilation where relevant.
- Potential effects on air during construction which will be mitigated by a dust management plan including a monitoring programme.
- Potential effects on traffic and the road network from the increase in traffic in the wider road network area. Such effects can be mitigated by use of more sustainable modes of traffic.

The Board completed an environmental impact assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures set out in the environmental impact assessment report and subject to compliance with the conditions set out below, the effects on the environment of the proposed development, by itself and in combination with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the Inspector.

Conclusions on Proper Planning and Sustainable Development

The Board considered that the proposed development is, broadly compliant with the provisions of the Fingal Development Plan 2023-2029 and would therefore be in accordance with the proper planning and sustainable development of the area.

The Board considered that, a grant of permission for the 87 residential units in the southern section of the site would not materially contravene a zoning objective or other objective of the Development Plan.

Furthermore, the Board considered that, subject to compliance with the conditions set out below that the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity and would be acceptable in terms of traffic and pedestrian safety and convenience and flood risk. 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, 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 development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. The number of residential units permitted by this grant of permission is 87 number residential units and all associated works. (Identified as 2, Character Area 4 on the Overall Site Layout (2 of 2) Drawing Number PL102.)

Reason: In the interest of clarity.

3.
 - (a) The mitigation and monitoring measures outlined in the Environmental Impact Assessment Report, the Natura Impact Statement and associated documents submitted with this application shall be compiled into a Single Schedule of Monitoring and Mitigation Measures and shall be submitted to the planning authority prior to the commencement of the development.
 - (b) The mitigation and monitoring measures shall be carried out in full except where otherwise required by conditions attached to the permission.

Reason: To safeguard amenities.

4. The proposed development shall be amended as follows :
- (a) Rotate Block F so that it is orientated to the south;
 - (b) Amend Blocks E and F so as there is a consistent roof ridge height and a hipped roof profile is provided.
 - (c) The extent and nature of the use of the access between house number 71 and Duplex Block F, identified on the drawing PL102 as an agricultural access, shall be the subject of written agreement with the Planning Authority.

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

Reason: In the interest of residential amenity, visual amenity and connectivity.

5. A Swept Path Analysis shall be submitted and agreed to the planning authority, prior to commencement of development, from the junction of Hazelbrook with Kinsealy Lane to the existing agricultural entrance. This should demonstrate that the carriageway is sufficient to accommodate the increased traffic generated by the proposed development and future developments and if not, specify the road widening works required.

Reason: In the interest of traffic convenience.

6. Prior to commencement of development,
- (a) details of the materials, colours and textures of all the external finishes to the proposed dwellings/buildings shall be as submitted with the application save for the brick, unless agreed in writing with, the planning authority prior to commencement of development. A compliance submission shall be made in relation to the brick used, prior to commencement of development. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

- (b) Such materials shall be consistent with the level of noise insulation required having regard to the site's location within Noise Zone B of Dublin Airport.

Reason: In the interests of visual and residential amenity.

7. Proposals for a development name and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all such names and numbering shall be provided in accordance with the agreed scheme.

Reason: In the interest of urban legibility.

8. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through the communal open spaces, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development/installation of lighting. Such lighting shall be certified as having appropriate lux levels provided by a bat specialist prior to the making available for occupation of any unit.

Reason: In the interests of amenity and public safety.

9. 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.

Reason: In the interests of visual and residential amenity.

10. 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

11. (a) The developer shall enter into water and wastewater connection agreement(s) with Uisce Eireann, prior to commencement of development.
- (b) No unit shall be occupied until the pumping station permitted under planning register reference number F21A/0451 has been commissioned.

Reason: In the interest of public health.

12. The site shall be landscaped (and earthworks carried out) in accordance with the detailed comprehensive scheme of landscaping, which accompanied the application submitted, unless otherwise agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of residential and visual amenity.

13. 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.

- 14. (a) The communal open spaces, including hard and soft landscaping, car parking areas and access ways, communal refuse/bin storage, and all areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company.
- (b) Details of the management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.

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

- 15. (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 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.

(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.

(c) This plan shall provide for screened bin stores, which shall accommodate not less than three standard sized wheeled bins within the curtilage of each house plot.

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

16. 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. 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 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) including area(s) identified for the storage of construction refuse;
- (b) Location of areas for construction site offices and staff facilities;
- (c) Details of site security fencing and hoardings;
- (d) Details of on-site 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.
- (n) Notification to Dublin Airport Authority in relation to crane use.

Reason: In the interest of amenities, public health and safety.

18. A minimum of 10% of all car parking spaces should be provided with electric vehicle charging stations or points, and ducting shall be provided for all remaining car parking spaces facilitating the installation of electric vehicle charging points or stations at a later date. Where proposals relating to the installation of electric vehicle ducting and charging stations or points has not been submitted with the application, in accordance with the above noted requirements, the development shall submit 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.

19. Site development and building works shall be carried out only between the hours of 0700 to 1900 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.

20. Electric charging facilities shall be provided for bicycle 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 bicycles.

21. All of the permitted house or duplex units in the development, when completed, shall be first occupied as a place of residence by individual purchasers who are not a corporate entity and/or by persons who are eligible for the occupation of social or affordable housing, including cost rental housing. Prior to commencement of development, the applicant, or any person with an interest in the land shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act 2000, as amended, to this effect. Such an agreement must specify the number and location of each house or duplex unit.

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.

22. 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.

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 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.

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.

Reasons and Considerations (2)

Refuse permission for for the proposed development located in the northern section of the site due to poor place making, generally in accordance with the Inspector's recommendation, for the following reasons and considerations.

1. Having regard to the layout of the proposed development in the northern section of the site, where the apartments and duplex units, which are reliant on a reduced car parking provision, are located distant from these services, it is considered that the layout of the proposed development fails to respond to the characteristics of the site.

Furthermore, the location of the proposed creche would not encourage active travel and would invite unnecessary vehicular trips. The proposed development would constitute disorderly development, would not mitigate for reduced private vehicular travel and would therefore, be contrary to the proper planning and sustainable development of the area.

Note: The Board reviewed the content of both the Fingal County Development Plan 2017- 2023 and the Fingal County Development Plan 2023 -2029. The Board noted that there are no material changes between the 2017 County Development Plan and the 2023 Plan as they relate to the appeal site and the current proposal the subject of this refusal specifically regarding zoning, access to public transport and access to existing retail and services.


Mary Henchy

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

Dated this

4th

day of

July

2024