



An
Bord
Pleanála

S. 6(7) of Planning and Development (Housing) and Residential Tenancies Act 2016

Inspector's Report on Recommended Opinion ABP-302993-18.

Strategic Housing Development	123 build to rent apartments.
Location	Clarehall, Malahide Road, Dublin 17.
Planning Authority	Dublin City Council.
Prospective Applicant	E to Infinity ICAV acting on behalf of its sub-fund Blacklion Real Estate Fund.
Date of Consultation Meeting	19 December 2018.
Date of Site Inspection	29 November 2018.
Inspector	Stephen Rhys Thomas.

1.0 Introduction

Having regard to the consultation that has taken place in relation to the proposed development and also having regard to the submissions from the planning authority, the purpose of this report is to form a recommended opinion as to whether the documentation submitted with the consultation request under section 5(5) of the Planning and Development (Housing) and Residential Tenancies Act 2016 - (i) constitutes a reasonable basis for an application under section 4, or (ii) requires further consideration and amendment in order to constitute a reasonable basis for an application under section 4.

2.0 Site Location and Description

The site is located opposite and to the south of the Clarehall Shopping Centre and accessed from a cul-de-sac road off a signalised junction from the R107, Malahide Road. The immediate area is known as Clare Village and comprises a number of large apartment blocks up to seven storeys in height.

The application site is currently laid out as a surface car park and is level with the existing road surface. Killaloe House, a three storey apartment block is located behind a fenced and landscaped barrier to the east of the site. Ennis House, a seven storey apartment block is located to the south west of the site and Doolin/Doonbeg House a five storey block is located to the south east. The site has no connection with these apartment blocks. The existing apartment blocks are mostly red brick, the exception being Killaloe with render, all blocks have no balconies or terraces on the elevations that face the site. Dublin Bus routes 15 and 27 serve the Clarehall area.

3.0 Proposed Strategic Housing Development

The development of 123 Build for Rent Development, ranging in height from 4 to 8 storeys over a basement level:

- 52 studio apartments
- 60 one bedroom apartments
- 11 two bedroom apartments

62% of units are stated as dual aspect.

Resident facilities include: concierge, laundries on ground to fifth floor level, gym and outdoor terrace seventh level, landscaping and communal open spaces at ground level.

74 car parking spaces in a basement car park. 241 cycle spaces.

The site area is 0.37 Hectares and the gross floor space proposed is 13,091 sq.m.

Residential density (123 apartments over 0.37 Hectares) 332 units per hectare.

4.0 Planning History

Site

PA reference 3301/16: Permission refused for the construction of 217 apartments, containing 28 No. 1 Bed Studio's, 43 No.1 bed Apartments, 84 No.2 bed apartments & 62 No. 3 bed apartments along on site fitness studio & Pool, common room, roof garden, crèche and meeting room all in a building rising from 8 storeys to 10 over a basement car park for 217 cars and with space for 276 bicycles at ground floor level.

It is considered that the proposed development which will contravene the Development Plan's height strategy for outer city locations would by way of its excessive extent, height, bulk and design in very close proximity to existing site boundaries would constitute significant overdevelopment of the subject site, would be visually dominant and overbearing on adjoining properties, would reduce access to daylight and sunlight and overlook adjacent properties, and would thereby seriously injure the residential and visual amenities of properties in the vicinity and depreciate their value and by itself and by the precedent it would set, would be contrary to the proper planning and sustainable development of the area.

Adjacent sites:

PA reference 3584/16 and **ABP reference PL29N-248050.** Permission refused for demolition of structures on site, construction of a mixed use development comprising a retail store, nursing home facility, restaurant and workshop.

Having regard to the location of the site in an area zoned Key District Centre, which is to be a strong spatial hub, providing sustainable city living and good urban place making, with a comprehensive range of commercial and community services and

where there are specific requirements in relation to active frontages, height, density, permeability and connectivity as set out in the Dublin City Development Plan 2016-2022 and the Clongriffin-Belmayne Local Area Plan 2012-2018, it is considered that the proposed development would be contrary to the objectives for this area, would be a barrier to their achievement, and would accordingly be contrary to the proper planning and sustainable development of the area.

Note: The Board had concerns about the quality of the amenity including the private open space amenity for the residents as well as the shortfall in the provision of car parking spaces for the nursing home but decided not to pursue this as a reason for refusal because of the substantive issues for refusal around zoning objectives.

5.0 National and Local Planning Policy

5.1 Section 28 Ministerial Guidelines

Having considered the nature of the proposal, the receiving environment, the documentation on file, including the submissions from the planning authority, I am of the opinion that the directly relevant S.28 Ministerial Guidelines are:

- 'Urban Development and Building Height' 2018
- 'Sustainable Urban Housing: Design Standards for New Apartments' 2018
- 'Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas' (including the associated 'Urban Design Manual') 2009
- 'Design Manual for Urban Roads and Streets' 2013
- 'The Planning System and Flood Risk Management' (including the associated 'Technical Appendices') 2009

5.2 Statutory Plan for the area

Clongriffin-Belmayne Local Area Plan 2012-2018

The site is located in the south western portion of the LAP and has no specific objectives attributed to it.

Dublin City Development Plan 2016-2022

Zoning and Related Objectives

Dublin City Development Plan 2016-2022, is the operative development plan for the area and contains general policies and objectives in relation to residential amenity standards. The site is located within SDRA 1.

The majority of the site is located within lands subject to zoning objective Z1 – to protect, provide and improve residential amenities.

Section 16.7 of the Development Plan sets out advice in relation to building heights, specifically; building height in the Outer City as it relates to the prevailing local height is capped at 16 metres.

6.0 Submissions Received

Irish Water

Confirmation of Feasibility issued for this site for a 123 no. build to rent housing development. Advises that the applicant must connect to the IW wastewater sewer network via third party sewers. Prior to any connection agreement being put in place, evidence of permission to connect to the third party network and adequate capacity in that network is required. That being said, subject to a compliant water services layout drawings, the proposed connections to the Irish Water network can be facilitated.

7.0 Forming of the Opinion

Pursuant to section 6(7) of the Act of 2016, regard is had in the forming of the opinion to the documentation submitted by the prospective applicant; the planning authority submissions and the discussions which took place during the tripartite consultation meeting. I shall provide a brief detail on each of these elements hereunder.

6.1 Documentation Submitted

The prospective applicant is required to submit certain information pursuant to section 5(5)(a) of the Planning & Development (Housing) and Residential Tenancies Act 2016 and Regulation No. 285 of the Planning and Development (Strategic Housing Development) Regulations 2017.

The information submitted included: OS location map; complete application form; site layout plans; photomontages; planning report/cover letter; Daylight Study; Outline Construction Management Plan; Engineering and services drawings; architect's design statement, schedule of accommodation; housing quality assessment; landscape masterplan and report; archaeology study; statement of consistency with planning policy report; EIA Screening Report; AA Screening Report; Part V proposals and a completed pre-connection enquiry feedback form from Irish Water.

I have reviewed and considered all of the above mentioned documents and drawings.

6.2 Planning Authority Submission

In compliance with section 6(4)(b) of the 2016 Act the planning authority for the area in which the proposed development is located, Dublin City Council, submitted a copy of their record of their section 247 consultation with the prospective applicant and also submitted their opinion in relation to the proposal. These were received by An Bord Pleanála on the 14 November 2018.

The planning authority's 'opinion' included, *inter alia*, the following: an assessment of the proposed development in the context of City Development Plan; the principle of the development; commentary on the scale/height/visual impact of the development; impact upon residential amenity; design standards, access, traffic and transportation, EIA and habitats directive; compliance with ministerial guidelines.

The planning authority are satisfied that the proposed development accords with both national guidelines and local zoning objectives for the area. There are reservations with regard to the proposed height of the development in the face of the existing CDP blanket ban on heights over 16 metres, however, there is also acknowledgement of recent ministerial guidance in relation to height and the best use of serviced land. The planning authority are broadly satisfied with the architectural response to the site but with some minor criticisms, specifically, it would be preferable if ground floor apartments were slightly raised from the public realm to assist privacy and set back. The issue of access to daylight and sunlight is raised and the planning authority believes greater consideration and assessment, the impacts on Killaloe House are highlighted. Communal and public open space is

addressed, in the case of the latter, the payment of a levy in lieu of any public space not provided could be considered. Whilst the planning authority support the principle of the proposed development, it cannot fully support the proposal until the items of detailed design and impacts on the amenities of the area are fully addressed.

Two formal Section 247 pre-application meetings with representatives of Dublin City Council took place on the 24th of April 2018 and the 1st of August 2018. The planning authority have submitted the reports of the meetings. Issues raised at the most recent meeting included, inter alia, the following:

- *North facing units are not considered acceptable under the Guidelines unless overlooking a significant amenity.*
- *Percentage of single aspect units to be justified.*
- *The density is considered high for this location and should be justified.*
- *A full daylight/sunlight study should be prepared for the SHD Pre-Application meeting with ABP including impacts on neighbouring properties and which demonstrates that the relevant standards are achieved for the proposed units and communal open space areas.*
- *Proposed building heights to be justified.*
- *Car parking ratio of 0.6 space per unit considered acceptable. Include a range of soft measures in MMP.*
- *Cycle parking provision should be in excess of Development Plan standards.*
- *Access / circulation- demonstrate sightlines are achieved for vehicles, the internal circulation is considered appropriate.*

All of the documentation submitted by the planning authority has been reviewed and considered by the undersigned as part of the opinion forming.

6.3 Consultation Meeting

A section 5 Consultation meeting took place at the offices of An Bord Pleanála on the 19 December 2018, commencing at 2.30pm. Representatives of the prospective applicant, the planning authority and An Bord Pleanála were in attendance. An agenda was issued by An Bord Pleanála prior to the meeting.

The main topics raised for discussion at the tripartite meeting were based on the Agenda that issued in advance and contained the following issues:

1. Building Height - *Urban Development and Building Heights Guidelines for Planning Authorities*
2. Public realm improvements
3. Residential Amenity
4. Car parking and Transport
5. Specific Planning Policy Requirements – covenant/legal agreement
6. Any other matters.

In relation to building height issues, ABP representatives sought further elaboration/discussion on the following: the design rationale behind the proposed building height in light of recently published building height guidelines. The urban design principles behind the proposal and whether the site is appropriate for greater height.

In relation to public realm improvement issues, ABP representatives sought further elaboration/discussion on how the proposed development fits into its surroundings and how the public realm could be adapted to accommodate an increase in pedestrian and cycle movements. In addition, the part played by any third parties in the improvement of the area in terms of pedestrian accessibility and road crossing opportunities were explored.

In relation to residential amenity issues, ABP representatives sought further elaboration/discussion about the effect of buildings in close proximity to existing residential properties. Specifically, the impact of overshadowing and access to daylight were discussed in the context of balancing existing standards against new national guidelines. The quantity of single aspect apartments was clarified and adherence to the Apartment Guidelines in terms of an accommodation quality assessment was emphasised as essential.

In relation to car parking and transport issues, ABP representatives sought further elaboration/discussion on the requirement for car parking given the location of the site, the future use and the need to provide adaptable and sustainable forms of transport. In this respect, the quantum of car parking was discussed in light of

national guidance with regard to build to rent policies and objectives. In addition, the preparation of a transport plan for the building that outlines the opportunities for sustainable transport modes and accessibility would be desirable.

In relation to Specific Planning Policy Requirements – covenant/legal agreement issues, ABP representatives sought further elaboration/discussion on the following: the applicant was reminded of the specific objectives concerning build to rent and the requirements of national guidance. In addition, the applicant was reminded about the importance of providing the correct legal agreements with any application for permission.

In relation to any other matters, ABP representatives sought further elaboration/discussion on the requirements of Irish Water in terms of providing appropriate letters of consent from third parties to enable access from the site to public water services. In addition, the planning authority raised some technical issues to do with surface water requirements and greater detail in terms of sustainable urban drainage systems, especially to ensure that landscape drawings fully integrate SuDS proposals.

Both the prospective applicant and the planning authority were given an opportunity comment and respond to the issues raised by the representatives of ABP. Those comments and responses are recorded in the 'Record of Meeting 302993' which is on file. I have fully considered the responses and comments of the prospective applicant and planning authority in preparing the Recommended Opinion hereunder.

8.0 Conclusion and Recommendation

Based on the entirety of the information before me, it would appear that the proposed development falls within the definition of Strategic Housing Development, as set out in section 3 of the Planning and Development (Housing) and Residential Tenancies Act 2016.

I have examined all of the information and submissions before me including the documentation submitted by the prospective applicant, the submissions of the planning authority and the discussions which took place at the tripartite meeting. I have had regard to both national policy, via the s.28 Ministerial Guidelines, and local policy, via the statutory plan for the area.

Having regard to the above, I recommend that the Board serve a notice on the prospective applicant, pursuant to Section 6(7)(b) of the Planning and Development (Housing) and Residential Tenancies Act 2016, stating that it is of the opinion that the documentation submitted with the consultation request under section 5(5) of the Act: constitutes a reasonable basis for an application under section 4 of the Planning and Development (Housing) and Residential Tenancies Act 2016.

- 8.1.1. I would also recommend that the prospective applicant be notified, pursuant to article 285(5)(b) of the 2017 Regulations, that specified information (as outlined hereunder) be submitted with any application for permission that may follow. I believe the specified information will assist the Board at application stage in its decision making process. I am also recommending that a number of prescribed bodies (as listed hereunder) be notified by the prospective applicant of the making of the application

9.0 **Recommended Opinion**

An Bord Pleanála refers to your request pursuant to section 5 of the Planning and Development (Housing) and Residential Tenancies Act 2016. Section 6(7)(a) of the Act provides that the Board shall form an opinion as to whether the documents submitted with the consultation request (i) constitute a reasonable basis for an application under section 4 of the Act, or (ii) require further consideration and amendment in order to constitute a reasonable basis for an application under section 4.

Following consideration of the issues raised during the consultation process, and having regard to the opinion of the planning authority, An Bord Pleanála is of the opinion that the documentation submitted would constitute a reasonable basis for an application for strategic housing development to An Bord Pleanála.

Pursuant to article 285(5)(b) of the Planning and Development (Strategic Housing Development) Regulations 2017, the prospective applicant is hereby notified that in addition to the requirements as specified in articles 297 and 298 of the Planning and Development (Strategic Housing Development) Regulations 2017, the following specific information should be submitted with any application for permission arising from this notification:

1. A detailed visual impact assessment that comprises a photomontage report with key viewpoints from locations in the vicinity of the site. An accompanying architectural report should outline the design rationale for the proposed building height, scale and massing in light of the recently published 'Urban Development and Building Height' 2018.
2. Appropriately scaled drawings that show how the development integrates with the existing footpath and road infrastructure. Detailed public realm proposals should be prepared that extend to and if possible, include the footpath and road. Public realm improvements should place pedestrian and cyclist movement at the centre of any design strategy. The preparation of a public realm design report, should be prepared in compliance with the guidance provided by the Design Manual for Urban Roads and Streets, that recognises the importance of assigning higher priority to pedestrians and cyclists, without unduly compromising vehicle movement.
3. A proposed covenant or legal agreement further to which appropriate planning conditions may be attached to any grant of permission to ensure that the development remains in use as Build to Rent accommodation. There shall be a requirement that the development remains owned and operated by an institutional entity and that this status will continue to apply for a minimum period of not less than 15 years and that similarly no individual residential units are sold or rented separately for that period (Your attention is drawn to the provisions of Specific Planning Policy Requirement 7 of the 'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities' 2018)
4. A Daylight/Sunlight analysis, showing an acceptable level of residential amenity for future occupiers and neighbours of the proposed development, which includes details on the standards achieved within the proposed residential units, in private and shared open space, and in public areas within the development and in adjacent properties.
5. Construction and Demolition Waste Management Plan.
6. A pedestrian permeability report that analyses the potential for pedestrian and cyclist connectivity to and through the site and the reasons and rationale for the finalised scheme.

7. A mobility management strategy and transportation management plan that shall be sufficient to justify the amount of parking proposed for cars and bicycles and provide a strategy for encouraging use of sustainable forms of transport.
8. A housing quality assessment which provides specific information regarding the proposed apartments and which demonstrates compliance with the various requirements of the 2018 Guidelines on Design Standards for New Apartments, including the specific planning policy requirements in respect of Build to Rent developments.

Pursuant to article 285(5)(a) of the Planning and Development (Strategic Housing Development) Regulations 2017, the prospective applicant is informed that the following authorities should be notified in the event of the making of an application arising from this notification in accordance with section 8(1)(b) of the Planning and Development (Housing) and Residential Tenancies Act 2016:

1. Irish Water
2. Transport Infrastructure Ireland
3. NTA
4. Irish Aviation Authority
5. Dublin Airport Authority
6. Dublin City Childcare Committee

PLEASE NOTE:

Under section 6(9) of the Planning and Development (Housing) and Residential Tenancies Act 2016, neither the holding of a consultation under section 6, nor the forming of an opinion under that section, shall prejudice the performance by the Board, or the planning authority or authorities in whose area the proposed strategic housing development would be situated, of any other of their respective functions under the Planning and Development Acts 2000 to 2016 or any other enactment and cannot be relied upon in the formal planning process or in legal proceedings.

Stephen Rhys Thomas
Planning Inspector

15 January 2019