

An
Bord
Pleanála

Board Order
ABP-318393-23

Planning and Development Acts 2000 to 2022

Planning Authority: Fingal County Council

Planning Register Reference Number: F23A/0492

Appeal by Beakonshaw Mables Limited care of McGill Planning Limited of 22 Wicklow Street, Dublin against the decision made on the 10th day of October, 2023 by Fingal County Council to refuse permission for the proposed development.

Proposed Development: The proposal will comprise a residential development of two-three storey houses consisting of 52 number units (seven number two beds, 31 number three beds, eight number four beds and six number five beds) within terraced and semi-detached arrangements. Provision of car and cycle parking, new residential streets, open spaces, play area and provision of new site entrance from the R107. All associated site development works, landscaping, boundary treatments and services provision, on lands at Mabestown, Malahide Road (R107), Malahide, County Dublin. The site is located to the east of the R107 and south of Mabestown House residential property.

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 nature, scale, and extent of the proposed development,
- (b) the provisions of the Project Ireland 2040 National Planning Framework,
- (c) the provisions of the Climate Action Plan 2024, with which the proposed development is consistent with,
- (d) the provisions of the Urban Development and Building Heights Guidelines for Planning Authorities issued by the Department of Housing, Local Government and Heritage in December 2018,
- (e) the provisions of the Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of Housing, Local Government and Heritage in July 2023,
- (f) 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,
- (g) the provisions of the Eastern and Midland Regional Assembly Regional Spatial and Economic Strategy (RSES) 2019-2031,

- (h) the provisions of the Fingal Development Plan 2023-2029,
- (i) the National Biodiversity Plan 2023-2030,
- (j) the documentation submitted with the planning application, including the Natura Impact Statement, and the grounds of appeal,
- (k) the submissions and observations received on file including from the planning authority, prescribed bodies, and third parties,
- (l) the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects on European sites,
- (m) the planning history of the site and adjoining areas,
- (m) the availability in the area of a wide range of social and public transport infrastructure, and
- (o) the report of the Inspector.

The Board considered that the proposed development, subject to compliance with the conditions set out below, on a site zoned RS "Residential" in the Fingal Development Plan 2023-2029, the objective of which seeks "to provide for residential development and protect and improve residential amenity" would positively contribute to compact growth and an increase in housing stock in an area with a range of social, commercial, retail, and public transport infrastructure, would be acceptable in terms of urban design, pedestrian and traffic safety and would provide an acceptable form of residential amenity for future occupants. The proposed development would not seriously injure the residential or visual amenities, or significantly increase traffic volumes, in the

area and the relocated pedestrian access would be appropriate for the proposed development. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board acknowledged the concerns of the planning authority and the concerns of the Inspector but was satisfied that the proposed residential development would provide a high quality mixed use development at an appropriate density in a peripheral location to an urban area in accordance with national, regional, and local planning policy and in particular would align with Policy SPQHP35 of the Fingal County Development Plan 2023-2029.

Specifically, the proposed development would create an attractive and quality form of residential development and open space given the restrictions of the tree lined site and would allow for the retention of the trees along the roadside approach to Malahide in compliance with Development Plan Objective 46. The Board considered that the public open space, landscape and boundary treatment of the site and dedicated play area would form an attractive and functional residential amenity in compliance with Development Plan Objective 63 Location of Open Space and Development Plan Objective 64 Design of Open Space of the Fingal County Development Plan 2023-2029.

Furthermore, the Board considered the proposed car parking spaces, located mainly in a number of cul-de-sacs, represented an acceptable balance of necessary car parking provision and would not appear to dominate nor visually detract from the overall layout of the public realm and would not be contrary to Strategic Objective 7 of the Fingal County Development Plan 2023-2029.

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 site in an established built-up urban area, the distances to the nearest European sites, the hydrological pathway considerations, the submissions on file, the information submitted as part of the applicant's Natura Impact Statement Report, and the Inspector's report.

In completing the screening exercise, the Board agreed with and adopted the report of the Inspector which concluded that two designated sites at the Baldoyle Bay Special Protection Area (site code 004016) and the Baldoyle Bay Special Area of Conservation (site code 000199) could not be screened out, due to a direct hydraulic connection and the possibility of run-off from construction to impact on the estuarine habitat.

Having carried out screening for Appropriate Assessment of the proposed development, it was concluded that there is potential for a significant effect on the Baldoyle Bay Special Area of Conservation and the Baldoyle Bay Special Protection Area. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites in light of their conservation objectives.

Appropriate Assessment

Following an Appropriate Assessment, the Board determined that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European sites at the Baldoyle Bay Special Protection Area (site code 004016) and the Baldoyle Bay Special Area of Conservation (site code 000199), or any other European site, 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 doubt as to the absence of adverse effects.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, and as amended in the appeal documents and plans received on the 6th day of November 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 mitigation measures identified and contained within the Natura Impact Statement and other plans and particulars submitted with the application shall be implemented in full.

Reason: In the interests of clarity, and of protecting the environment and public health.

3. Details of the relocated pedestrian crossing and future access footpaths identified on the drawing title Proposed Site Masterplan dated the 3rd day of November 2023 drawing number MBS-02-SW-RL-DR-RAU-AR-1005 Revision P3-1 shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

4. Details of the materials, colours, and textures of all the external finishes to the proposed development shall be as submitted with the application, unless otherwise agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

5. Proposals for a development name and numbering scheme for the residential scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of urban legibility.

6. 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.

7. (a) The location and layout of the car parking spaces shall be agreed in writing with the planning authority prior to the commencement of development.
- (b) A minimum of 10% of all car parking spaces shall be provided with functioning 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 have not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted to, and agreed in writing with, the planning authority prior to the occupation of the development.
- (c) Cycle parking and storage shall comply with SPPR 4 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. All cycle parking details shall be submitted to, and agreed in writing with, the planning authority and shall be in situ prior to the occupation of the development.

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

8. Public lighting shall be provided in accordance with the plans and particulars and a final scheme 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 first occupation of the residential units.

Reason: In the interests of residential amenity and public safety.

9. Drainage arrangements including the attenuation and disposal of surface water, and wastewater arrangements shall comply with the requirements of the planning authority for such works and services. The solution to be submitted in writing and agreed with the planning authority shall not impact or impede on the proposed open space provision for the proposed development.

Reason: In the interests of public health and surface water management and residential amenity.

10. The developer shall enter into water connection agreement(s) with Uisce Éireann prior to commencement of development.

Reason: In the interest of public health.

11. No development shall occur in the strip of riparian buffer in the area of the site which shall be reserved as public open space.

Reason: In the interests of visual amenity and the proper planning and sustainable development of the area.

12. The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme. 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 finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development,

- (b) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings,
- (c) details of proposed street furniture, including bollards, lighting fixtures and seating, and
- (d) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes.

Reason: In the interest of visual amenity.

13. The proposed development shall be provided with noise insulation to an appropriate standard having regard to the location of the site within Dublin Airport Noise Zone C.

Reason: In the interest of residential amenity and to comply with objective DAO11 of the Fingal Development Plan 2023-2029.

14. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company, or by the local authority in the event of the development being taken in charge. Details of the management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility, and the elements to be taken in charge 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 ensure the satisfactory completion and maintenance of this development.

15. (a) A plan containing details for the management of waste 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 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.

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

16. Prior to commencement of development, the developer shall prepare a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for 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 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. Hoardings shall include a one square metre area on each frontage detailing site management contact details,
 - (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 road network,
 - (h) alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any 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, and
- (n) a community liaison officer shall be appointed for the duration of the construction works.

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

18. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, 0800 to 1400 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.

19. Prior to the commencement of development, the developer shall submit for the written agreement of the planning authority the details any crane operations and ensure they do not impact on flight procedures and air safety. The developer shall also notify the Irish Aviation Authority and Dublin Airport Authority of the intention to commence crane operations with a minimum of 30 day's notice of their erection.

Reason: In the interests of residential amenity and aircraft safety.

20. The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths and kerbs shall comply with the detailed standards of the planning authority for such road works.

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

21. 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.

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.

22. (a) Prior to the commencement of the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all relevant residential units permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.
- (b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each of the residential units for use by individual purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.
- (c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified housing units, in which case the planning authority shall confirm in writing to the applicant or any person with an interest in the land that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.

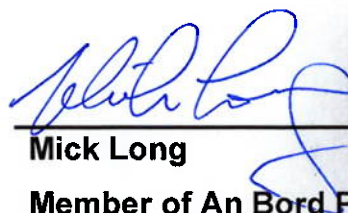
Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

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 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 of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer.

Reason: To ensure the satisfactory completion of the development.

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.

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.


Mick Long

Member of An Bord Pleanála

duly authorised to authenticate
the seal of the Board.

Dated this th27 day of January 2025.