

An
Bord
Pleanála

Board Order
ABP-317332-23

Planning and Development Acts 2000 to 2022

Planning Authority: Dún Laoghaire-Rathdown County Council

Planning Register Reference Number: D22A/0951

Appeal by Liam and Karen Flannery care of Peter P. Gillett and Associates, Town Planning and Development Consultancy of 55 Glencarrig, Sutton, Dublin against the decision made on the 30th day of May 2023 by Dún Laoghaire-Rathdown County Council to grant, subject to conditions, a permission to Care Concern Group care of Downey Planning of 29 Merrion Square North, Dublin in accordance with plans and particulars lodged with the said Council:

Proposed Development: The proposed development will comprise of the demolition of the existing detached two-storey houses at 51 and 52 Bray Road and all associated outbuildings, the construction of a six storey (part four-storey, part five-storey and part six-storey) 96-bedroom residential care facility, with associated ancillary/common facilities, office administration areas, recreational leisure outlets which include dining rooms (all with balconies/terrace), lounges (some with balconies/terrace), nurse offices, cafe, cinema, hairdressers, nail bar/spa, celebrations room, activity room and library, the provision of a new vehicular access onto kill lane, the infill of an existing vehicular entrance at 51 Bray Road (N11) and the modification of an


existing vehicular entrance from 52 Bray Road (N11) as a pedestrian entrance and the modification of the existing vehicular entrance from Kill Lane (serving Number 51-Clara) for use as a pedestrian entrance only, ancillary bin storage, 24 car parking spaces (10 spaces within undercroft parking, 14 outdoor carparking spaces), 27 bicycle parking spaces (nine spaces for visitors and 18 spaces for staff) green roofs, all associated site development, engineering, landscaping works and boundary treatments, all at 51 (Clara House) and 52 (Montrose) Bray road (N11), Foxrock, Dublin. The subject site is bounded by Kill Lane to the north, Cremone House, Kill Lane (D18FD93) to the east, Kilmoylan House (D18W5Y4) to the south and Bray Road (N11) to the west.

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 Objective 'A' zoning objective which applies to the site and its setting under the Dún Laoghaire-Rathdown County Development Plan 2022-2028, which seeks to provide residential development and improve residential amenity while protecting the existing residential amenities, under which the proposed residential care facility is deemed to be permissible, the site's corner location with frontage onto the N11 identified under the development plan's Building Height Strategy which is set out under Appendix 5 as being a location suitable for taller buildings, subject to safeguards, with the site forming part of an established serviced and highly accessible residential suburban setting a type of setting that is deemed to be suitable for this type of land use under Section 12.3.8.2 of the development plan, subject



to safeguards, the Development Plans Housing Strategy which in a manner that accords with 'Housing Options for Our Ageing Population', 2019, and the Government policy, 'Housing for All – A new Housing Plan for Ireland, 2021' which seeks to ensure appropriate provision of housing options including for older people and for people with disabilities within existing residential areas well served by social and community infrastructure and amenities together with the nature, scale and extent of the proposed development it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable and would not seriously injure the residential amenities of the area or of property in the vicinity, would be acceptable in terms of built heritage and traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 4th day of May 2023, 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. The proposed development shall be amended as follows:

- (a) The building shall be repositioned, or the development shall be amended such that the proposed northeastern elevation of the residential care building shall along its entire length be setback by a minimum of an additional one-meter lateral separation distance from its boundary with Number 1 Kill Lane (Cremorne) to give a total minimum lateral separation distance from its boundary with Number 1 Kill Lane of 2580 millimetres and 3680 millimetres at the northwest corner and southeast corner respectively. With a linear row of semi-mature evergreen pleached trees planted alongside the entire length of the boundary with Number 1 with this linear row of planting returning alongside the boundary with Number 53 Bray Road (Kilmoylan). In addition, additional semi-mature individually placed trees shall be provided within the southeastern corner of the site. The placement of these trees shall reinforce the natural screening as well as provide visual softening of the proposed building as viewed from the properties in its vicinity.
- (b) All window openings on the northeastern elevation shall be permanently fitted with obscure or opaque glazing.
- (c) The proposed elevational treatment to the northeastern elevation addressing Number 1 Kill Lane (Cremorne) will be revised to include qualitative improvements to its external palette of materials with this including additional vertical emphasis so as to break up sections of elevational treatments that are lacking appropriate visual interest and are unduly monotonous.
- (d) Revised screen walls of increased height and constructed of brick or concrete block or similar durable materials and, if in concrete block, shall be suitably capped and rendered on both sides in a

finish that matches the external finish of the dwellings that adjoin the site in order to appropriately screen their side and rear garden. Such walls shall be a minimum of two metres in height above ground level of the site on the northeastern side addressing Number 1 Kill Lane (Cremorne) and shall be a minimum of two metres in height above the side and rear garden level of Number 53 Bray Road (Kilmoylan).

Revised drawings showing compliance with the above requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual and residential amenity

3. A schedule of all materials to be used in the external treatment of the development to include a variety of high-quality finishes, such as brick and stone, roofing materials, windows and doors and boundary walls shall be submitted to and agreed in writing with, the planning authority prior to commencement of development. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of visual amenity.

4. The disposal of surface water shall comply with the requirements of the planning authority for such works and services. Prior to the commencement of development, the developer shall submit details for the disposal of surface water from the site for the written agreement of the planning authority.

Reason: To prevent flooding and in the interests of sustainable drainage.

5. (a) Car parking and bicycle parking provision in accordance with the layout, finishes and quantity of spaces shall be as submitted to the planning authority on the 4th day of May 2023. The dimensions of the circulation aisles, car parking spaces and the details of the bicycle parking spaces shall be subject to the written agreement of the planning authority. With this including the cycle parking provision in accordance with the Dún Laoghaire-Rathdown County Development Plan, 2022-2028 requirements and with the Dún Laoghaire-Rathdown County Councils 'Standards for Cycle parking and Associated Cycling Facilities for New Developments', dated January 2018.
- (b) A minimum of five number Electrical Charging Points shall be provided at the proposed development in accordance with Section 12.4.11 Electrically Operated Vehicles of the current DLRCC County Development Plan. The remaining car parking spaces shall be fitted with ducting for electric connection points to allow for future fitout of charging points. Details of how it is proposed to comply with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
- (c) No objects, structures or landscaping shall be placed or installed within the visibility triangle exceeding a height of 900 millimetres, which would interfere with or obstruct, or could obstruct over time, the required visibility envelope onto Kill Lane.

Reason: To ensure that there is adequate car parking and bicycle parking spaces to serve the development, and to provide parking facilities for all users of the development in order to avoid on-street parking and congestion.

6. (a) No additional development, to that indicated and hereby permitted, shall take place above roof 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.
- (b) Access to non-amenity roof areas shall be restricted for the purpose of maintenance works only.

Reason: To protect the residential and visual amenities of the area.

7. Prior to the commencement of development, the developer shall enter into Connection Agreements with Uisce Éireann (Irish Water) to provide for service connections to the public water supply and wastewater collection network.

Reason: In the interest of public health and to ensure adequate water/wastewater facilities.

8. (a) Prior to the commencement of any development works on the site, the applicant shall undertake a bat survey by a competent qualified person or consultancy to ascertain the presence of any bat activity on the site in relation to roosting and foraging and an assessment of any potential impact on the species arising from the proposed development. The nature and methodology of this survey shall be agreed with the planning authority prior to the commencement of the survey. No building, feature or vegetation shall be altered or removed prior to this survey and assessment. Full details of the survey and assessment shall be submitted to the planning authority in advance of any development works on the site. Should the presence of bats be established on the site no development shall occur until the necessary permission/ derogation licence has been obtained from the appropriate statutory body.

- (b) Trees to be removed on site shall be felled in late summer or autumn. Should the presence of bats be identified on site, any disturbance shall be managed in a manner to be agreed in writing with the planning authority on the advice of a qualified ecologist.

Reason: In the interest of bat protection and to provide for the preservation and conservation of this species.

9. A lighting scheme shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes, spaces, and entrances to the scheme, and shall ensure artificial lighting shall not overspill onto adjoining areas. Details of the scheme shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the operation of the proposed residential care facility.

Reason: In the interest of amenity and public safety.

10. 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. Details of the ducting shall be submitted to, and agreed in writing with, the Planning Authority prior to the commencement of development.

Reason: In the interest of visual and residential amenity.

11. A comprehensive boundary treatment and landscaping scheme shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. This scheme shall include the following:
- (a) Details of all proposed hard surface and/or permeable surface finishes, including proposed paving slabs/materials for footpaths, kerbing, road, and parking surfaces within the development.
 - (b) Measures for the protection of those trees which it is proposed to be retained shall be submitted to, and agreed in writing with, the planning authority before any trees are felled.
 - (c) Excavations in preparation for foundations and drainage, and all works above ground level in the immediate vicinity of tree to be retained, shall be carried out under the supervision of a specialist arborist, in a manner that will ensure that all major roots and canopies of trees to be retained are protected.
 - (d) Proposed locations of all trees and other landscape planting in the development, including but not limited to the linear rows of evergreen pleached trees along the boundaries with Number 1 Kill Lane (Cremorne) and Number 53 Bray Road (Kilmoylan), including details of proposed species and their size as well as the planting interval of these trees along these boundaries.
 - (e) Details of proposed outdoor furniture, including bollards and lighting fixtures.

- (f) Details of proposed boundary treatments at the public road perimeter of the site, that is, Kill Lane and Bray Road/N11 including heights, materials, and finishes. This shall include heights, materials, and finishes.
- (g) All trees shall be inspected by a suitable qualified expert for bats prior to felling. In the event a roost is found the developer shall require a derogation license from the National Parks and Wildlife Service.
- (h) Any clearance of vegetation from the site should only be carried out in the period between the 1st day of September and the end of February, that is, outside the main bird breeding season.
- (i) All trees, shrubs and hedge plants supplied shall comply with the requirements of BS:3936, Specification for Nursery Stock. All pre-planting site preparation and post planting maintenance works shall be carried out in accordance with the requirements of BS: 4428 (1989) Code of Practice for General Landscape Operations (excluding hard surfaces). In addition, all new tree planting shall be positioned in accordance with the requirements of Table 3 of SS 5837: 2012 'Trees in Relation to Design, Demolition and Construction – Recommendations'.
- (j) The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme, with all boundary works completed prior to the commencement of operation of the residential care facility and all landscaping works implemented fully in the first planting season following the completion of the development. In addition, any plants, trees or hedging 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 visual amenity, to ensure a satisfactory landscape treatment of the site, in order to screen the development and assimilate it into its surrounding suburban setting.

12. No development shall take place until details of earthworks have been submitted to, and agreed in writing with, the planning authority. These details shall include the following:
- (a) Soil and subsoil cross-sections.
 - (b) Plans and sections showing the proposed grading and mounding of land areas, including the levels and contours to be formed.
 - (c) The relationship of the proposed mounding to the existing vegetation to be retained,
 - (d) The boundaries with the public road and the boundaries with Number 1 Kill Lane (Cremorne) and Number 53 Bray Road (Kilmoylan).

Reason: In the interest of residential and visual amenity.

13. Site development and construction works shall be carried out between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of properties in the vicinity.

14. During the operational phase of the proposed development the noise level shall not exceed

(a) 55 dB(A) rated sound level between the hours of 0700 to 2300, and

(b) 45 dB(A) 15 min and 60 dB LAfmax, 15 min at all other times,

(corrected for a tonal or impulsive component) as measured at the nearest dwelling or at any point along the boundary of the site.

Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To protect the residential amenities of property in the vicinity of the site.

15. Prior to the commencement of the residential care facility's operations, a Mobility Management Plan (MMP) shall be submitted to and agreed in writing with the planning authority. This shall provide for incentives to encourage the use of public transport, cycling and walking by residents/occupants/staff employed in the development. The mobility strategy shall be prepared and implemented by the management company for the development.

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

16. A Demolition, Construction and Environmental Management Plan shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. This plan shall include but not be limited to demolition and construction phases controls for dust, noise and vibration; waste management; location of the site and materials compound(s) including area(s) identified for the storage of construction refuse; location of areas for construction site offices and staff facilities; details of site security fencing and hoardings; protection of soils, groundwaters, and surface waters; site housekeeping; emergency response planning; site environmental policy; and project roles and responsibilities.

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

17. A detailed Construction Traffic Management Plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The plan shall include details of arrangements for routes for construction traffic, parking during the construction phase, the location of the compound for storage of plant and machinery and the location for storage of deliveries to the site.

Reason: In the interest of sustainable transport and safety.

18. 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 Environmental Protection Agency'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 the site office at all times.

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

19. 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 shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the agreed waste facilities shall be maintained, and waste shall be managed, in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste, in the interest of protecting the environment and the amenities of properties in the vicinity.

20. No advertisement or signage structure shall be erected or displayed on the building, within the curtilage or perimeters of the site, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

21. Prior to the commencement of development, the developer shall submit, for the written agreement of the planning authority, a Climate Action and Energy Statement for the proposed residential care facility building.

Reason: In the interest of proper planning, sustainable and climate resilient development.



22. 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.

23. The developer shall pay a financial contribution to the planning authority as a special contribution under Section 48 of the Planning and Development Act 2000, as amended, in respect of public and communal open space, as provided for in Section 12.8.4 of the Dún Laoghaire-Rathdown Development Plan, 2022-2028, which benefits the proposed development. The amount of the contribution 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 for determination. The contribution shall be paid prior to commencement of development or in such phased payments as may be agreed prior to the commencement of the development and shall be subject to any applicable indexation provisions of the Scheme at the time of payment.

Details of the terms of payment of this financial contribution shall be agreed in writing between the planning authority and the developer.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority in respect of community and public parks infrastructure, which will benefit the proposed development.

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

Dated this 14th day of May 2025.