



An
Bord
Pleanála

Inspector's Report ABP 302926-18.

Development	Demolition of house and construction of apartment building with 26 no. dwelling units.
Location	45 Woodland Park, Blackrock, Co. Dublin.
Planning Authority	Dún Laoghaire-Rathdown Co. Council.
Planning Authority Reg. Ref.	D18A/0799
Applicant	Bartra Property Limited
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	First and Third Party
Appellants	(1) Bartra Property Limited (2) Terry Hayden (3) Niall & Elaine Doyle
Observers	(1) Thomas B Courtney (2) Suzanne McElligott (3) Conor O'Donnell (4) Rosaleen O'Donnell

(5) Woodland Park Residents

(6) Villa Nova Apartments

(7) Seán Carroll

Date of Site Inspection

17/5/19

Inspector

Siobhan Carroll

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1.0 Site Location and Description

- 1.1. The appeal site is located at no. 45 Woodlands Park, Blackrock in south County Dublin. This is a mature residential area comprising a mix of detached and semi-detached dwellings built in the 1940's.
- 1.2. The subject site has a stated site area of 0.2933 hectares contains a large two-storey detached dwelling. The property is served by gated vehicular accesses off Woodlands Park. The site is bounded by dwellings to the east, west and south. The northern boundary adjoins Villa Nova a three-storey block which access off Mount Merrion Avenue. Priory stream runs along the eastern site boundary.
- 1.3. There is a recessed gated entrance to the south-eastern corner of the site. The dwelling is set back 36m from the public road it is served by a large front and rear garden. The garden previously contained a lawn tennis court only a section of the court fencing remains.
- 1.4. The site is located 500m from the N11 QBC served by the no.'s 7b, 7d, 46a, 46e, 47, 116, 118, 145 and 155 routes. Mount Merrion Avenue 200m to the north is served by the no. 17, no. 17c bus routes. Rock Road circa 1.5km to the east served by no. 4, 7, 7a, 7d and 84a bus routes and Blackrock Dart Station lies approximately 2.3km from the site.

2.0 Proposed Development

- 2.1. Permission is sought for development consisting of the following;
 - Demolition of the existing dwelling (350sq m) and ancillary garage (28sq m)
 - Construction of a part-3 to part-5 No. storey apartment development (2,885sq m) comprising 26 No. units (8 No. 1 bedroom and 18 No. 2 bedroom apartments), all with associate balconies/terraces.
 - Widening and setback of the entrance from to the south-west of the site;
 - 26 No. car parking spaces; bicycle parking; bin store; boundary treatments; hard and soft landscaping; plant; green roofs; substation; lighting;

- All other associated site works above and below ground.

3.0 Planning Authority Decision

3.1. Decision

Permission was refused for the following reason;

1. The proposal, by reason of its scale, height, form, massing and architectural expression is not considered to accord with Section 8.2.3.4(vii) of the Dun Laoghaire-Rathdown-County Development Plan 2016-2022 in relation in infill development and in its current form fails to respect and compliment the established character of the area. In addition, the proposal, by reason its scale, height, massing and insufficient southern boundary setback, does not provide an appropriate transition in height to properties within the vicinity and will severely compromise the residential amenity of these properties by reasons of overlooking, overshadowing and by being overbearing. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- It was concluded that the site is located close to good quality public transport and subject to an appropriate architectural response there is potential to accommodate higher density development while respecting the sylvan character of the site and surroundings. However, the Planning Authority determined that the proposal by reason of its scale, height and form and architectural expression fails to respect and the established character of the area and that it has the potential to have a detrimental impact upon the existing residential amenity of properties in the vicinity by reason of overlooking, overshadowing and overbearing. It was also considered that there was insufficient car parking provided and that community amenity space was inadequate.

3.2.2. Other Technical Reports

Drainage Planning – Further information requested

Transportation Planning – Further information requested

Waste Section – Further information requested

Parks and Landscape Services – Refusal recommended

Public Lighting Section – Further information requested

Housing Department – No objection subject to condition

3.3. **Prescribed Bodies**

Irish Water – No objections

3.4. **Third Party Observations**

- 3.4.1. The Planning Authority received 50 no. submissions/observations in relation to the application. The main issues raised are similar to those set out in the third party appeals and observations on the appeals.

4.0 **Planning History**

- None on site

Neighbouring Sites

PA Reg. Ref. D06A/0963 – Permission was granted for an extension and alteration of existing dwelling, with new development consisting of 2 no. detached 5 bedroom houses, with 2 no. individual vehicular entrances from Woodland Park at No. 43 Woodlands Park.

PA Reg. Ref. D05A/1431 – Permission was refused for the Demolition and replacement of existing dwelling, with development consisting of 3 no. detached 5 bedroom houses, with individual vehicular and pedestrian access to each at No. 43 Woodlands Park. The decision was appealed (PL06D.217160) and the application was declared withdrawn on appeal.

5.0 Policy Context

5.1. Project Ireland 2040 - National Planning Framework

- 5.1.1. The NPF includes a Chapter, No. 6 entitled 'People, Homes and Communities'. It sets out that place is intrinsic to achieving good quality of life. National Policy Objective 33 seeks to "prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location".
- 5.1.2. National Policy Objective 35 seeks "to increase residential density in settlements, through a range of measures including restrictions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights".
- 5.1.3. National Planning Objective 13 also provides that "In urban areas, planning and related standards, including in particular height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected".

5.2. Section 28 Ministerial Guidelines

- 5.2.1. The following is a list of section 28 Ministerial Guidelines considered of relevance to the proposed development. Specific policies and objectives are referenced within the assessment where appropriate.
- 'Urban Development and Building Heights' Guidelines for Planning Authorities
 - 'Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas' (including the associated 'Urban Design Manual')
 - 'Design Manual for Urban Roads and Streets' (DMURS)
 - 'The Planning System and Flood Risk Management' (including the associated 'Technical Appendices')

- ‘Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities’

5.3. **Dún Laoghaire Rathdown County Development Plan, 2016-2022:**

- 5.3.1. Land Use Zoning: The proposed development site is located in an area zoned as ‘A’ with the stated land use zoning objective ‘To protect and-or improve residential amenity’.
- 5.3.2. Chapter 8 – Principle of Development
- 5.3.3. Section 8.2.3 – refers to Residential Development

5.4. **Environmental Impact Assessment (EIA)**

- 5.4.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

5.5. **Natural Heritage Designations**

- 5.5.1. The following Natura 2000 sites are located in the general vicinity of the proposed development site:
 - The South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), approximately 1.3km east of the site.
 - The South Dublin Bay Special Area of Conservation (Site Code: 000210), approximately 1.3km east of the site.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

First Party Appeal

A first party appeal was lodged by Bartra Property Limited. The main issues raised are as follows;

- The proposed development seeks to densify the site from 3.4 units per to 88.6 no. units per hectare which fully accords with national policy, specifically policy Objective 35 of the National Planning Framework – Project Ireland 2040.
- The Draft Urban Development & Building Height Guidelines for Planning Authorities were not considered by the Planning Authority in their assessment of the scheme.
- The Draft Guidelines note *'in relation to the assessment of individual planning applications and appeals, it is Government policy that building heights must be generally increased in appropriate urban locations. There is therefore a presumption in favour of buildings of increased height in our town/city core and in other urban locations with good public transport accessibility.'*
- Having regard to the highly accessible location and scale of the site within an existing urban area which is less than 500m from a QBC it is considered eminently suitable for densification and increased height, once it can be demonstrated that there is no significant impact on surrounding residential amenity.
- The setback of 35m from the eastern rear façade of the proposed apartment building to the rear of the property 'Gleneevin' is considered acceptable as it is only the ground floor which is setback 35m. The proposed separation between the upper floor windows from Gleneevin is 52m this ensures that the development is not overbearing in the context of Grove Avenue.
- The applicant notes a number of examples including the Charleville Scheme in Dalkey, ABP Ref. 300080-18 where the Board granted permission for a four-storey apartment scheme with a separation distance of 22m to the adjacent dwelling. Under ABP Ref. PL06D.206308 the Board granted permission for a scheme at Grange apartments, Stillorgan, a separation distance of 29m was provided between the apartment blocks and the two-storey dwellings at the Grange.

- Under ABP Ref: PL06D.248703 the Board granted permission for a four-storey block at Aberdour, Stillorgan. The separation distances between the scheme and the closest properties is 46m-48m which is 4-6m less than the separation distances provided at the proposed development.
- It is therefore argued that the proposed development provides a substantial separation distance to the dwellings to the rear. Furthermore, the existing and proposed landscape will prevent any direct overlooking of Gleneevin's amenity space.
- To eliminate any possibility of overlooking from the penthouse level, a 600mm frosted screen is proposed to the top of the wall which will ensure no overlooking can occur onto the rear gardens on Grove Avenue from the penthouse windows. These windows are setback from the rear façade of the building and will be fully obscured by the parapet wall.
- It is highlighted that no balconies are proposed on the rear elevation of the building.
- In relation to potential overshadowing of Grove Avenue it is submitted that any potential impact is immaterial. There is only a slight difference at 15.00 hours and 17.00 hours on the 21st of March. As demonstrated by both the shadow study and the Daylight/Sunlight assessment there is no material overshadowing impact/reduction in sunlight to properties along Grove Avenue or any other properties in the vicinity.
- Regarding potential impacts to no. 47 Woodlands Park it is noted that the footprint of the development is 31m from the boundary with no. 47. It is noted that no. 47 has a two-storey equivalent shed along the rear boundary of the site which blocks views into the site and the amenity portion of the site. It is submitted that the subject scheme cannot be considered overbearing in the context of no. 47.
- It is submitted that a quality design is proposed to the front façade of the proposed apartment building which provides significant architectural interest.
- The extent of tree coverage between the boundaries of no's 45 and 47 which it is proposed to retain is extensive. The proposed development will not

cause any material overlooking of no. 47 and cannot be considered overbearing in its relationship to no. 47.

- It is argued that a transition from two-story to three-storey at the shared boundary is entirely appropriate. The proposed scheme is capable of providing heights of three-storeys along the southern boundary without having a negative impact on the neighbouring residential development.
- The Planning Authority in their assessment of the scheme refer to a number of windows on the northern elevation of no. 44 which have outlook onto the site. The first-floor windows at no. 44 have frosted glazing and therefore the scheme would not cause any undue overlooking of these existing windows. It is also noted that the residents of no. 44 did not object to the scheme. The daylight/sunlight study demonstrates that the location of the proposed development to the north of no. 44 would mean that there would be no material impact on no. 44 in terms of shadowing.
- The Planning Authority queried the quantum of communal open space proposed. The open space area proposed in total measures 700sq m, this exceeds the requirement of 166sq m as required under the 2018 Apartment Guidelines.
- As indicated on drawing no. 1724 P001, a play area can be provided within the scheme should the Board require it.
- It is stated that the provision of a basement cark is not economically viable and it is noted that an Irish Water watermain traverses the site which cannot be relocated or built over. Therefore, it is not possible to provide a basement.
- The Roads Department are seeking a minimum of 29 no. car parking spaces. The applicant considers that 26 no. spaces is appropriate having regard to the excellent public transport nearby.
- As detailed in the report of the Planning Officer a number of the observations to the application stated that the redline along the eastern boundary incorrectly includes lands which do not fall within the ownership of the applicant including the area around the Priory Stream.

- The applicant sought the advice of their solicitor on the matter and they confirmed that the lands as shown within the redline area are fully within the applicant's ownership. Notwithstanding this the applicant also refers to Section 34(13) of the Planning and Development Act, 2000 (as amended) which states, '*A person shall not be entitled by reason of a permission under this Section to carry out any development*'.
- Furthermore, no works are proposed within the area of the stream. There is an existing fence covered by foliage near the eastern boundary of the subject site to the rear of the existing dwelling. The stream lies behind this fence and it is at a level significantly lower than the garden of no. 45, this makes the stream inaccessible. It is proposed that the existing fence will remain in place in the subject scheme with no works proposed behind the fence. No development is possible in this area due to setback requirements from the stream. It is therefore submitted that the ownership of the stream is not relevant in the context of the design and layout of the scheme.
- In relation to the matters raised in the report of the Water Drainage, the applicant received a response from Irish Water which confirms they will accept the attenuation flow of 2.0 l/s from the development site can outfall into the combined drainage network. The applicant confirms that there will be no outfall from the subject site to the stream.
- All runoff generated on site will either drain to ground or via the existing combined sewer. The stream will be 2.975m below the ground level of the proposed development which would mitigate the potential for fluvial flooding.
- In relation to car parking the scheme has been designed in accordance with the Apartment Guidelines which seeks to minimise or eliminate car parking spaces in higher density apartment schemes close to high quality public transport.
- The proposed 26 no. spaces equates to 1 no. space per unit. The Transportation Planning Section required the provision of 29 no. spaces they referred to the shortfall as potentially leading to 'inappropriate/illegal parking on the adjoining roads.' The scheme will create very limited parking demand beyond that provided for on-site. Woodland Park does not have double

yellow lines and the surrounding area does contain many parked cars along the street. It is submitted that limited demand which would arise from occasional visitors would be immaterial. The applicant intends to pursue the option of a car share facility which can reduce the parking requirement by circa 14 no. spaces. Facilities for electric car charging are proposed with two dual charging points which could accommodate four cars.

- Having regard to all the matters set out in the appeal including that the proposal is in line with national policy, which expressly seeks the provision of increased density and increased height on brownfield urban serviced sites and the high quality designed scheme it is requested that the Board overturn the decision to refuse permission.

Third Party Appeals

- (1) The Board received third party appeals from the following; (1) Terry Hayden
(2) Niall & Elaine Doyle. The main issues raised can be summarised as follows;

(1) Terry Hayden

- It is submitted that the applicant does not have sufficient interests in the site to carry out the development.
- It is submitted that the appellant, Mr. Hayden's lands extend into the redline area of the application site.
- It is stated that the submitted that plans and particulars accompanying the application grossly misrepresents the distances to the adjoining properties.
- The appellant strongly objects to the proposed demolition of the dwelling on the site which would be contrary to policies AR5 and AR8 of the Development Plan.
- The density of 89 units per hectare as calculated by the Planning Authority included lands outside the applicant's ownership.
- The reason for refusal does not adequately refer to the grossly excessive height of the proposal. The proposed height of the scheme is not in

accordance with Appendix 9 of the Development Plan which refers to Building Height Strategy.

- The refusal issued by the Planning Authority did not refer to negative impact upon the landscape amenity and existing trees on site.
- The appellant considers that the matter of surface water drainage and flood risk was not satisfactorily addressed.
- The proposed development would cause significant overlooking of neighbouring properties to the south, east and west.
- It is submitted that the Planning Authority should have refused permission on the basis of traffic hazard due to the increased traffic turning movements which would be generated and the substandard nature of the proposed vehicular access.
- The appellant requests that the Board uphold the decision of the Planning Authority to refuse permission.

(2) Niall & Elaine Doyle

- It is submitted that the applicant has insufficient legal interest in the lands subject of the application.
- A justifiable case for the proposed demolition of the subject dwelling no. 45 Woodlands Park has not been provided. The proposal would be contrary to Development Plan policy AR5.
- The proposed development fails to comply with SuDS and entails connection of the surface water to a combined sewer. The Drainage Department of the Council have highlighted in their report that this is not acceptable.
- The grounds levels in relation to the Priory Stream are unknown and given the direct connection of the Priory Stream to the Dublin Bay SAC, it is considered that the AA screening and the Council's assessment is not adequate.
- The report of the Transportation Department outlines that there is inadequate parking to serve the scheme. This would result in overspill carparking in the surrounding area and would result in a traffic hazard.

- The Council's Parks Department outlines that there are inadequacies of the tree survey and landscape assessment and that there are inadequacies in the quality and quantity of communal open space provision.
- It is requested that the Board refuse permission for the issues raised in appeal.

6.2. Applicant Response

A first party response to the third party appeals was submitted by Thorton O'Connor Town Planning. The main issues raised are as follows;

- In relation to the applicant's legal interest in the lands the applicant was furnished a map of the site which dates back to 1946. The map shows two key dimensions of 180 feet from the gate back to the eastern boundary and 196 feet from the gate along the western boundary. This was mapped onto an existing OS map and in conjunction with the topographical survey has informed the redline boundary.
- This redline boundary is correct. Cantrell & Crowley Architects plotted the redline boundary of 'Gleneevin' from a 1937 map. It is clear that the dimensions shown on the historical maps provide both sites with their own redline boundary, without any overlapping.
- Reference is made to a letter submitted by the solicitor of the previous owner of the site dated the 24th of April 2018 to the Property Registration Authority which outlined that the previous map which was submitted was incorrect.
- Regarding the proposed demolition of the dwelling, the third party appellants argue that it is part of a group of six houses built by Tom Roche in the 1940's that the property should be retained in accordance with policy AR5 of the development plan.
- Historic Building Consultants employed by the applicant contend that this is not sufficient grounds to retain the house. Policy AR5 of the development plan refers to the contribution of a house within the streetscape. No. 45 Woodland Park is not entirely visible from the street and it makes no contribution to the streetscape.

- The third party appellants are seeking to use policy AR5 in effect to treat the building as if it were a Protected Structure without the proper legal processes for such inclusion.
- The letter from Historic Building Consultants notes that the conservation assessment submitted with the planning application included a full assessment of the heritage qualities of the house at No. 45 Woodlands Park. The third party appeals contain nothing that would alter this professional opinion.
- The surface water runoff from the dwelling currently discharges to the combined sewer traversing the site. This flow is presently unattenuated. It is proposed to provide attenuation storage up to and including the 100 year storm event with a limit in the discharge rate to 2.0l/s to the combined sewer. The proposed scheme when completed would in fact be a betterment to the existing combined network and reduce the risk of surcharging the sewer downstream.
- Regarding pluvial flooding at the entrance to no. 45 Woodlands Park, Cronin Sutton Engineers advise that the ponding is due to the condition of the existing gullies located outside no. 45. The gullies are located at the lowest point of Woodlands Park and in the absence of maintenance/cleaning excess surface water will pond there.
- A ground penetrating radar survey was carried out on the site to determine the location of the watermain and combined sewer. The watermain is located along the western boundary of the site and would be unaffected by the proposed development.
- Cronin Sutton Consulting Engineers contacted Irish Water in relation to entering into a diversion agreement.
- In relation to the matter of flood risk to the adjacent stream, Cronin Sutton Consulting Engineers reviewed the Dun Laoghaire-Rathdown SFRA which indicated no flooding adjacent to the proposed site. It is proposed to discharge the attenuated surface water runoff to the existing combined sewer which traverses the site. It is submitted that there is no risk of exposing any potential flood risk adjacent to the site or downstream.

- The third party appellants state that the AA screening and Council's assessment is inadequate as there is no definitive assurance of no direct pollution of the Priory Stream and to Dublin Bay SAC to which it is connected. They therefore considered that a full Natura Impact Assessment was required.
- In response to this the applicant has prepared a full Natura Impact Assessment for the Board, the competent authority.
- The ECJ ruling in relation to the People Over Wind and Sweetman v Coillte case is noted. The Court ruled that mitigation measures could not be taken into account at the screening stage of an appropriate assessment.
- Having regard to the ECJ ruling the applicant has taken the view that where a proposed development required construction management where there is either immediate or downstream hydrological connectivity to the AA process must move to Stage 2 AA and a Natura Impact Statement is required.
- The submitted NIS reviewed the predicted impacts arising from the project and found that with the implementation of appropriate mitigation measures specifically in relation to surface water that significant effects on the integrity of the South Dublin Bay SAC and South Dublin Bay and River Tolka SPA can be ruled out.
- It is concluded in the NIS that the implementation or operation of the project under the conditions of appropriate planning will not result in significant adverse effects to the conservation objectives or integrity of the South Dublin Bay SAC and the South Dublin Bay and River Tolka SPA, or any other European Site, either alone or in combination with other plans and projects.
- The third party appellants refer to inadequate parking which will cause an adverse impact and traffic hazard due to overspill out to the surrounding streets. This matter has been comprehensively covered in the first party appeal.
- The appeal submitted by Terry Hayden refers to the separation distance between his property 'Gleneevin' and the proposed development as being incorrect. The distance between the existing rear façade of no. 45 Woodlands Park and 'Gleneevin' is 50.86m. The proposed apartment building is set back

a further 6.5m from the rear façade of the existing dwelling no. 45 Woodlands Park. Therefore, a distance of 57m is provided between opposing first floor windows. It is submitted that the only relevant dimension to use is the distance between the closest point of 'Gleneevin' and the opposing first floor windows is 38m with 44.5m provided to the rear façade.

- The appeals refer to the removal of trees and its impact on the sylvan character of the area. It is submitted that some element of tree removal on site is generally necessary to facilitate development. As detailed in the Arboricultural Impact Assessment the trees and hedgerow along the eastern, western and southern boundaries which provide good screening and which will be retained. The trees to the north of the site are not located within the site and the proposed development would not interfere with their growth.
- Two large Monterey Cypress trees of moderate quality are proposed for removal as their root protection areas would be compromised by the foundations of the proposed apartment building. A third tree of limited value a garden tree is also proposed to be removed. The recommended tree surgery works and tree protection works set out in the Arboricultural Impact Assessment will ensure that all the trees to be retained will remain part of the fabric of the site.
- The overall scheme and resultant density has been entirely designed in accordance with current national planning policy, whilst still protecting the existing residential amenity.

6.3. Planning Authority Response

- It is considered that the grounds of appeal do not raise any new matters, which would justify a change of attitude to the proposed development.
- The Board is referred to the Planner's report.
- Drainage Planning make the following comments on the first party response to the third party appeal.
 - Drainage Planning agree that the construction of the proposed surface water measures in capturing and controlling surface water outflow rates

will result in a marginal improvement of the existing sewerage system given the low flow rate involved.

- A flood risk assessment should be undertaken for all development but particularly for sites adjacent to watercourses irrespective of whether or not there have been any recorded incidences of flooding. A Site Specific Flood Risk Assessment (SSFRA) should consider and quantify the flood depths and extents have been established to ensure development proposals should be in accordance with Appendix 13 of the Development Plan and the Flood Risk Management Guidelines.
- Drainage Planning would accept that an error was made in not requesting a Site Specific Flood Risk Assessment (SSFRA) by submitted as part of further information.

6.4. Observations

(1) Thomas B Courtney

- The proposed three-five storey development with 26 units is an unacceptable intensification of residential use. The proposed development would be visually overbearing and out of character with surrounding development.
- The proposed balconies and fenestration would overlook the rear of the existing residential properties and it will unduly impinge on the established privacy of surrounding and adjacent properties.
- The existing road network is not capable of accommodating the additional traffic which would be generated. The proposed scheme would generate additional on-street carparking which would cause congestion.
- The height, scale and insufficient boundary setback of the proposed development would seriously injure the visual and residential amenities of existing surrounding properties by reason of overshadowing, overbearing and overlooking.

- The proposed scheme does not comply with Section 8.2.8.2 of the Development Plan which refers to Public/Communal Open Space.

(2) Suzanne McElligott

- The pre-planning advice provided by the Dun Laoghaire-Rathdown Co. Council in the meeting held on the 16th of April 2018 is noted. The Planning Authority advised that the site may be able to accommodate a development of three-storeys subject to an appropriate architectural response.
- The proposed scheme is predominately 4-5 stories and the proposed application was subject to 50 no. observations.
- The Observers concerns relate to excessive height and overlooking, visual massing and dominance and the proposed excessive density of the proposed scheme.
- The Planning Authority in their assessment of the proposal had serious concerns in relation to the height, scale and massing.
- In relation to the residential amenity of Grove Avenue, the report of the Planning Officer stated that there are significant overshadowing impacts, the proposal has a sheer eastern façade which is predominant and that the upper floors will be highly visible with potential for significant overlooking of the rear amenity spaces to the east.
- It is submitted that the proposal is grossly inappropriate for the site.

(3) Conor O'Donnell

- The proposed development will exceed the height and massing of the existing residential dwellings in the vicinity and would be out of character with the surrounding area.
- The proposed development will increase traffic in the area and contribute to congestion.

- The development does not contain sufficient parking for the number of units proposed.
- The proposed development gives rise to a loss of residential amenity and is inconsistent with the zoning objective.
- There would be a significant loss of residential amenity to all surrounding properties in the vicinity resulting from undue and unwarranted overlooking of private amenity, loss of light, overshadowing and an overbearing impact.
- The observer notes that there is a legal dispute in relation to the site's eastern boundary.
- The proposed developments proximity to the property at 'Gleneevin' will reduce the opportunity for further developments at 'Gleneevin'.
- The proposed development does not provide a suitable transition in building heights and should therefore be refused.
- Concern is also expressed in relation to traffic generation and the inadequate car parking proposed.

(4) Rosaleen O'Donnell

- The proposed apartment block would overlook the observer's home at Hillsbrook, Grove Avenue from the third, fourth and fifth floors.
- The proposed development would cause overshadowing of the observer's property.
- The Observer states that they have ownership of a section of the Priory Stream along with the neighbouring property Gleneevin and therefore it is not within the subject site as indicated on the submitted site drawings.

(5) Woodland Park Residents

- It is submitted that eastern boundary of the site is not correctly shown on the lodged plans.

- The proposed demolition of the existing dwelling is unnecessary, and it would result in the destruction of the architectural heritage of Woodlands Park and would be contrary to policy AR5 of the Development Plan.
- The proposal should be refused permission on the basis of substandard means of access, traffic hazard and insufficient car parking.
- The proposal would contravene the Council's Building Height Strategy.
- The proposal would be contrary to the zoning objective of the site which is protect and or improve residential amenity.
- The proposed 600mm frosted screen would not satisfactorily prevent overlooking of the private amenity space of adjoining properties.
- The grounds of appeal submitted by the first party do not address the refusal issued by the Planning Authority.
- It is submitted that proposal would have a seriously negative impact upon the residential and visual amenity of no. 44 Woodlands Park.
- The scheme fails to provide any meaningful communal open space.
- The matter of the applicant's legal interest in the lands subject of the application is raised.
- The proposal is deficient in its provision of car parking spaces.

(6) Villa Nova Apartments

- The north facing elevation of the proposed apartment building is five stories high. The site abuts Villa Nova and Villa Nova is a three-storey apartment building. Therefore, it is submitted that the proposed development would block light from the southern elevation of Villa Nova apartments.
- The Observers state that the red line boundary of the site is incorrectly drawn and that a section of the site lies within lands in the ownership of Villa Nova. It is also submitted that the proposed development would require trees inside the Villa Nova property to be cut down.

- The accuracy of the computer generated images indicating the proposed development and Villa Nova is questioned. The images on file appear to show that the proposed five storey apartment building and the Villa Nova a three-storey building are the same height.

(7) Seán Carroll

- The development would result in an unacceptable intensification of residential development
- The proposed five storey building is considered excessive in height out of character with surrounding development. It would result in overlooking of the rear of the existing adjoining residential properties.
- The existing road network is unsuitable to accommodate the additional traffic which would be generated.
- The proposed development would generate additional on-street car parking. The site entrance is located at a bend in the road and the additional traffic would cause a traffic hazard.
- Due to the height and scale of the proposed building and insufficient setback from boundaries it would seriously injure the visual and residential amenities of adjoining residential properties by reason of overshadowing and overbearing.
- The proposal does not comply with Section 8.2.8.2 of the Dún Laoghaire Rathdown County Development Plan, 2016-2022 which refers to Public/Communal Open Space.
- Flooding has occurred at this location on Woodlands Avenue during the wet winter months. The development of a large building on site would have a severely detrimental effect on flooding.

6.5. Further Responses

Further submissions have been received from Terry Hayden.

- The appellant reiterates his concerns in relation to the design of the proposed scheme in terms of height, overlooking and overshadowing.
- The appellant reiterates his contention regarding the accuracy of the submitted plans and further questions whether the applicant has sufficient legal interest in the lands.
- Concerns regarding overshadowing, overlooking and visual impact were not satisfactorily addressed by the applicant.

Further submissions have been received from Niall and Elaine Doyle.

- The applicant has failed to address the concerns raised in their submission.
- A NIS should have been submitted with the application.
- They contend that there are deficiencies in the Consultants reports.
- The applicant has failed to address the matter of conflict of ownership in relation to a section of the site.
- The matter of the proposed demolition of the existing dwelling has not been satisfactorily addressed.
- The proposed development fails to comply with SuDS and entails the connection to an existing combined sewer.
- The applicant has failed to address the matter of traffic hazard.
- 3 no. trees are proposed to be removed along the boundary. The mitigation measures as suggested by the applicant are not feasible with the zone of 2.2m between the proposed apartment block and the observers' property.

A further submission has been received from and Sean Carroll.

- It is stated that a NIS should have been submitted with the application.
- It is contended that the applicants have not satisfactorily addressed the matter of flood risk.

7.0 Assessment

I consider that the main planning issues in the assessment of the proposed development can be dealt with under the following headings:

- Design and impact upon residential amenity
- Access and traffic
- Drainage
- Appropriate Assessment
- Other Issues

7.1. Design and impact upon residential amenity

- 7.1.1. The lands in question are zoned 'Objective A' – to protect and/or improve residential amenity. The proposal is to demolish a dwelling and construct 26 no. apartments in a four-storey building. The existing dwelling subject of this application 'No. 45 Woodlands Park' was built circa 1940's. The site has an area of 0.2933 hectares the proposed density would be equivalent to 88.6 units per hectare.
- 7.1.2. The third party appeals raise concerns about the scale, density and overall height of the proposed development, that it would be out character with the existing area. I accept that the more prevalent character in the area is low rise suburban style housing, however I note the proximity of the Villa Nova apartments to the north which is a three-storey development. In relation to the proposed density I note that the proposed 88 units per hectare is in accordance with Section 8.2.3.2 of the Development Plan which recommends the provision of densities at higher than 50 dwellings per hectare at locations readily accessible to public transport corridors – QBCs, Luas, DART.
- 7.1.3. Regarding the matters of building height and adherence to existing pattern of residential development in the area as raised in the appeals, Ministerial policy as set out in 'Urban Development and Building Heights' Guidelines for Planning Authorities advises that the constant expansion of low-density suburban development around our cities and towns cannot continue. Section 3.4 of the Guidelines refers to Building height in suburban/edge locations (City and Town) and it advises that for newer housing developments outside city and town centres and inner suburbs, i.e. the

suburban edges of towns and cities, should now include town-houses (2-3 storeys), duplexes (3-4 storeys) and apartments (4 storeys upwards). The Guidelines advise that such developments also address the need for more 1 and 2 bedroom units in line with wider demographic and household formation trends, while at the same time providing for the larger 3, 4 or more bedroom homes across a variety of building typology and tenure options, enabling households to meet changing accommodation requirements over longer periods of time without necessitating relocation.

Accordingly, having regard to the provisions of the Ministerial Guidelines in relation to Building Heights, I would accept that the principle of an apartment building of five storeys can be considered subject to all other relevant planning considerations being satisfactorily addressed.

- 7.1.4. The issue of the proposed demolition of the dwelling on site has been raised in the grounds of appeal. The appellants have cited policy AR5 of the development plan which refers to buildings of heritage interest. It states that it is Council policy to retain, where appropriate, and encourage the rehabilitation and suitable reuse of existing older buildings/structures/features which make a positive contribution to the character and appearance of a streetscape in preference to their demolition and redevelopment.
- 7.1.5. The existing dwelling is in habitable condition and is currently occupied. Under Section 2.1.3.4 of the County Development Plan in regards to existing housing stock it is noted that “in certain specific circumstances the Council will encourage the retention of existing houses that, while not Protected Structures or located within an ACA, do have their own merit and/or contribute beneficially to the area in terms of visual amenity, character or accommodation type - particularly those in areas consisting of exemplar 19th and 20th century buildings and estates”. The existing property subject of this application is a large detached two-storey dwelling construction in the 1940’s, it is not a protected structure nor is it located within an ACA. The subject dwelling would not be of significant architectural merit and it is setback from the roadside boundary and the presence of high mature trees and hedging on the site mean that the dwelling is not highly visible from the public road, therefore I would consider that the existing dwelling does not contribute significantly to the streetscape.

- 7.1.6. The third party appeals and observations raise concern regarding overshadowing and overlooking of adjoining properties. In relation to the matter of overshadowing, a shadow study was prepared by 3D Design Bureau with the application. Having reviewed the shadowing diagrams for December 21st and June 21st I note that the proposed development would not result in any additional shadowing.
- 7.1.7. On the Spring Equinox, 21st of March, I note that there would be some marginal additional overshadowing of the rear garden of properties on Grove Avenue at 3pm – 5pm however, I note that the rear elevation of the dwellings would not receive additional shadowing. Accordingly, given that the additional shadowing would very limited and there would be no direct additional shadowing onto the houses, I am satisfied that the proposed development would not unduly impact the amenities of neighbouring property in terms of overshadowing.
- 7.1.8. In relation to the issue of overlooking I note that the separation distances provided between the proposed the proposed apartment building and rear of the appellant's property 'Gleneevin' at Grove Avenue is 35m at ground floor where the dwelling 'Gleneevin' has been extended to the rear and a setback of 52m is provided between the proposed apartment building and the upper floor. I consider that this separation distance is satisfactory to prevent undue overlooking and also overbearing impact.
- 7.1.9. As indicated Drawing No: 1724 P 301 submitted with the first party appeal the applicant proposes to erect a 600mm frosted screen to the top of the wall at the penthouse level terrace. Furthermore, I note that the east facing penthouse windows are setback 2m from the rear façade of the building. Accordingly, I am satisfied that these proposed design measures would protect against any undue overlooking of the rear gardens on Grove Avenue from the penthouse windows. It is highlighted in the first party appeal that no balconies are proposed on the rear elevation of the building.
- 7.1.10. The separation distance between the southern side of the proposed apartment building and the side of no. 44 Woodlands Park is 8.7m at the closest point. I note that the height of the building has been stepped down at the southern boundary with no. 44 Woodlands Park. Therefore, the closest section of the side of the building to the side of no. 44 is three-storey. A separation distance of 13.5m is provided between the four-storey section of the proposed building and the side no. 44. The

increased separation distance provided with the stepping down and tapering of the building at the southern side provides an acceptable separation distance between the closest point of the four-storey section and adjacent dwelling. I consider that this address concerns relating to overbearing impact. In relation to the matter of overlooking, I note that only 4 no. upper floor windows are proposed to the south facing side elevation and windows are high level which will prevent undue overlooking. Furthermore, as indicated on the Proposed Site Plan Drawing No: 1724 P 001 it is proposed to retain the existing mature tree screening along the southern boundary.

7.1.11. The proposed apartment building is setback 30m from the boundary with no. 47 Woodlands Park. The separation distance between the front of the apartment building and the side of no. 47 Woodlands Park is 31m. The first party in their appeal noted that at no. 47 Woodlands Park there is a two-storey equivalent shed located along the rear boundary of the site which blocks views into the site and the amenity portion of the site. The first party therefore state that the proposed development would not unduly impact upon the existing amenities of the property. The first party also highlighted the extent of tree coverage between the boundaries of no's 45 and 47 which it is proposed to retain is extensive. The existing and proposed boundary treatment is indicated on the Proposed Site Plan Drawing No: 1724 P 001. The western boundary between the subject site and no. 47 is formed by mature tall conifers and hedgerow, this will provide year-round substantial screening of the proposed development. Accordingly, I am satisfied that proposed development will not cause any material overlooking of no. 47 and would not have any undue overbearing impact.

7.1.12. In relation to the Villa Nova apartment scheme to the north there is a separation distance of over 30m provided between the side of the new apartment building and closest point of the Villa Nova apartments. Furthermore, as was evident from the site visit and also indicated on the Proposed Site Plan Drawing No: 1724 P 001 there is extensive mature tree planting along the boundary of the sites and on the Villa Nova lands to the south of that apartment scheme. Accordingly, I am satisfied that the proposed development would not unduly impact upon the existing residential amenities of the Villa Nova apartments.

- 7.1.13. Therefore, I consider having regard to the proposed siting and design of the scheme and relative separation distances to the existing dwellings to the north, south, east and west of the site that the proposed scheme would not result in any undue overlooking of residential properties.
- 7.1.14. A total of 18 no. of the proposed 26 no. apartments are dual aspect this represents 69% and is therefore over the 50% requirement set out in the Apartment Guidelines.
- 7.1.15. Regarding open space provision the report of the Council's Parks and Landscape Services considered that the quantum of communal open space proposed was not satisfactory. As set out in Appendix 1 of the Apartment Guidelines the minimum required area for public communal amenity space is 5sq m per one bedroom unit and 6-7sq m per two bedroom unit. A total of 8 No. 1 bedroom units and 18 No. 2 bedroom units are proposed. Therefore, the minimum required communal open space area would be 166sq m. The communal open space areas proposed are indicated on Drawing No: 1724 P 001 submitted by the applicant with the first party appeal. Open space area A is proposed to the front of the apartment building it has an area of 436sqm. Open space area B with an area 264sq m is proposed to the rear of the building. In total the proposed communal open space area on site measures 700sq m, this therefore exceeds the 166sq m as required under the 2018 Apartment Guidelines. Accordingly, I consider that the communal open space proposals are acceptable.
- 7.1.16. Having reviewed the site layout plans and floor plans, I am satisfied that the areas of the balconies and terraces have been provided in accordance with the required standards set out in Appendix 1 of the Apartment Guidelines and table 8.25 of the development plan which refers to minimum private open space standards.
- 7.1.17. In relation to the proposed design of the apartment building, it is contemporary it includes a flat roof and projecting balconies to the front elevation. I consider that there is reasonable variety to the elevational treatment and the proposed stepping down of the building height at the southern side serves to reduce the massing of the proposal. Overall in terms of the visual impact of the proposed scheme on the surrounding area I consider that the development has been designed well to integrate with the surrounding development.

7.1.18. Having reviewed the proposed layout of the scheme relative to the existing surrounding properties, I consider having regard to the proposed siting of the apartment building and relative separation distances to the existing dwellings that the proposed scheme would not result in any undue overlooking, overbearing or overshadowing of neighbouring residential properties.

7.2. Access and Traffic

7.2.1. The proposal entails the provision of a total of 26 no. dwelling units. It is proposed to use the existing vehicular entrance at Woodlands Park. Third party appellants and the observers have raised concern regarding the additional vehicular traffic the scheme would generate and lack of car parking within the development.

7.2.2. Regarding the matter of traffic generation, in terms of overall scale and intensity the proposed development it is relatively modest in scale. The nature of the traffic associated is residential which is not out of character with the existing type of traffic that frequents the road network in the vicinity of the site. Having inspected the site and road network in the vicinity I would consider that such is of sufficient capacity to deal with level of traffic likely to be generated by the proposed development. Furthermore, I note the findings in the Traffic Impact Assessment prepared by CS Consulting Group, they concluded vehicular traffic generated by the proposed development should not exceed a maximum increase of 32% of the total traffic flows at the location. In relation to the potential impacts on the surrounding road network and specifically the road junctions within Woodlands Park and between Woodlands Park and Mount Merrion Avenue and Woodlands Park and Priory Avenue it was concluded in the TIA that the impact of traffic flows related to the proposed development on the junctions would be slight.

7.2.3. The proposed layout provides for the vehicular access off to be access off Woodlands Park to the proposed surface carparking area. The proposed entrance is located at a corner bend in the road 70m to the north of the junction between Priory Avenue and Woodlands Park. The entrance is located onto a section of the road where there is a bend in the road and where the road width is circa 6m. The road within Woodlands Park has a speed limit of 50km/h. As per Table 4.2 of 'Design Manual for Urban Roads and Streets' (DMURS) (2013) 45m of forward visibility is required at junction. As indicated on drawing no: B085-008 sightlines of 50m are

available in both directions at the proposed vehicular entrance including and the gated access to the scheme setback 5.5m from the public footpath. The Transportation Planning Section in their report dated 2nd of October 2018 sought further information on a number of matters including in relation to the vehicular entrance that the gate be setback 6m from the footpath. Drawing No: 1724 P 400 submitted with the first party indicates the proposed entrance setback 6m as required. The applicant proposes electronic gates, the Transportation Planning Section in their report cited Section 8.2.4.9 of the Development Plan which refers to 'Vehicular Entrances and Hardstanding Areas' and advises that electronic or automatic gates are not acceptable in terms of road safety unless the entrance is set back 6.0m from the back of the footway to avoid the roadway or footway being obstructed by a vehicle while the gate is opening. Given that the proposed electronic gates would be set back 6.0m from the back of the footway, I consider the proposed would be acceptable.

- 7.2.4. Having inspected the site and having regard to the details set out above I am satisfied that the required sightline distance is available, that the vehicular access arrangements are acceptable.
- 7.2.5. Car parking standards are set out under Table 8.2.3 of the Dún Laoghaire Rathdown Development Plan 2016 – 2022 sets out the car parking standards for residential schemes. Generally, 1 no. car parking space is required for all one bed units, 1.5 spaces per two bed unit. The proposed scheme comprises a total of no. 26 apartments with 8 no. one bed units, 18 no. two bed units. Therefore, based on the development plan standards 8 no. spaces would be required for the one bed units and 27 no. spaces would be required for the two bedroom units. Accordingly, a total of 35 car parking spaces would be required in accordance with Table 8.2.3 of the Development Plan. A total of 26 no. surface car parking spaces are proposed. There would be a shortfall of 9 no. spaces.
- 7.2.6. As detailed in the report of the Transportation Planning Section they required 1.1 off-street car parking space per 1 bed unit and 1.1 off-street car parking spaces per 2 bed unit. This calculation comprises the requirement of 1.0 residential space and 0.1 a share in visitor/disable/car share space. The number of car parking spaces required by the Transportation Planning Section is 29 no. spaces. On that basis there would be a shortfall of 3 no. spaces. The applicant in response to the matter

in their first party appeal considered that the 26 no. spaces is appropriate having regard to the excellent public transport nearby.

- 7.2.7. 'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities' advise for accessible urban locations where apartments are proposed and that are well served by public transport, the default policy is for car parking provision to be minimised, substantially reduced or wholly eliminated in certain circumstances. Suitable locations for such a reduction in car parking includes locations which are within 10 minutes walking distance of DART, commuter rail or Luas stops or within 5 minutes walking distance of high frequency (min 10 minute peak hour frequency) bus services.
- 7.2.8. Regarding public transport provision in the area, I note that the site is located 500m from the N11 QBC served by the no.'s 7b, 7d, 46a, 46e, 47, 116, 118, 145 and 155 routes. Mount Merrion Avenue 200m to the north is served by the no. 17, no. 17c bus routes. Rock Road circa 1.5km to the east served by no. 4, 7, 7a, 7d and 84a bus routes and Blackrock Dart Station lies approximately 2.3km from the site.
- 7.2.9. Therefore, I consider that the location of the site within 7-10 minutes walking distance of the N11 QBC means that it is an appropriate location for a reduction in car parking standards.
- 7.2.10. A total of 32 no. bicycle parking spaces contained with 16 no. Sheffield-type bicycle stands are also proposed. This is in accordance with the requirements set out in the 'Standards for Cycle Parking and associated Cycling Facilities for New Development' which requires one long stay bicycle parking space per dwelling unit and 1 visitor space per 5 units. I also note that the scheme includes facilities for electric car charging with two dual charging points proposed which is in accordance with Section 8.2.4.12 of the Development Plan.
- 7.2.11. The proposed scheme is well served by public transport and each dwelling unit has bicycle parking, therefore I consider the shortfall in car parking in terms Development Plan standards and the requirement of the Transportation Planning Section of the Council would be acceptable.

7.3. **Drainage**

- 7.3.1. The third party appeals raised the matter surface water drainage and potential flood risk. There is an existing 225mm combined sewer which traverses the south-western

corner of the site. It is proposed that foul effluent generated by the scheme will be completely separated from all surface water flows. The proposed SUDS Layout is indicated on drawing no. B085-003. A green roof system is proposed to the roof of the apartment building and grasscrete parking spaces are indicated on the plans.

- 7.3.2. The report from the Water Drainage Section referred to the requirement to receive consent from Irish Water to allow surface water flow from the site into the existing piped network as proposed. In response to the matter the applicant stated in their appeal that they received a response from Irish Water which confirms they will accept the attenuation flow of 2.0 l/s from the development site which can outfall into the combined drainage network. The applicant has also confirmed that there will be no outfall from the subject site to the stream as all runoff generated on the site will either drain to ground or via the existing combined sewer. Drainage Planning Section in their response to the appeal stated that the construction of the proposed surface water measures in capturing and controlling surface water outflow rates will result in a marginal improvement of the existing sewerage system given the low flow rate involved.
- 7.3.3. Accordingly, I am satisfied with the submitted proposal which provided that the surface water generated within the development will be attenuated, controlled and managed in accordance with the SUDS Manual (2015).
- 7.3.4. Regarding the matter of potential flood risk the Drainage Planning Section of the Council in their response to the appeal stated that a flood risk assessment should be undertaken for all development but particularly for sites adjacent to watercourses irrespective of whether or not there have been any recorded incidences of flooding.
- 7.3.5. While, it is noted that a Site Specific Flood Risk Assessment (SSFRA) was not provided in relation to the proposal, the matter of flooding was addressed in the Engineering Services Report prepared in CS Consulting Group. As illustrated on Flood Zone Map no. 2 which includes the appeal site at no. 45 Woodlands Park, Blackrock it is located within Flood Zone C and therefore the site has a low risk of flooding.
- 7.3.6. The Priory Stream runs along the eastern boundary of the site. As per the submitted OPW – National Flood Hazard Mapping there is no history of flooding in the area. The first party in their response to the issue of potential flood risk to the adjacent

stream confirmed that Cronin Sutton Consulting Engineers reviewed the Dun Laoghaire-Rathdown SFRA which indicated no flooding adjacent to the proposed site. Furthermore, it is proposed to discharge the attenuated surface water runoff to the existing combined sewer and therefore they submitted that there is no risk of exposing any potential flood risk adjacent to the site or downstream. They also confirm that the Priory Stream will be 2.975m below the ground level of the proposed development which would mitigate the potential for fluvial flooding.

7.3.7. Regarding pluvial flooding on Woodlands Avenue, Cronin Sutton Engineers confirm that flooding which occurred at the entrance to no. 45 Woodlands Park was caused by ponding is due to the condition of the existing gullies located outside no. 45. The gullies are located at the lowest point of Woodlands Park and in the absence of maintenance/cleaning excess surface water will pond there.

7.3.8. Accordingly, I am satisfied that the proposed development would be acceptable in terms flood risk considerations.

7.4. Appropriate Assessment

7.4.1. At application stage the applicants submitted a report for the purposes of Appropriate Assessment Screening which was prepared by Moore Group – Environment Services (dated 30th July 2018). It was concluded in the report that there would be no direct or indirect impact on the Dublin Bay SAC or South Dublin Bay and River Tolka Estuary SPA. The Planning Authority as part of the assessment of the planning application carried out Appropriate Assessment Screening. They concluded that having regard to the location of the site and the nature of the project that there will be no likely direct or indirect significant effects on any Natura 2000 site.

7.4.2. Grounds of appeal refer to the matter of appropriate assessment stating that the AA screening and the Council's assessment was not adequate. Concern was raised in relation to the Priory Stream and the direct connection to the Dublin Bay SAC.

AA Screening

7.4.3. While the applicant's original AA Screening Report concludes that the overall development, either individually or in combination with other plans or projects, is not likely to have a significant effect upon any Natura 2000 sites and that a Stage 2 AA and NIS is not required, as detailed in the first party response to the third party

appeals the applicant submitted a report for the purposes of Appropriate Assessment Screening (dated 27th of November 2018) and a full Natura Impact Assessment to address the concerns of the appellants.

- 7.4.4. The CJEU case law (People Over Wind & Sweetman v Coillte (C-323/17)) was cited, an extremely precautionary approach has been adopted in consideration of the hydrological link to the South Dublin Bay and River Tolka Estuary Special Protection Area and the South Dublin Bay Special Area of Conservation, and that a Stage 2 NIS has consequently been prepared. The NIS was prepared by Moore Group – Environment Services (dated 27th November 2018). The information contained in the NIS is considered sufficient for the Board to carry out an Appropriate Assessment.
- 7.4.5. The European sites, South Dublin Bay SAC (000210) and South Dublin Bay and River Tolka Estuary SPA (004024), are both located approximately 1.3km to the east of the development site and are connected to the subject lands via the Priory Stream. Priory stream runs along the eastern site boundary and flows east to Blackrock crosses through a culvert from the Frascati Shopping Centre, flowing under Blackrock Park and then discharges to South Dublin bay through a culvert in the seawall
- 7.4.6. The qualifying interests/special conservation interests of the designated sites, are summarised as follows:

South Dublin Bay SAC Site Code: (000210)	South Dublin Bay & River Tolka Est. SPA Site Code: (004024)
Mudflats and sandflats not covered by seawater at low tide [1140] Annual vegetation of drift lines [1210] Salicornia and other annuals colonising mud and sand [1310] Embryonic shifting dunes [2110]	Light-bellied Brent Goose [A046] Oystercatcher [A130] Ringed Plover [A137] Grey Plover [A141] Knot [A143] Sanderling [A144] Bar-tailed Godwit [A157] Redshank [A162] Dunlin [A149] Black-headed Gull [A179] Roseate Tern [A192] Common Tern [A193] Arctic Tern [A194] Wetlands & Waterbirds [A999]

7.4.14. It is necessary to establish the potential (a) likely and (b) significant effects (direct or indirect) of the project alone on the European sites solely within the context of the site's conservation objectives. The conservation objectives for the SAC and SPA listed above are to maintain or restore the favourable conservation condition or the relevant habitats/species as appropriate.

7.4.15. The potential for likely significant effects should be assessed in the context of the relevant sites' conservation objectives. The development site in question is not part of or located adjacent to any of the designated sites. Furthermore, there would be no direct habitat loss or fragmentation as a result of the proposed project.

7.4.16. In relation to South Dublin Bay SAC and South Dublin Bay and River Tolka Estuary SPA, I note that the site is bordered by the Priory Stream which discharges to the

sea in South Dublin Bay at Blackrock. Having regard to the ‘source-pathway-receptor’ model there is a potential connective pathway linking the proposed development and the two Natura 2000 sites.

- 7.4.17. The applicant submit that the NIS was prepared on the basis of an extremely precautionary approach in light of the CJEU judgement in Case C323/17. The judgement in the case related to the risk of sedimentation to freshwater pearl mussel populations in an SAC, which were noted by the CJEU as being threatened with extinction and being particularly vulnerable to sedimentation. The ‘protective measures’ proposed in that instance were therefore clearly intended to avoid or reduce the harmful effects of the project on the designated site in light of its conservation objectives.
- 7.4.18. In the case of the subject project, I note the proposed management measures that are set out in the NIS will include appropriate site-specific measures from the CIRIA Report C532 Control of Water Pollution from Construction Sites. These are relatively standard construction methods/measures for works in the vicinity of watercourses. Such measures should therefore be utilised as a matter of good practice, given the presence of a nearby watercourse, regardless of the presence of a designated site downstream.
- 7.4.19. Having regard to the proposed use of best construction practices as an integral component of the development and having regard to the qualifying interests and associated conservation objectives, I do not consider it likely that any suspended solids or pollutants that enter the watercourse in the vicinity of the site as a result of the proposed development are likely to reach the SAC and SPA in sufficient quantity or concentration so as to be likely to result in a significant effect on the SAC or SPA in light of their Conservation Objectives.
- 7.4.20. In relation to potential in combination effects having regard to the proposed Best Practice Management and the implementation of the Construction Management Plan during the construction phase, I do not consider that any additional likely in combination effects arise.

AA Screening Conclusion

- 7.4.21. In conclusion, it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the

proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the South Dublin Bay and River Tolka Estuary SPA (Site Code 004024) and South Dublin Bay SAC (Site Code 000210), or any other European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment is not therefore required.

7.5. Other Issues

Legal issues

- 7.5.1. The appellants have raised the matter of whether the applicant has sufficient legal interest in the lands to carry out the proposed development. They specifically refer to the redline along the eastern boundary which it is contented includes lands which do not fall within the ownership of the applicant including the area around the Priory Stream.
- 7.5.2. In response to these matters the applicant states that they sought the advice of their solicitor on the matter and they confirmed that the lands as shown within the redline area are fully within the applicant's ownership. The applicant also cites the provisions of Section 34(13) of the Planning and Development Act, 2000 (as amended) and they confirm that no works are proposed within the area of the Priory stream. They note that there is an existing fence covered by foliage near the eastern boundary of the site, that the stream lies behind the fence and it is at a level significantly lower than the garden of no. 45 which makes the stream inaccessible. The applicant confirms that the existing fence will remain in place in the subject scheme with no works proposed behind the fence. Therefore, they set out that the ownership of the stream is not relevant in the context of the design and layout of the scheme.
- 7.5.3. Having regard to the details submitted by the applicant and the appellants this is a disputed matter between the parties. The Planning and Development Act 2000, as amended, requires that the applicants have sufficient legal interests in the lands to carry out the development. Furthermore, I note that it is not within the remit of the Board to determine legal interests and/or obligations held by the applicant, in relation to such lands. Section 34(13) of the Planning and Development Act, 2000, as amended, relates as follows: "A person shall not be entitled solely by reason of a permission or approval under this section to carry out a development." This

subsection makes it clear that the grant of permission does not relieve the grantee of the necessity of obtaining any other permits or licences which statutes or regulations or common law may necessitate.” Accordingly, I do not consider that these matters are reasonable and substantive grounds for refusal of the proposed development.

8.0 Recommendation

8.1. I recommend a grant of permission subject to the following conditions.

9.0 Reasons and Considerations

Having regard to the zoning objective for the site as set out in the Dún Laoghaire Rathdown County Council, 2016 – 2022, the National Planning Framework, 2018 – 2040, the Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities (2009), Urban Development and Building Heights, Guidelines for Planning Authorities, (2018), and the overall scale, design and height of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual or residential amenities of the area or of property in the vicinity, and would be acceptable in terms of pedestrian and traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by An Bord Pleanála on the 5th day of November, 2018, 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. Water supply and 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.

3. The site access arrangements and the internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs, and the basement car park, shall be in accordance with the detailed requirements of the planning authority for such works. All residential parking spaces shall be constructed so as to be capable of accommodating future electric vehicle charging points.

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

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

Reason: In the interest of visual amenity.

5. Details of all boundary treatment shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development on the site.

Reason: In the interests of visual and residential amenity.

6. Prior to commencement of development, the developer shall appoint and retain the services of a qualified Landscape Architect (or qualified Landscape Designer) as a Landscape Consultant, throughout the life of the construction works and shall notify the planning authority of that appointment in writing prior to commencement. A Practical Completion Certificate shall be signed off by the Landscape Architect when all landscape works are fully completed to the satisfaction of the planning authority and in accordance with the permitted landscape proposals.

Reason: To ensure full and verifiable implementation of the approved landscape design.

7. Prior to commencement of any permitted development, the developer shall engage the services of a qualified arborist as an arboricultural consultant, for the entire period of construction activity. The developer shall inform the planning authority in writing of the appointment and name of the consultant, prior to commencement of development. The consultant shall visit the site at a minimum on a monthly basis, to ensure the implementation of all of the recommendations in the tree reports and plans. To ensure the protection of trees to be retained within the site, the developer shall implement all the recommendations pertaining to tree retention, tree protection and tree works, as detailed in the Arboricultural Method Statement and Tree Protection Plan in the submitted tree report. All tree felling, surgery and remedial works shall be completed upon completion of the works. All works on retained trees shall comply with proper arboricultural techniques conforming to BS 3998: 2010 Tree Work – Recommendations. The clearance of any vegetation including trees and shrub shall be carried out outside the bird-breeding season (1 March–31 August inclusive) or as stipulated under the Wildlife Acts 1976 and 2000. The arborist shall carry out a post construction tree survey and assessment on the condition of the retained trees. A completion certificate is to be signed off by the arborist when all permitted development works are completed and in line with the recommendations of the tree report. The certificate shall be submitted to the planning authority upon completion of the works.

Reason: To ensure and give practical effect to the retention, protection and sustainability of trees during and after construction of the permitted development.

8. 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 crossing or bounding the site shall be relocated underground as part of the site development works, at the developer's expense.

Reason: In the interests of visual and residential amenity.

9. Proposals for an estate/development name and apartment 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 numbers, shall be provided in accordance with the agreed scheme. The proposed 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 of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.

Reason: In the interests of urban legibility, and to ensure the use of locally appropriate place names for new residential areas.

10. Site development and building works shall be carried out only between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 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.

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

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

12. A construction traffic management plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The plan shall include details of arrangements for routes for construction traffic, parking during the construction phase, the location of the compound for storage of plant and machinery (which shall not be within the areas designated for tree protection) and for storage of deliveries to the site.

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

13. 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 prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: In the interests of residential amenity and proper waste management.

14. 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 be provided prior to the making available for occupation of any unit.

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

15. 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 96(4) and 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 97(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 for the area.

16. 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, 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 or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of the development.

17. 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.

Siobhan Carroll
Planning Inspector

27th of June 2019