

An
Bord
Pleanála

Board Order
ABP-314309-22

Planning and Development Acts 2000 to 2022

Planning Authority: Dún Laoghaire-Rathdown County Council

Planning Register Reference Number: D21A/1041

Appeal by Katherine Aylmer of Lisieux House, 5 Charlemont Terrace, Crofton Road, Dún Laoghaire, County Dublin and by others against the decision made on the 13th day of July, 2022 by Dún Laoghaire-Rathdown County Council to grant subject to conditions a permission to Fitzwilliam DL Limited care of John Spain Associates of 39 Fitzwilliam Place, Dublin in accordance with plans and particulars lodged with the said Council:

Proposed Development: The development will consist of the demolition of existing dwelling on site (circa 79 square metres) and the construction mixed use development of 88 number Build to Rent residential apartments, commercial unit and café across two buildings. Building 01 (part five, six and eight storeys) fronting Crofton Road provides 43 apartments with associated internal residential amenity at ground-floor, first-floor level and seventh-floor level with associated internal residential amenity at ground-floor, first-floor level and seventh-floor level with external roof terraces at fifth and seventh-floor levels (with flagpole at seventh-floor level) and commercial unit (use falling within Class 1 (shop), Class 2 (financial/professional services), Class 8 (medical services)) and café located at the eastern part of the building at ground-floor level. Building 02 (part eight, part nine storeys) to the rear

provides 45 apartments with external roof terrace at eighth-storey level with refuse, bicycle storage and storage at ground floor level. A central courtyard provides 378 square metres of communal amenity space, with a total of 681 square metres public open space provided within a landscaped area adjacent to the northern elevation of Building 01 and pedestrian route at the eastern perimeter. Access is taken from Crofton Road with a shared vehicular and cycle entrance at the western perimeter of the site providing access to three number car parking spaces within the central courtyard and to Saint Michael's Hospital to the south. All associated infrastructure, access, works to footpath and road markings at Crofton Road, landscaping, cycle parking, refuse storage, plant and ancillary works to enable the development. All on lands at Saint Michael's Hospital Car Park, Crofton Road, Dún Laoghaire, County Dublin, as revised by the further public notice received by the planning authority on the 16th day of June, 2022.

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

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

- (a) The location of the site on lands with the zoning objective 'Major Town Centre (MTC)' as set out in the Dún Laoghaire-Rathdown County Development Plan 2022 - 2028, which aims to protect, provide for and/or improve major town centre facilities;

- (b) The nature, scale and design of the proposed development, which is in accordance with the policies and objectives of the Dún Laoghaire-Rathdown County Development Plan 2022 - 2028;
- (c) The pattern of existing and permitted development and the availability of adequate social and physical infrastructure in the area;
- (d) The provisions of "Housing for All – A New Housing Plan for Ireland", issued by the Department of Housing, Local Government and Heritage in September 2021;
- (e) The provisions of Project Ireland 2040 - National Planning Framework, which identifies the importance of compact growth on brownfield/infill sites;
- (f) The provisions of the "Urban Development and Building Heights Guidelines for Planning Authorities", issued by the Department of Housing, Planning and Local Government in December 2018;
- (g) The provisions of 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;
- (h) The provisions of the "Sustainable Residential Development and Compact Settlements, Guidelines for Planning Authorities", issued by the Department of Housing, Local Government and Heritage in January 2024;

- (i) The provisions of the “Architectural Heritage Protection Guidelines for Planning Authorities”, issued by the Department of Arts, Heritage, and Gaeltacht in 2011;
- (j) The provisions of the “Design Manual for Urban Roads and Streets” (DMURS), issued by the Department of Transport, Tourism and Sport and the Department of Environment, Community and Local Government in 2019;
- (k) The provisions of the Eastern and Midland Regional Assembly Regional Spatial and Economic Strategy 2019 - 2031, which supports compact sustainable growth and accelerated housing delivery integrated with enabling infrastructure;
- (l) The provisions of the Greater Dublin Area Transport Strategy 2022 - 2042 prepared by the National Transport Authority;
- (m) The Climate Action Plan 2023 prepared by the Government of Ireland;
- (n) “The Planning System and Flood Risk Management Guidelines for Planning Authorities” (including the associated Technical Appendices), 2009;
- (o) The submissions and observations received;
- (p) Technical documents received in relation to daylight and sunlight by the applicants and appellants, and the assessment undertaken on this matter by the planning authority;
- (q) The reports from the planning authority and

- (r) The report of the Planning Inspector.

Appropriate Assessment Screening

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on European sites, taking into account the nature and scale of the proposed development on serviced lands, the nature of the receiving environment, which comprises a built-up urban area, the distances to the nearest European sites and the hydrological pathway considerations, submissions and observations on file, the information and reports submitted as part of the subject application, and the Planning Inspector's report. In completing the screening exercise, the Board agreed with and adopted the report of the Planning Inspector and considered that, either by itself or in combination with other development, plans and projects 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, and that a Stage 2 Appropriate Assessment is not, therefore, required.

Environmental Impact Assessment Screening

The Board completed an environmental impact assessment screening of the proposed development and considered that the Environmental Impact Assessment Screening Report and other documents and drawings submitted by the applicant identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

Having regard to:

- (a) The nature and scale of the proposed development, which is below the thresholds in respect of Class 10(b)(i) and Class 10(b)(iv) of the Planning and Development Regulations 2001, as amended;
- (b) The location of the site on lands that are zoned as 'Major Town Centre', including the proposed uses, under the provisions of the Dún Laoghaire-Rathdown County Development Plan 2022 - 2028 and the results of the strategic environmental assessment of this Plan undertaken in accordance with the SEA Directive (2001/42/EC);
- (c) The brownfield nature of the site and its location within a Major Town Centre which is well served by public infrastructure, and the existing pattern of development in the vicinity;
- (d) The location of the site outside of any sensitive location specified in article 109(4)(a) the Planning and Development Regulations 2001, as amended, and the absence of any potential impacts on such locations;
- (e) The guidance, as set out in the "Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development", issued by the Department of the Environment, Heritage and Local Government (2003);
- (f) The criteria set out in Schedule 7 and 7A of the Planning and Development Regulations 2001, as amended;

- (g) the available results, where relevant, of preliminary verifications or assessments of the effects on the environment carried out pursuant to European Union legislation other than the Environmental Impact Assessment Directive; and
- (h) the features and measures proposed by the applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Construction and Environmental Management Plan, the Construction Management Plan, the Resource Waste Management Plan, the Operational Waste Management Plan, the Engineering Planning Report, the Ecological Statement and Bat Survey, the Noise Assessment and Noise Management Plan, and the Archaeological Assessment,

the Board concluded that, by reason of the nature, scale and location of the proposed development, the development would not be likely to have significant effects on the environment and that the preparation of an environmental impact assessment report would not, therefore, be required in this case.



Conclusions on Proper Planning and Sustainable Development:

The Board considered that, subject to compliance with the conditions set out below, the proposed development would be consistent with the zoning objectives and other policies and objectives of the Dún Laoghaire-Rathdown County Development Plan 2022 - 2028, would constitute an acceptable quantum of development at this location which would be served by an appropriate level of public transport, social and community infrastructure, would provide an acceptable form of residential amenity for future occupants, would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would be acceptable in terms of built heritage impacts, urban design, height and scale of development, would be acceptable in terms of traffic safety and convenience, would not be at risk of flooding or increase the risk of flooding to other lands, would not result in any unacceptable ecological or biodiversity impacts, and would be capable of being adequately served by wastewater and water supply networks. Having regard to the technical reports submitted by all parties, the Board accepted and endorsed the assessment of the Inspector that the proposed development would be acceptable in terms of daylight and sunlight, by reference to this specific urban site location and context. 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 16th day of June, 2022, 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. (a) The screening of windows on the eastern elevations of Building Numbers 1 and 2 shall be in accordance with Option Number 2, as submitted to the planning authority on the 16th day of June, 2022. The precise details and specification of louvres, including samples, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
- (b) The east-facing sides of balconies on Building Number 1 shall be screened in accordance with the proposals for Building Number 2, as submitted to the planning authority on the 16th day of June, 2022.
- (c) The enclosed amenity space at the top floor of Building Number 1 shall be for resident use only and shall not be available to the public.

Reason: To protect the amenities of existing and proposed properties.

3. 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, Local Government and Heritage 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 the proper planning and sustainable development of the area and in the interest of clarity.

4. Prior to commencement of development, the owner 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 separately for that period, save for any other agreements made under Part V of the Planning and Development Act 2000, as amended. The period of 15 years shall be from the date of occupation of the first residential unit within the scheme.

Reason: In the interest of the proper planning and sustainable development of the area.

5. Prior to 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 planning application.



Reason: In the interests of orderly development and clarity.

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

Reason: In the interest of visual 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 provided prior to the making available for occupation of any apartment 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. A total of 162 number bicycle parking spaces shall be provided within the site. Details of the layout, marking demarcation and security provisions for these spaces shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure that adequate bicycle parking provision is available to serve the proposed development, in the interest of sustainable transportation.

11. Prior to the occupation of the development, a finalised Mobility Management Plan (Residential Travel Plan) shall be submitted to, and agreed in writing with, the planning authority. This plan shall include modal shift targets and shall provide for incentives to encourage the use of public transport, cycling, walking and carpooling by residents of the development and to reduce and regulate the extent of parking. The mobility strategy shall be prepared and implemented by the management company for all units within the development.

Reason: In the interest of encouraging the use of sustainable modes of transport.

12. The internal road network serving the proposed development, including pedestrian crossings, 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. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination

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

13. Details of the works to the public road shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of road safety and to ensure the satisfactory completion of the work.

14. The site shall be landscaped in accordance with the scheme of landscaping, which accompanied the application. The developer shall appoint and retain the services of a qualified Landscape Architect (or qualified Landscape Designer) as a Landscape Consultant throughout the life of the construction works, unless otherwise agreed in writing with the planning authority prior to commencement of development.

Reason: In the interests of residential and visual amenity.

15. A schedule of landscape maintenance shall be submitted to, and agreed in writing with, the planning authority prior to the occupation of the development. This schedule shall cover a period of at least three years and shall include details of the arrangements for its implementation.

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

16. Details of all boundary treatments shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Proposals shall include the provision of a gate at the southern end of the proposed pedestrian route and shall facilitate the future continuation of the pedestrian route south to connect with Eblana Avenue

Reason: In the interests of clarity and improved permeability.

17. 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 interests of public health and surface water management.

18. The developer shall enter into water and/or wastewater connection agreement(s) with Uisce Éireann prior to commencement of development.

Reason: In the interest of public health.

19. All plant, including extract ventilation systems, shall be sited in a manner so as not to cause nuisance at sensitive locations due to emissions. All mechanical plant and ventilation inlets and outlets shall be sound insulated and/or fitted with sound attenuators to ensure that noise levels do not pose a nuisance at noise sensitive locations.

Reason: In the interest of residential amenity.

20. 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 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.



Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

21. Prior to the commencement of development, the developer or any agent acting on its behalf, shall prepare a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) including demonstration of proposals to adhere to best practice and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness; these details shall be placed on the file and retained as part of the public record. The RWMP must be submitted to the planning authority for written agreement prior to the commencement of development. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at site offices at all times.

Reason: In the interest of sustainable waste management.

22. The construction of the development shall be managed in accordance with a Construction Environmental 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 the following:

- (a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;



- (b) Location of access points to the site for any construction related activity;
- (c) Location of areas for construction site offices and staff facilities;
- (d) Details of site security fencing and hoardings;
- (e) Details of on-site car parking facilities for site workers during the course of construction;
- (f) 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;
- (g) Measures to obviate queuing of construction traffic on the adjoining road network;
- (h) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network and for the cleaning of the same;
- (i) 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;
- (j) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (k) 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;

- (l) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (m) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains; and
- (n) 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.

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

23. Site development and building works shall be carried out only between the hours of 0700 and 1900 from Mondays to Fridays inclusive, between 0800 and 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 amenities of property in the vicinity.

24. (a) No signage, advertising structures/advertisements, security shutters, or other projecting elements (other than the proposed flagpole), shall be erected within the site and adjoining lands under the control of the applicant unless authorised by a further grant of planning permission.
- (b) The windows to the proposed ground floor units of Building Number 1 shall not be obscured by adhesive material or otherwise, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of visual amenity.

25. (a) 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 legally-constituted management company contract, and drawings/particulars describing the parts of the development for which the legally-constituted management 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. The management scheme shall provide adequate measures for the future maintenance of public open spaces, roads and communal areas.

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

26. 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 archaeological remains that may exist within the site.

- 27. 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 Act 2000, as amended, and of the housing strategy in the development plan of the area.




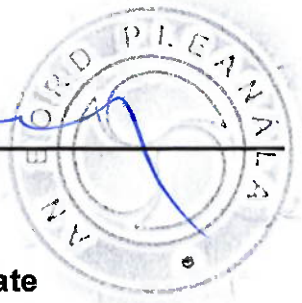
28. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, 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.

29. 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.


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



Dated this 8th day of May 2024.

