



An  
Bord  
Pleanála

Board Order  
ABP-321455-24

**Planning and Development Acts 2000 to 2022**

**Planning Authority: Fingal County Council**

**Planning Register Reference Number: LRD0025/S3E.**

**Appeal** by Bartra PropCo23 Limited care of Thornton O'Connor Town  
Planning of Number 1 Kilmacud Road Upper, Dundrum, Dublin  
against the decision made on the 20<sup>th</sup> day of November 2024 by Fingal  
County Council to refuse a permission for the proposed development.

**Proposed Development:** The proposed development will principally consist of the construction of 123 number residential units (55 number one-bed apartments and 68 number two-bed apartments). The development will be provided in a courtyard block arrangement ranging in height from part four number to part five number storeys. The proposed development has a gross floor area of circa 10,291 square metres. The proposed development will also provide vehicular access from the access road to the east; 24 number car parking spaces; bicycle parking spaces; motorcycle parking spaces; pedestrian/cycle entrances at the south-west and north of the site, and along the western boundary connecting into the adjoining open space; a footpath and bicycle path around the south, east and north of the site perimeter and a shared cycle/pedestrian path along the western boundary; balconies and terraces facing all directions; hard and soft landscaping; boundary treatments;

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green roofs; lift overrun; PV panels; lighting; ESB substation; switchroom; plant and all associated works above and below ground. Part V Validation letter reference is B156. A site fronting the Swords to Malahide Road (R106), Mountgorry, Swords, Co. Dublin. The site is bounded to the west by open space, with Seamount View Housing Estate further beyond, to the south by the R106, to the east by an access road to the Applegreen Service Station and to the north by Swords Business Park. The development's surface water drainage network shall discharge from the site into the existing manhole located along the access road to the east of the site. The development site area and drainage work areas will provide a total application site area of circa 0.8792 Ha. Further plans and particulars were submitted to An Bord Pleanála with the appeal which revised the number of residential units to 119.

## **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, and as relevant been consistent with, the following:

- (a) The policies and objectives set out in the National Planning Framework 2040 and the Regional Spatial and Economic Strategy for the Eastern and Midland Region 2019-2031,
- (b) the policies and objectives set out in the Fingal Development Plan 2023-2029, including the location of the site on lands subject to Zoning Objective 'MRE' - 'Facilitate opportunities for high-density mixed-use

employment generating activity and commercial development, and support the provision of an appropriate quantum of residential development within the Metro and Rail Economic Corridor' and the permitted uses therein,

- (c) Fingal County Council Development Contribution Scheme 2021-2025,
- (d) Housing for All, A New Housing Plan for Ireland, 2021,
- (e) the Climate Action Plan, 2024,
- (f) the National Biodiversity Plan 2023-2030,
- (g) Sustainable Residential Development and Compact Settlements, Guidelines for Planning Authorities, 2024,
- (h) Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2023,
- (i) Urban Development and Building Heights, Guidelines for Planning Authorities, 2018,
- (j) the Design Manual for Urban Roads and Streets, 2013, updated 2019,
- (k) Childcare Facilities, Guidelines for Planning Authorities, 2001,
- (l) Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009,
- (m) Regulation of Commercial Institutional Investment in Housing, Guidelines for Planning Authorities, 2021, updated 2023,
- (n) Development Management, Guidelines for Planning Authorities, 2007,
- (o) the nature, scale, and design of the proposed development,
- (p) the availability in the area of a range of existing and planning social, community, and transport infrastructure,
- (q) the pattern of existing and permitted development in the area,
- (r) the planning history at the site and within the area,
- (s) the reports of the planning authority,

- (t) the submissions received by the planning authority from observers and prescribed bodies,
- (u) the grounds of appeal and observations,
- (v) the responses to the grounds of appeal by the planning authority and the applicant, and
- (w) the report and recommendation of the Planning Inspector including the examination, analysis and evaluation undertaken in relation to Appropriate Assessment and Environmental Impact Assessment.

The Board did not share the Inspectors opinion that a condition with respect to the use of the ground floor units is appropriate in this case. The proposed development was for a single perimeter apartment block with no reference made to duplex units.

### **Appropriate Assessment Screening**

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on designated European sites, taking into account the nature and scale of the proposed development on serviced lands, the nature of the receiving environment, the distances to the nearest European sites, and the absence of any direct hydrological connections, submissions and observations on file, the information and reports submitted as part of the application and appeal, and the Planning Inspector's report. In completing the screening exercise, the Board adopted the report of the Planning Inspector and concluded that, by itself or in combination with other development, plans and projects in the vicinity, the proposed development would not be likely to have a significant effect on any European site in view of the conservation objectives of such sites, and that an Appropriate Assessment (Stage 2) and the preparation of a Natura Impact Statement would not, therefore, be required.

## Environmental Impact Assessment Screening

The Board completed an Environmental Impact Assessment screening determination of the proposed development and considered that the Environmental Impact Assessment Screening Report and other documents submitted by the applicant identify and describe adequately the direct, indirect, and cumulative effects of the proposed development on the environment.

Regard has been had to:

- (a) The nature and scale of the project, which is below the thresholds in respect of Class 10(b)(i) and Class 10(b)(iv) of the Planning and Development Regulations 2001, as amended.
- (b) The location of the site on zoned lands (Zoning Objective 'MRE' - 'Facilitate opportunities for high-density mixed-use employment generating activity and commercial development, and support the provision of an appropriate quantum of residential development within the Metro and Rail Economic Corridor'), and other relevant policies and objectives in the Fingal Development Plan 2023-2029, and the results of the strategic environmental assessment of this plan undertaken in accordance with the SEA Directive (2001/42/EC).
- (c) The infill nature of the site and its location in an urban neighbourhood area which is served by public services and infrastructure.
- (d) The pattern of existing and permitted development in the area.
- (e) The planning history at the site and within the area.
- (f) The location of the site outside of any sensitive location specified in article 109(4)(a) the Planning and Development Regulations 2001, as amended and the absence of any potential impacts on such locations.
- (g) The guidance set out in the 'Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development', issued by the Department of the Environment, Heritage, and Local Government (2003).

- (h) The criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as amended.
- (i) The available results, where relevant, of preliminary verifications or assessments of the effects on the environment carried out pursuant to European Union legislation other than the EIA Directive.
- (j) The features and measures proposed by the developer envisaged to avoid or prevent what might otherwise be significant effects on the environment, including those identified in the Construction Environmental Management Plan, Ecological Impact Assessment, Arboricultural Assessment and Impact Report, Site Specific Flood Risk Assessment (Chapter 6 of the Engineering Services Report), Noise and Vibration Impact Assessment, and Mobility Management Plan.

In so doing, the Board concluded that by reason of the nature, scale and location of the proposed development, the development would not be likely to have significant effects on the environment and that an Environmental Impact Assessment and the preparation of an Environmental Impact Assessment Report would not, therefore, be required.

### **Conclusion on Proper Planning and Sustainable Development**

The Board considers that, subject to compliance with the conditions set out below, the proposed development would be consistent with the applicable 'MRE zoning' objective that seeks to facilitate opportunities for high-density mixed-use employment generating activity and commercial development, and support the provision of an appropriate quantum of residential development within the Metro and Rail Economic Corridor, and other policies and objectives of the Fingal Development Plan 2023-2029, would appropriately intensify the residential use at the site, would constitute an acceptable mix and quantum of residential development, would provide acceptable levels of residential amenity for future occupants, would not seriously injure the residential or visual amenities of property in the vicinity, would not cause adverse impacts on or serious pollution to biodiversity, lands, water, air, noise or waste, would

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be acceptable in terms of pedestrian, cyclist and traffic safety and convenience, and would be capable of being adequately served by water supply, wastewater, and surface water networks without risk of flooding. 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 to the planning authority on the 26<sup>th</sup> day of September 2024, as amended by the plans and particulars received by An Bord Pleanála on the 16<sup>th</sup> day of December 2024, 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 development permitted by this Order is for the construction of 119 dwelling units, in accordance with the drawings submitted to the Board on the 16<sup>th</sup> day of December 2024 and titled 'Option B'.

**Reason:** In the interest of clarity, residential amenity and sustainable development.

3. Mitigation and monitoring measures outlined in the plans and particulars, including the Construction Environmental Management Plan, Ecological Impact Assessment, Arboricultural Assessment and Impact Report, Site Specific Flood Risk Assessment (Chapter 6 of the Engineering Services Report), Noise and Vibration Impact Assessment (updated by Technical Note dated 9<sup>th</sup> December 2024), and Mobility Management Plan, submitted with this application shall be carried out in full, except where otherwise required by conditions attached to this permission.

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

4. Noting the applicant has stated that as the project progresses the acoustic specification presented may change, to address this and to provide certainty, prior to the commencement of development a report from a suitably qualified noise expert confirming that the internal noise criteria detailed in table 14 (of the AWN Consulting Limited Technical Note dated 9<sup>th</sup> day of December 2024, submitted as part of the appeal documentation) are being met or improved upon shall be submitted to, and agreed in writing with, the planning authority.

**Reason:** To protect residential amenity.



5. Prior to commencement of development, proposals for a development name and numbering scheme, and associated signage shall be submitted to and agreed in writing with the planning authority. Thereafter, all such names and numbering shall be provided in accordance with the agreed scheme. The development name 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 urban legibility and to ensure the use of locally appropriate place names for new residential areas.

6. (a) Details of the materials, colours, and textures of all the external finishes to the proposed buildings and boundary treatments shall be as submitted with the application, unless otherwise agreed in writing with the planning authority.
- (b) Details of a maintenance strategy for all external finishes within the proposed development shall be submitted for the written agreement of the planning authority. 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.

7. Public lighting shall be provided in accordance with a scheme which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. The scheme shall include lighting along pedestrian routes through open spaces and shall take account of trees within a finalised agreed Landscape Masterplan and Planting Schedule. Such lighting shall be provided prior to the making available for occupation of any residential unit.

**Reason:** In the interest of amenity and public safety.

8. The developer shall enter into water and/ or wastewater connection agreement(s) with Uisce Eireann, prior to commencement of development. All development shall be carried out in compliance with Uisce Eireann codes and practices.

**Reason:** In the interest of public health.

9. Site development and building works shall be carried out only between the hours of 0700 to 1900 on 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 property in the vicinity.

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

**Reason:** In the interest of public health and surface water management.

11. 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 interest of visual and residential amenity.

12. The following requirements in terms of traffic, transportation and mobility shall be incorporated into the development and where required, revised plans and particulars demonstrating compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development:
- (a) The details and the extent of all road markings and signage requirements on surrounding roads.
  - (b) The roads and traffic arrangements serving the site (including signage) shall be in accordance with the detailed requirements of the planning authority for such works and shall be carried out at the developer's expense.
  - (c) The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths, cycle paths and kerbs, pedestrian crossings and car parking bays shall comply with the requirements of the Design Manual for Roads and Streets and with any requirements of the planning authority for such road works.

- (d) Cycle tracks within the development shall be in accordance with the guidance provided in the National Cycle Manual.
- (e) The materials used on roads and footpaths shall comply with the detailed standards of the planning authority for such road works.
- (f) The developer shall carry out a Stage 3 Road Safety Audit of the constructed development on completion of the works and submit to the planning authority for approval and shall carry out and cover all costs of all agreed recommendations contained in the audit.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In the interests of traffic, cyclist and pedestrian safety and sustainable travel.

13. A minimum of 10% of all communal car parking spaces should be provided with functioning EV (Electric Vehicle) charging stations/points, and ducting shall be provided for all remaining car parking spaces, including in-curtilage spaces, facilitating the installation of EV charging points/stations at a later date. Where proposals relating to the installation of EV ducting and charging stations/points has not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted and agreed in writing with the planning authority prior to the occupation of the development.

**Reason:** To provide for and/or future proof the development such as would facilitate the use of Electric Vehicles.

14. (a) The management and maintenance of the 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 so taken in charge.
- (b) The communal open spaces, hard and soft landscaping, car and cycle parking areas, access ways, refuse/ bin storage, and all areas not intended to be taken in charge by the local authority, shall be maintained by the 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.

**Reason:** In the interest of orderly development and to provide for the satisfactory future maintenance of this development.

15. The site shall be landscaped in accordance with the detailed comprehensive scheme of landscaping, which accompanied the application submitted, unless otherwise agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of residential and visual amenity.

16. (a) Prior to commencement of development, all trees, groups of trees, hedging and shrubs which are to be retained shall be enclosed within stout fences not less than 1.5 metres in height. This protective fencing shall enclose an area covered by the crown spread of the branches, or at minimum a radius of two metres from the trunk of the tree or the centre of the shrub, and to a distance of two metres on each side of the hedge for its full length, and shall be maintained until the development has been completed.
- (b) No construction equipment, machinery or materials shall be brought onto the site for the purpose of the development until all the trees which are to be retained have been protected by this fencing. No work shall be carried out within the area enclosed by the fencing and, in particular, there shall be no parking of vehicles, placing of site huts, storage compounds or topsoil heaps, storage of oil, chemicals or other substances, and no lighting of fires, over the root spread of any tree to be retained.
- (c) Excavations in preparation for foundations and drainage, and all works above ground level in the immediate vicinity of tree(s) and hedges and identified as 'to be retained' on landscape drawings, as submitted with the application, shall be carried out under the supervision of a specialist arborist, in a manner that will ensure that all major roots are protected and all branches are retained.
- (d) No trench, embankment or pipe run shall be located within three metres of any trees and hedging which are to be retained on the site.

**Reason:** To protect trees and planting during the construction period in the interest of visual amenity.

17. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company or such other security as may be accepted in writing by the planning authority, to secure the protection of the trees on site and to make good any damage caused during the construction period, coupled with an agreement empowering the planning authority to apply such security, or part thereof, to the satisfactory protection of any tree or trees on the site or the replacement of any such trees which die, are removed or become seriously damaged or diseased within a period of three years from the substantial completion of the development with others of similar size and species. 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 secure the protection of the trees on the site.

18. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works.

**Reason:** To ensure the continued preservation (either in situ or by record) of places, caves, sites, features or other objects of archaeological interest.

19. The construction of the development shall be managed in accordance with a Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:

- (a) Location of the site and materials compounds including areas 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.
- (d) Details of on-site car parking facilities for site workers during 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 public road network.
- (h) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works.
- (i) Details of appropriate mitigation measures for noise, dust and vibration, and the location and frequency of 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) Means to ensure that surface water run-off is controlled such that no silt or other pollutants / contaminants enter local surface water sewers or drains.
- (l) 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.



- (m) Measure to fully remediate the site in accordance with a Construction Stage Invasive Plant Species Management plan, in advance of the commencement of construction activities.

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

20. (a) An Operational Waste Management Plan (OWMP) containing details for the management of waste within the development, the provision of facilities for the storage, separation, and collection of the waste and for the ongoing operation of these facilities, shall be submitted to and agreed in writing with the planning authority not later than 6 months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed OWMP.
- (b) The OWMP shall provide for screened communal bin stores for the apartment block, the locations and designs of which shall be as indicated in the plans and particulars lodged within the application unless otherwise agreed in writing with the planning authority.

**Reason:** In the interest of residential amenity, and to ensure the provision of adequate refuse storage for the proposed development.

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 sections 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, and of the housing strategy in the development plan of the area.

22. 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 and/ or management company 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.

23. (a) Prior to the commencement of development the developer shall submit, for the written approval of the planning authority, revised drawings and associated schedules which clearly indicate the location and sizes of the public open space and environmental open space.
- (b) If any shortfall in public open space is identified the developer shall pay to the planning authority a financial contribution as a contribution in lieu of the public open space requirement in respect of public open space benefitting the development in the area of the planning authority which is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the adopted Development Contribution Scheme made under section 48 of the Planning and Development Act, 2000 (as amended). The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any indexation provisions of the Scheme at the time of payment.

**Reason:** In the event of a shortfall in the provision of public open space 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 (as amended) be applied to the permission.

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 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.

  
Mary Henchy

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

Dated this 25 day of February 2025.