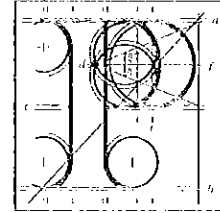


Our Ref: ABP-300514-17

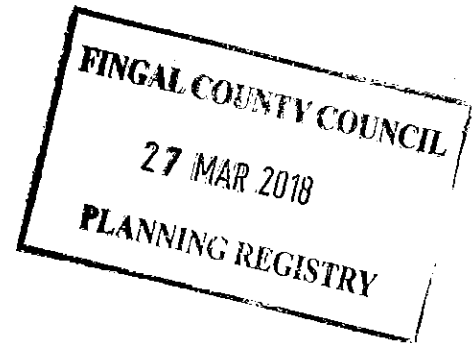
PA Reg Ref:

Your Ref:



An
Bord
Pleanála

Peter Hill
Fingal County Council
County Hall
Main St
Swords
Co. Dublin



Date: 26 MAR 2018

Re: 150 no. units (52 no. duplex/apartments and 98 no. houses).
Station Road, Portmarnock, Co. Dublin.

Dear Sir

An Bord Pleanála has made a decision in respect of the application for Strategic Housing Development for the above mentioned proposed development. A copy of the Board Order is enclosed.

In accordance with section 146(5) of the Planning and Development Act, 2000, as amended, the Board will make available for inspection and purchase at its offices the documents relating to the decision within 3 working days following its decision. In addition, the Board will also make available the Inspector's Report and the Board Direction on the decision on its website (www.pleanala.ie). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

Overleaf contains information in relation to challenges to the validity of a decision of An Bord Pleanála under the provisions of the Planning and Development Act, 2000, as amended.

If you have any queries in relation to the matter please contact the undersigned officer of the Board.

Please quote the above mentioned An Bord Pleanála reference number in any correspondence or telephone contact with the Board.

Yours faithfully,

Cora Cunningham
Executive Officer
Direct Line: 01-8737295

SHA32

Tell
Glao Áitiúil
Facs
Láithreán Gréasáin
Ríomhphost

Tel
LoCall
Fax
Website
Email

(01) 858 8100
1890 275 175
(01) 872 2684
www.pleanala.ie
bord@pleanala.ie

64 Sráid Maoilbhride
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
D01 V902

Judicial review of An Bord Pleanála decisions under the provisions of the Planning and Development Act, 2000, as amended.

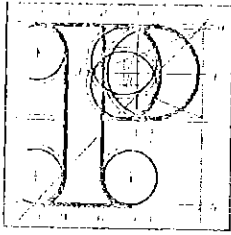
A person wishing to challenge the validity of a Board decision may do so by way of judicial review only. Sections 50, 50A and 50B of the Planning and Development Act 2000 (as substituted by section 13 of the Planning and Development (Strategic Infrastructure) Act 2006, as amended/substituted by sections 32 and 33 of the Planning and Development (Amendment) Act 2010 and as amended by sections 20 and 21 of the Environment (Miscellaneous Provisions) Act 2011) contain provisions in relation to challenges to the validity of a decision of the Board.

The validity of a decision taken by the Board may only be questioned by making an application for judicial review under Order 84 of The Rules of the Superior Courts (S.I. No. 15 of 1986). Sub-section 50(6) of the Planning and Development Act 2000 requires that subject to any extension to the time period which may be allowed by the High Court in accordance with subsection 50(8), any application for judicial review must be made within 8 weeks of the decision of the Board. It should be noted that any challenge taken under section 50 may question only the validity of the decision and the Courts do not adjudicate on the merits of the development from the perspectives of the proper planning and sustainable development of the area and/or effects on the environment. Section 50A states that leave for judicial review shall not be granted unless the Court is satisfied that there are substantial grounds for contending that the decision is invalid or ought to be quashed and that the applicant has a sufficient interest in the matter which is the subject of the application or in cases involving environmental impact assessment is a body complying with specified criteria.

Section 50B contains provisions in relation to the cost of judicial review proceedings in the High Court relating to specified types of development (including proceedings relating to decisions or actions pursuant to a law of the state that gives effect to the public participation and access to justice provisions of Council Directive 85/337/EEC i.e. the EIA Directive and to the provisions of Directive 2001/12/EC i.e. Directive on the assessment of the effects on the environment of certain plans and programmes). The general provision contained in section 50B is that in such cases each party shall bear its own costs. The Court however may award costs against any party in specified circumstances. There is also provision for the Court to award the costs of proceedings or a portion of such costs to an applicant against a respondent or notice party where relief is obtained to the extent that the action or omission of the respondent or notice party contributed to the relief being obtained.

General information on judicial review procedures is contained on the following website, www.citizensinformation.ie.

Disclaimer: The above is intended for information purposes. It does not purport to be a legally binding interpretation of the relevant provisions and it would be advisable for persons contemplating legal action to seek legal advice.



An
Bord
Pleanála

Board Order

ABP-300514-17

Planning and Development Acts 2000 to 2017

Planning Authority: Fingal County Council

Application for permission under section 4 of the Planning and Development (Housing) and Residential Tenancies Act 2016, in accordance with plans and particulars, lodged with An Bord Pleanála on the 20th day of December 2017 by St Marnock's II Designated Activity Company and Clear Real Estate Investments PLC care of Stephen Little and Associates, 26/27 Upper Pembroke Street, Dublin 2.

Proposed Development:

A strategic housing development at a site generally bounded by Station Road to the north, Coast Road and Baldoyle Bay to the east, Moyne Road to the south, and the Dublin-Belfast train line, Portmarnock Rail Station and the St. Marnock's Bay development to the west, within the townlands of Portmarnock and Maynetown, Portmarnock, County Dublin.

The development will consist of 150 number units (52 number duplex/apartments and 98 number houses), ranging between two and three storeys in height comprising the following: 50 number three-bed two-storey houses (House Type A1, A2, A3, A4, B1, C1, C2, C3 and C4), 48 number four-bed two-storey houses (House Type D1, D4, E1, E2, F1, F2, F3, and F4), 26 number two-bed duplex/apartments (House Type H1, H2 and H3) at ground floor with 26 number three-bed duplex/apartments (House Type G1, G2 & G3) on two floors above (three storey overall), vehicular access to serve the development is proposed off the already existing vehicular

access to Station Road provided under Register Reference F13A/0248, which is to be modified, together with a new (second) vehicular access (circa 6 metres in width) off Station Road located to the east towards Coast Road; areas of proposed public open space (circa 1.6 hectares overall) including the provision for a linear park (circa 0.64 hectares), the provision of an open space area (circa 0.55 hectares) to integrate a Recorded Monument (Ref. DU015-014)/ a Protected Structure (RPS No. 0475) into the overall landscape treatment; provision of a cycle and walking route along Station Road to connect with lands at Portmarnock Train Station to the west and ultimately to link to the Baldoyle to Portmarnock Pedestrian & Cyclist Scheme being provided separately by Fingal County Council located to the east; provision of a detention pond in the northeast corner of the site adjacent Station Road; provision of a temporary foul water pumping station and 24-hour wastewater storage tank; provision of a regional wetland area on lands immediately west of Coast Road, which includes a new storm water outfall and associated headwall into Baldoyle Estuary/Bay on lands to the east of Coast Road; all ancillary site development and landscape works including boundary treatments, bin and cycle storage proposed for all duplex/apartments and one number electricity sub-stations; all on a site of approximately 7.59 hectares. This development comprises amendments to permitted site development works at St Marnock's Bay (Register Reference F13A/0248).

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.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Act and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

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

- (a) the site's location on lands with a zoning objective for residential development in the Fingal Development Plan 2017-2023,
- (b) the nature, scale and design of the proposed development which is consistent with the provisions of the Portmarnock South Local Area Plan,
- (c) the Rebuilding Ireland Action Plan for Housing and Homelessness,
- (d) the provisions of the Urban Design Manual – A Best Practice Guide, issued by the Department of the Environment, Heritage and Local Government in May 2009,
- (e) the Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Housing and Planning and Local Government in March 2018,
- (f) the Design Manual for Urban Roads and Streets (DMURS) issued by the Department of Transport, Tourism and Sport and the Department of the Environment, Community and Local Government in March 2013,
- (g) the availability in the area of a wide range of social infrastructure,
- (h) the pattern of existing and permitted development in the area,
- (i) the submissions and observations received and
- (j) the report of the Inspector.

It is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would respect the existing character of the area and would be acceptable in terms of traffic and pedestrian safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment

The Board completed an Appropriate Assessment in relation to the potential effects of the proposed development on designated European Sites, taking into account the nature, scale and location of the proposed development within a zoned and serviced urban area, the Natura impact statement submitted with the application, and the Inspector's report and submissions on file. In completing the Appropriate Assessment, the Board adopted the report of the Inspector and concluded that, subject to the implementation of the proposed mitigation measures contained in the Natura impact statement, the proposed development, by itself or in combination with other development in the vicinity, would not be likely to have a significant effect on any European Site in view of the sites' conservation objectives.

Environmental Impact Assessment Screening

The Board completed an environmental impact assessment screening of the proposed development and considered that the Screening for Environmental Impact Assessment Report, contained in the Planning Application Report, supported by the documentation submitted by the applicant, identifies and describes adequately the direct, indirect, secondary, and cumulative effects of the proposed development on the environment.

Conditions

1. The proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the proposed development shall be carried out and completed in accordance with the agreed particulars.

In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:
 - (a) Access shall be provided to the rear patios of the ground floor apartments along Station Road from both bedrooms or an alternative means of access to the patio shall be provided subject to the written agreement of the planning authority.
 - (b) Provision of covered bicycle stands to serve the duplex apartments.
 - (c) All rear gardens shall be bounded by concrete block walls 1.8 metres in height, which shall be rendered on both sides and capped. The proposed concrete post and timber panel fences shall not be used and the roadside verges shall be increased in width accordingly.
 - (d) The Avenue shall be reduced in width to 5.5 metres eastwards from house number 145 to the junction with Station Road.
 - (e) Open space areas to the sides of houses numbers 151, 186, 187, 191, 172 and 161 shall be maintained as public open spaces until taken in charge and shall not be incorporated into the adjacent house plots.

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

Reason: In the interest of residential amenity.

3. Prior to commencement of development, the developer shall submit a schedule of Ecological Mitigation Measures as detailed in the Natura impact statement (including supporting appendices) and Ecological Appraisal submitted with the application. The schedule shall set out the timeline for implementation of each measure and assign responsibility for implementation. All of the mitigation measures shall be implemented in full and within the timescales stated.

Reason: In the interests of clarity, protection of the environment and the proper planning and sustainable development of the area.

4. A suitably qualified ecologist shall be appointed by the developer to oversee the site set-up and construction of the proposed development and the ecologist shall be present on site during construction works pertaining to the wetlands and outfall to the estuary. The ecologist shall ensure the implementation of all measures contained in the Schedule of Ecological mitigation measures. Prior to commencement of development, the name and contact details of said person shall be submitted to the planning authority. Upon completion of works, an audit report of the site works shall be prepared by the appointed ecologist and submitted to the planning authority to be kept on record.

Reason: In the interest of nature conservation, to prevent adverse impacts on the European sites and to ensure the protection of the Annex I habitats and Annex II species and their qualifying interests for which the site were designated.

5. The site shall be landscaped in accordance with the submitted scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The developer shall retain the services of a suitably qualified landscape architect throughout the life of the site development works.

Reason: In the interest of residential and visual amenity.

6. The Giant Hogweed (*heracleum mantegazzianum*) Management Plan set out in Appendix 2 of the Ecological Appraisal shall be implemented for a further three years following commencement of development on site.

Reason: In the interests of nature conservation, public safety and to ensure the protection of the Annex I habitats and Annex II species and their qualifying interests for which the sites were designated.

7. The wetlands/Sustainable Drainage Systems features proposed shall be amended as follows:
- (a) 1.8-metre-high fence shall be omitted.
 - (b) Provision of staging and wet benches to allow for access/egress from the wetlands.
 - (c) Provision of a small wooden kneeler fence or similar around the edge of the wetland feature to delineate the feature from surrounding level ground.
 - (d) The design of the larger eastern wetland shall provide for incorporation of the permanent waste water pumping station, if required, following final decision of location by Irish Water.
 - (e) A detailed planting scheme to provide for suitable aquatic planting within and at the edge of the wetland features to aid habitat provision and to restrict ease of access to the elements of the wetland which contain permanent standing water.

Reason: In the interests of nature conservation, public safety and the visual amenities of the area.

8. Prior to commencement of development, the developer shall submit details of all boundary treatment for the agreement of the planning authority. This shall include boundaries between rear gardens and boundaries to the exterior of the site. All concrete and timber panel fences to be replaced with solid block walls. All block walls to be rendered on both sides.

Reason: In the interest of residential privacy.



9. Proposals for an estate/street name, house numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

Reason: In the interest of orderly development.

10. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

11. The internal noise levels, when measured from bedroom windows of the proposed development, shall not exceed:

- (a) 35 dB(A) LAeq during the period 0700 to 2300 hours, and
- (b) 30 dB(A) LAeq at any other time.

A scheme of noise mitigation measures, in order to achieve these levels, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The agreed measures shall be implemented before the proposed dwellings are made available for occupation.

Reason: In the interest of residential amenity.

12. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which 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, and
- (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site, co-ordinate all the mitigation proposals contained in the archaeological assessment and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

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 area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

13. The internal road network and public footpaths within and outside the proposed development site, including car parking provision to service the proposed development, shall comply with the requirements of the planning authority for such works.

Reason: To ensure a satisfactory standard of development.

14. 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. All existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interest of visual and residential amenity.

15. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall comply with the categorisation system contained in section 5.7 of the Portmarnock South Local Area Plan. Public lighting shall be provided prior to the making available for occupation of any house.

Reason: In the interests of residential amenity and nature conservation.

16. The development hereby permitted shall be carried out and completed at least to the construction standards set out in the planning authority's Taking in Charge Policy. Following completion, the development shall be maintained by the developer, in compliance with these standards, until taken in charge by the planning authority.

Reason: In the interest of the amenities of the occupants of the proposed housing.



17. (a) Prior to commencement of development, a revised Taking in Charge Plan shall be submitted which omits the internal road (cul-de-sac) and parking along this road which serves the apartments from those areas to be taken in charge.
- (b) The communal open spaces, including hard and soft landscaping, internal road serving the apartments, car parking areas and access ways, communal refuse/bin storage and all areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company
- (c) Details of the management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.
- (d) The areas of open space shown on the lodged plans shall be reserved for such use and shall be levelled, contoured, soiled, seeded, and landscaped in accordance with the detailed requirements of the planning authority. All of this work shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open space by the developer until taken in charge by the local authority. When the estate is taken in charge, the open spaces shall be vested in the planning authority, at no cost to the authority, as public open space.

Reason: In order to ensure the satisfactory development of the public open space areas, and their continued use for this purpose and to provide for the satisfactory future maintenance of this development in the interest of residential amenity.



18. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act, 2000 (as amended).

19. Site development and building works shall be carried out only between 0800 to 1900 hours 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 amenity of property in the vicinity.

20. 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 noise management measures and off-site disposal of construction/demolition waste.

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



21. 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 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.

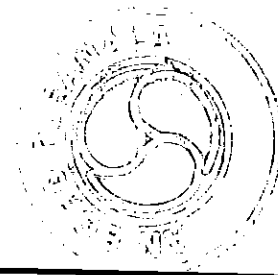
Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

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. 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.



S. Ó. Niadh

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

Dated this *23rd* day of *March*, 2018

