



An
Bord
Pleanála

Inspector's Report

ABP-305229-19

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| Development | Construction of apartment building to accommodate 3 apartments and 2 duplex units, dormer windows, car parking new access from Bolton Avenue and associated works. |
| Location | Ballyboden House, Ballyboden Road, Rathfarnham, Dublin 16. |
| Planning Authority | South Dublin County Council |
| Planning Authority Reg. Ref. | SD19A/0055 |
| Applicant | Mary Bugler. |
| Type of Application | Permission. |
| Planning Authority Decision | Grant Permission. |
| Type of Appeal | Third Party v. Decision. |
| Appellant(s) | Ballyboden Road Cottage Residents. |
| Observer(s) | Glendoher and District Residents Association. |
| Date of Site Inspection | 14 th February 2020. |
| Inspector | Susan McHugh |

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1.0 Site Location and Description

- 1.1. The appeal site is located within an established residential area approx. 1.6km to the south of Rathfarnham village. It is located to the east of Ballyboden Road R115, and approx. midway between Ballyroan Road R817 to the north and Taylors Lane to the south. The area is well served with a number of primary and secondary schools within walking distance of the site, in addition to St. Enda's Park.
- 1.2. Bolton Park estate is located to the northeast of the appeal site and is served by a separate one way access and egress road from Ballyboden Road. This access also provides access to a laneway which runs to the rear of Ballyboden Road Cottages directly to the north of the appeal site. A petrol station, Barbers and Pizza Hut delivery unit are located to the west. Buglers Public house and surface car park are located to the south.
- 1.3. The appeal site includes an existing house no. 38 Glendoher Close to the east forms part of a larger landholding in the ownership of the applicant. This house is accessed from the cul de sac within Glendoher Close.
- 1.4. A way leave/right of way is indicated on plans submitted and includes part of a green area and access/egress roadway from the northern part of the site to the Ballyboden Road.
- 1.5. The site is bounded along the northern boundary by a row of mature Lombardy Poplar trees which form the boundary with No. 1 Bolton Avenue. Other smaller trees and hedgerows are located around the site other boundaries. The southern boundary is defined by wooden fencing which includes an access gate from the surface car park.
- 1.6. The site is irregular in shape and has a stated area of 0.1395ha.

2.0 Proposed Development

- 2.1. The application was lodged with the planning authority on the 04/03/2019 with further plans and details submitted on the 05/06/2019. The latter triggered revised public notices.
- 2.2. The proposed development as lodged comprises permission to construct;

- 3 no. 2 bed apartments at ground floor level, and
 - 2 no. 3 bed duplex units at first and second floor level.
- 2.3. The apartment building includes a mono pitched roof to the part-single storey element, and a pitched roof to the part-three storey element. It will include dormer windows and roof lights on the front/western roof slope, and on the rear/eastern roof slope. Finishes include selected brick and render.
- 2.4. Each ground floor apartment unit is to be served by private amenity space to the rear/east and each duplex unit is to be served by a private balcony at first floor level on the front/western elevation.
- 2.5. A new access and egress route is proposed via Bolton Avenue to the north of the site, together with the provision of a shared car parking area (7 parking spaces) and secure bicycle storage unit adjacent to the car park in front of the units which can accommodate up to 6 cycles. The bin storage area is located adjacent to the car parking area.
- 2.6. In relation to foul drainage and water supply it is proposed to connect to the existing 225mm foul drainage pipe, and 110mm watermain on Bolton Avenue. Surface water drainage will be dealt with on site.
- 2.7. It is proposed to remove existing trees and planting on site as indicated on the Tree Protection Plan and Tree Constraints Plan drawings, prepared by Arborists Associated Ltd. A Landscape Plan for the site were also prepared by Doyle and O'Troithigh Landscape and Architecture, in addition to details in relation to soft and hard works specifications and planting proposals and proposed boundary details.
- 2.8. The application was accompanied by the following;
- Planning Report - Hughes Planning and Development Consultants
 - Engineering Services Report – D.C. Turley and Associates
 - Arborist Report – Arborist Associates Ltd.
 - Traffic Impact Report – Stephen Reid Consulting Traffic and Transportation Limited.
- 2.9. In the interests of clarity for the Board, pursuant to further information, the applicant submitted revised public notices which were submitted on 27/06/2019.

2.10. The significant design alteration includes the addition of another residential unit, above the previously single storey element of the block, resulting in an increase in the no. of residential units from 5 to 6. Revised plans also include a reduction in overall ridge height and a reconfiguration of the internal layouts of the units to accommodate additional storage.

2.11. Table 1: Unit Mix:

| Unit Type | No. units proposed | % of units |
|-------------------------------------|---------------------------|-------------------|
| 2 bed - ground floor apartment | 3 | 50% |
| 2 bed duplex - first & second floor | 1 | 17% |
| 3 bed duplex - first & second floor | 2 | 33% |
| Total | 6 | 100% |

2.12. The response to further information was accompanied by the following;

- Planning Report - Hughes Planning and Development Consultants
- Flood Risk Assessment Report & cover letter – D.C. Turley and Associates
- Ground Investigation Report – Ground Investigations Ireland

2.13. This assessment makes reference to the plans submitted at further information stage and the original application stage.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to **grant** planning permission subject to 20 no. conditions. A brief description of the conditions are as follows;

Condition No.1 Plans and particulars

Condition No.2 Obscure glazing on windows above ground level on northside elevation.

Condition No.3 & 4 Irish Water, Water Services requirements.

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| Condition No.5 | Boundary treatment of rear gardens |
| Condition No.6,7&10 | Arborist, tree works landscaping requirements, and tree bond €6,000.00. |
| Condition No.8 | Taking in Charge requirements. |
| Condition No.9 | Street naming and numbering. |
| Condition No.11 | Dish kerb and footpath, requirements |
| Condition No.12 | Construction traffic management plan. |
| Condition No.13,15 &16 | Undergrounding of services, street lighting, occupation subject to service connections requirements. |
| Condition No. 14 | Restriction on use and occupancy. |
| Condition No. 17 &18 | Dust, construction noise and hours requirements |
| Condition No. 19 | Section 48 Development Contribution €52,253.72. |
| Condition No. 20 | Taking in Charge security €29,814.00. |

3.2. Planning Authority Reports

3.2.1. Planning Reports (dated 25/04/2019 and 24/07/2019)

Basis for planning authority decision includes. First planning report notes the following:

- Internal accommodation and storage – Recommends further information in relation to storage areas.
- Private amenity space – Meets requirements.
- Visual impact and residential amenity – While the building footprint is similar to that granted under PL06S.3029933, the current application site is larger in width at 20.3m and is closer to the north boundary wall with a passage of c.1m compared to the previously approved 2.5m width. The ridge height would be 618mm higher than that permitted under PL06S.3029933, and in the event of a grant this should be conditioned to accord with PL06S.3029933. Proposed elevational finishes are acceptable. The incorporation of a single storey element to the north of the site would reduce the potential for

overshadowing and overbearing on the rear amenity space of No. 1 Bolton Avenue. The rear building line of the apartment block is located 8.8m from the rear boundary wall with No. 38 Glendoher Close which is acceptable. Window on north gable should be finished in opaque glazing to protect privacy of existing dwelling to the north.

- Access and Parking – Bolton Avenue is not taken in charge by SDCC. A right of way has been indicated on drawings accompanied by a letter stating same.
- Landscaping – Notes the existing mature Lombardy Poplar trees on the northern site boundary which are to be removed and condition no 4 of PL06S.302933 which if in the event of a grant of permission should also apply. Boundary treatment of rear gardens should also be conditioned.
- Screening for Appropriate Assessment – Notes information submitted in terms of drainage and flood risk are inadequate. Not feasible to screen for AA until further information received.

The second planners report dealt with the applicant's response to further information and is summarised as follows:

- Response to further information in relation to storage, private amenity space, surface water management, flood risk and watermains acceptable.
- Building Height – The ridge height has been reduced to 9.457metres (from 10.075m) to align with the grant of permission under PL06S.302933. The applicant has also incorporated an additional apartment unit (Unit 6), thereby eliminating the single storey element at the north elevation. Notes set backs at first and second floor to northern building line and separation distances from northern site boundary and existing dwelling 1 Bolton Avenue. Having regard to the previous Board decision on PL06S.302933 proposal is acceptable.
- Parking – No additional parking proposed to serve additional 2 bed duplex unit but 7 spaces to serve the development is acceptable.
- Density – Notes increased density (including additional unit but again excluding 38 Glendoher Close) comprises a gross density of 65 units per ha. Density considered acceptable with reference to Section 11.3.1 of the SDCDP

and Departmental Guidelines on Sustainable Residential Development in Urban Area.

- Screening for appropriate Assessment – Screened out.

The planner recommended a grant of permission subject to conditions.

3.2.2. Other Technical Reports

Roads Department: Report dated 26/03/2019 recommends no objection.

Water Services: Report dated 28/03/2019 recommends further information. Report dated 18/06/2019 recommends no objection.

Parks and Landscape Services/Public Realm: Report dated 25/03/2019 recommended no objection subject to conditions.

Environmental Health Officer: Report dated 05/04/2019 recommends no objection subject to conditions.

3.3. Prescribed Bodies

Irish Water: Report dated 02/04/2019 recommends further information. Report dated 02/07/2019 recommends no objection.

3.4. Third Party Observations

3.4.1. A number of third party observations were lodged with the planning authority from the following parties;

- Glendoher & District Residents Association
- Ballyboden Road Cottages Residents (No.s 149-163 Ballyboden Road)
- Bolton Park Residents Association
- Eimear Moloney No. 4 The Mill, Bolton Park.
- Yvonne Jeffrey & Niamh Mangan No. 2 & 1 Bolton Avenue.
- Mark McCabe and Claire Keegan No. 163 Ballyboden Road.

- 3.4.2. Further submissions were lodged with the planning authority following the response to further information including from the Ballyboden Road Cottages Residents, Bolton Park Residents Association, and Mark McCabe and Claire Deegan.
- 3.4.3. Objections to the proposal received by the planning authority have been forwarded to the Board and are on file for its information. The issues raised are comparable to those raised in the third party appeal and are summarised in section 6 below.

4.0 Planning History

Appeal Site

P.A.Reg.Ref.SD18A/0187 ABP-302933-18: Permission **granted** 03/04/2019 for a terrace of 3 infill dwellings, and new access road from Bolton Avenue. (See file attached).

Condition No. 2 required that the proposed ridge and eaves heights of the three dwellings be reduced by 300millimetres, and all windows above ground floor level on the side elevations to be filled with obscured glass.

Condition No. 3 and 4 referred to boundary treatments, landscaping and tree protection measures to be agreed.

Buglers Public House to the South

P.A.Reg.Ref.SD18A/0255 PL06S.304332: Permission **granted** 02/09/2019 for extension comprising additional bar and seating area, enclosed smoking area, provision of beer garden, signage, new vehicular entrance and ancillary works.

Site adjoining No. 21 Glendoher Close

P.A.Reg.Ref.SD18A/0184 PL06S.302812: Permission **granted** 27/03/2019 for demolition of a single storey unit and construction of a four bedroom, two storey infill dwelling. (See file attached).

5.0 Policy Context

5.1. Development Plan

5.1.1. The operative development plan for the area is the South Dublin County Development Plan 2016-2022. The site is zoned '**RES** – *To Protect and/or Improve Residential Amenity*'. Residential use is 'permitted in principle' under this zoning objective.

5.1.2. Chapter 2 refers to Housing

Section 2.2.2 refers to *Residential Densities*

Housing Policy H8 states that '*It is the policy of the Council to promote higher residential densities at appropriate locations and to ensure that the density of new residential development is appropriate to its location and surrounding context.*'

H8 Objective 6 states '*To apply the provisions contained in the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, DEHLG (2009) relating to Outer Suburban locations, including a density range of 35-50 units per hectare, to greenfield sites that are zoned residential (RES or RES-N) and are not subject to a SDZ designation, a Local Area Plan and/or an approved plan, excluding lands within the M50 and lands on the edge or within the Small Towns/ Villages in the County.*'

Section 2.3.1 refers to *Residential Design and Layout*.

Housing **Policy H11** states that '*It is the policy of the Council to promote a high quality of design and layout in new residential development to ensure a high-quality living environment for residents, in terms of the standard of individual dwelling units and the overall layout and appearance of the development*'.

Section 2.4.0 of the Development Plan considers Residential Consolidation – Infill, Backland, Subdivision and Corner sites.

Housing **Policy H17** states that '*It is the policy of the Council to support residential consolidation and sustainable intensification at appropriate locations, to support ongoing viability of social and physical infrastructure and services and meet the future housing needs of the County*'.

H17 Objective 2 states ‘*To maintain and consolidate the County’s existing housing stock through the consideration of applications for housing subdivision, backland development and infill development on large sites in established areas, subject to appropriate safeguards and standards identified in Chapter 11 implementation*’.

H17 Objective 5 states ‘*To ensure that new development in established areas does not impact negatively on the amenities or character of an area*’.

5.1.3. **Chapter 11** refers to **Implementation**

Section 11.3.1 (ii) refers to *Residential Density* which states ‘that the residential density (net) of new development should generally be greater than 35 dwellings per hectare, save in exceptional circumstances’.

Section 11.3.2 (i) specifically refers to *Infill Development*. It states (inter alia):

Development on infill sites should meet the following criteria:

- Be guided by the Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities DEHLG, 2009 and the companion Urban Design Manual;
- A site analysis that addresses the scale, siting and layout of new development taking account of the local context should accompany all proposals for infill development. On smaller sites of approximately 0.5 hectares or less a degree of architectural integration with the surrounding built form will be required, through density, features such as roof forms, fenestration patterns and materials and finishes. Larger sites will have more flexibility to define an independent character;
- Significant site features, such as boundary treatments, pillars, gateways and vegetation should be retained, in so far as possible, but not to the detriment of providing an active interface with the street.
- Where the proposed height is greater than that of the surrounding area a transition should be provided.

Section 11.4.2 refers to Car Parking Standards

Table 11.24 states that maximum parking rates for a two bedroom apartment is 1.25 car parking spaces, and 1.5 car parking spaces for a three bedroom apartment in areas not within towns or villages (Zone1).

5.2. National Guidelines

- Project Ireland 2040 National Planning Framework, Government of Ireland, 2018.
- Sustainable Urban Housing : Design Standards for New Apartments, Guidelines for Planning Authorities, Departments of Environment, Community and Local Government.

5.3. Natural Heritage Designations

None of relevance.

5.4. EIA Screening

Having regard to the nature the proposed development, the nature of the receiving environment, and proximity to the nearest sensitive location, 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.

6.0 The Appeal

6.1. Grounds of Appeal

The Third Party appeal against the decision of the planning authority, has been lodged by Paschal Comerford, on behalf of the Ballyboden Road Cottage Residents. The main grounds of appeal can be summarised as follows;

- Proposal is contrary to sustainable and principles of proper planning and to policies and objectives of the SDCC Development Plan.
- *Insufficient Legal Interest* - Applicant is not the legally registered owner of the entire site, nor do they hold equitable interest in the entirety of the subject site according to the PRAI/Registry of Deeds.
- Applicant has not submitted a letter of consent from the legally registered owner of the grassed area behind the bottle bank i.e. Merchant Banking Ltd.

- Issues of land ownership were not dealt with by the P.A. and submit that the applicant should be requested to provide documentation that provides proof of ownership.
- *Excessive Density* – Is completely out of character with the pattern of development in the neighbouring development of Bolton Hall and the surrounding area.
- *Car Parking Provision* – Previous planning permissions for the subject site provided a higher no. of car spaces per unit. The parent permission for Bolton Hall under SD11A/0244 provided 53 car spaces for 27 units an average of 1.96 spaces per unit. Notes subsequent planning applications relating to Burton Hall under SD16A/0387 and SD18A/0187 provided for 2 no. spaces per unit. The current proposal which provides an average of 1.6spaces per unit represents a reduction of car parking provision contrary to SDCDP standards and will result in car parking spillage in nearby estates and roads.
- *Right of Way* – Applicant has not submitted any documentation from the PRAI providing proof of a right of way, or any letter of consent from Homehall Development to access onto Bolton Avenue.
- *Lombardy Poplar trees and Bat Activity* – Application was not referred by SDCC to the Heritage Officer of the P.A. for comments, despite the fact that there are bats in the nearby residential developments, St. Enda’s and Marley Park. The presence of Bats has not been addressed by either the applicant or the P.A., and failure to do so and take necessary steps of mitigation including seeking a license by the NPWS renders this planning permission contrary to European Law.
- *Procedural* – Insufficient time for objectors to comment on the significant additional information, and the failure to re advertise the significant additional information for the extra unit.
- *Visitor Parking* – No provision.
- *Service Vehicles* – No turnaround area provided.
- *Traffic Safety* – Already traffic movement pressures and traffic safety concerns at the existing junction arrangement at this laneway for both

residents of Bolton Hall and Ballyboden Road Cottages, and 'loading' requirements of two adjoining commercial units. The Traffic Management Report submitted by the applicant is inadequate.

- *Pedestrian Safety* – From Bolton Park has not been adequately addressed, as the existing footpath will have to be removed to facilitate access to the proposed development. This is a school route and shop route for residents in Bolton Park.
- *Relocation of Bottle Bank* – Unclear and may result in unacceptable noise pollution for the proposed new residents, no noise survey carried out.
- *Boundary Treatment* – Inadequate in terms of quality and detail.
- *Residential Amenity* – Will result in overlooking of neighbouring properties, specifically at 163 Ballyboden Road and Bolton Park.
- *Loss of Green Infrastructure* – Ecological fragmentation on Bolton Park and Burton Hall. No attempt to implement the National Pollinator Plan. In breach of the Climate Action objectives. No attempt to retain the row of Lombardy Poplar trees which is a significant loss to the visual amenity and character of the area.
- *Open Space* – No provision of open space or any play feature.

6.2. Planning Authority Response

The planning authority confirmed its decision and issues raised in the appeal have been covered in the planner's report.

6.3. Observation

Submission from Hendrik Van der Kamp on behalf of Glendoher and District Residents Association, can be summarised as follows;

- Excessive density
- Haphazard and substandard development
- Loss of a section of footpath at the junction with the rear access lane to houses on Ballyboden Road.

7.0 Assessment

7.1.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues are addressed under the following headings:

- Design and Layout
- Residential Amenity
- Access, Parking and Traffic Safety
- Loss of Open Space, Trees and Ecology
- Other Matters
- Appropriate Assessment

7.1.2. I refer the Board to the most recent planning history on this site under P.A.Reg.Ref. SD18A/0187 ABP Ref.302933-18 which was granted planning permission in April 2019 for a somewhat similar development.

7.1.3. It is important to note from the outset that the current proposal differs from the previous application under P.A.Reg.Ref. SD18A/0187 ABP Ref.302933-18. The main difference between the previous application and the current application relates to the stated application site area and number of units.

7.1.4. The current proposal has a stated site area of (0.1395ha) and includes house no. 38 Glendoher Close and provides for the construction of 6 no. apartments. By comparison the previous application related to a smaller site area (0.092ha) and was for 3 no. dwellings.

7.1.5. I am satisfied, therefore, that the current proposal is materially different to the previous proposal, and my assessment will focus on the current proposal on its own merits.

7.2. Design and Layout

7.2.1. Concern has been raised by the appellants and observers to the appeal in relation to the proposed residential density which is considered excessive.

7.2.2. While the principle of infill development can be supported within the residential land use zoning, it needs to be ascertained whether the proposed development is in accordance with Housing Policy H11, and H17, standards and criteria for infill development, as set out under Sections 11.3.1(iv) 11.3.2(i) of the Development Plan.

7.2.3. The proposal, as amended by way of further information namely 6 apartments, equates to a density of 65 units per hectare. The planning authority accept this is within the range specified by section 11.3.1 of the County Development Plan. Whilst I note the densities prevailing on adjoining lands notably to the north east are comparably low, the proposed density on this infill site is appropriate and in the context of its proximity to nearby services and amenities.

7.2.4. The surrounding area is characterised by a mixed pattern of development comprising largely two storey, semi-detached dwellings to the north and east within the Bolton estate, and terraced two storey houses along Ballyboden Cottages. The scheme provides for a mix of two and three bedroom units in a two storey block, which I consider acceptable on this infill site.

7.2.5. The proposed layout entails units in a block facing west onto the proposed surface parking area. They will back onto the side rear boundary with No.38 Glendoher Close a semidetached house to the east. The block will be stepped off the northern boundary with no. 1 Bolton Avenue by approx. 1m. at its closest point. I also note that an additional unit at first floor along the northern end of the block was proposed by way of further information. This unit is located is set back from the boundary with no. 1 Bolton Avenue by approx. 2.4m at its closest point.

- 7.2.6. While the building footprint is similar to that granted under PL06S.3029933, the current proposal is closer to the north boundary wall with a passage of c.1m compared to the previously approved 2.5m width.
- 7.2.7. I note that the planning authority expressed concern in terms of the proposed height of the block. This was reduced by way of further information to 9.457m which is consistent with the building height permitted under ABP PL065.3029933.
- 7.2.8. I am also satisfied that the proposal provides adequate private amenity space for each unit of the two bedroom ground floor units. The first floor three bedroom units include west facing balconies, and range in area from between, 8.7m sqm to 9.7sqm. The proposal, therefore, meets the development plan requirement of 7sqm private open space per 2 bed unit and 9sqm for 3 bed unit as set out in Section 11.3.1 (iv) dwelling standards Table 11.21.
- 7.2.9. The appellants note that the proposal does not include open space or any play feature. In my view however it is very difficult to provide usable open space on an infill site such as this. I have had regard to the landscape plans and planting proposals including specifications for hard and soft works on site prepared by Doyle and O'Troithigh Landscape and Architecture and am satisfied that these works will contribute to the visual amenity of the development.
- 7.2.10. Overall I consider that the proposed layout allows the most efficient use of the site, and in particular it provides an appropriate quantum of car parking for each unit.
- 7.2.11. I have considered the layout of the proposal, the west facing orientation of the balconies to the front of the units, and I am satisfied that the proposed design and layout takes account of the local context and complements existing residential development and is an appropriate form of infill development.
- 7.2.12. I am satisfied that the proposed development is therefore, in accordance with Housing Policy H11 and H17 standards and criteria for infill development as set out under Sections 11.3.1(iv) 11.3.2(i) and (ii) of the Development Plan.

7.3. Residential Amenity

- 7.3.1. As per the South Dublin County Development Plan 2016 – 2022 the site is within an area zoned 'RES', the objective of which is 'to protect and/or improve residential amenity'.
- 7.3.2. Having regard to the Guidelines for Sustainable Residential Development and the provisions of the current development plan the acceptability or otherwise of the proposed development will be subject to the need to attain a balance between the reasonable protection of the amenities and privacy of adjoining property and the need to provide for additional residential development at this location. I propose to address such matters in the following sections.
- 7.3.3. The appellants have raised concern in relation to overlooking of adjoining residential properties, and in particular the corner house no. 163 Ballyboden Cottages, to the north and house no. 1 Bolton Avenue to the northeast. However, it must also be accepted that with any new infill development there will be a level of overlooking from adjoining development.
- 7.3.4. As already noted the proposed development includes three first floor balconies, and dormer windows in the roof space on the front west facing elevation. I have examined the relationship between the proposed development and no. 163 Ballyboden Cottages which has been recently extended to the rear. I note the separation distance of approx. 15m, that the rear garden boundary which is located at the entrance to the Bolton estate is relatively exposed, and that it has also been planted.
- 7.3.5. I am reasonably confident that as this planting matures over time the issue of overlooking will be mitigated. I also note that the proposed block does not directly face the rear elevation or garden of this property, but rather onto the single storey commercial properties to the west.
- 7.3.6. In relation to no. 1 Bolton Avenue I note the location of first floor balcony closest to the northern boundary and one small window proposed at first floor on the gable/north facing elevation. I also noted from my site inspection that some of the first floor windows on the gable of house no. 1 Bolton Avenue are fitted with obscure glazing. I also note the concerns of the planning authority in relation to overlooking

of this property and the inclusion of condition no. 2 requiring obscure glazing on windows above ground level on the northern elevation.

- 7.3.7. While I agree with the planning authority in relation to the inclusion of this condition, I also consider that there would also be merit in providing an obscure side panel to the proposed first floor balcony nearest no. 1 Bolton Avenue. I am satisfied that this can be dealt with by way of condition.
- 7.3.8. I have also had regard to the relationship between the proposed block and no. 1 Bolton Avenue. The proposed block is located to the south of the rear garden which itself is orientated in a south easterly direction.
- 7.3.9. I note the massing and ridge height of the proposed block which is 14.05m in width and 9.457m in height. This is comparable in width to the permitted house along the northern boundary which was 14.162m, and similar in height.
- 7.3.10. I also note the set back of the first floor element from the northern site boundary and the line of existing poplar trees which themselves are quite overbearing on the adjoining residential properties no. 1 and 2 Bolton Avenue. I am therefore, reasonably satisfied that the proposed block will not give rise to an unacceptable overbearing impact on the residential amenity of the existing rear garden areas in this urban context.
- 7.3.11. I am satisfied that the proposed development would not therefore, seriously injure the amenities and depreciate the value of property in the vicinity and would be in accordance with the 'RES' land use zoning objective for the area, and with the proper planning and sustainable development of the area.

7.4. Access, Parking and Traffic Safety

- 7.4.1. Concern has been raised by the appellants in relation to access, car parking, and traffic safety.
- 7.4.2. It is proposed to provide access to the appeal site along the northern boundary of the site, via the existing access and egress arrangement which serves the Bolton Park development and laneway to the rear of Ballyboden Cottages. This requires the creation of a new entrance which traverses an existing footpath and an area of open space.

- 7.4.3. The access egress arrangement which serves Bolton Park is a private development, and consequently the use of this access egress in the current application is disputed by the appellants.
- 7.4.4. In this regard I would note that the Roads Department of the P.A. confirm in their report that Bolton Avenue has not been taken in charge by the P.A, and also note the right of way indicated on the drawings submitted and accompanying letter and recommended no objection to the proposal.
- 7.4.5. I would also note that a similar access egress arrangement was proposed under the most recent application granted by the Board under ABP Ref.302933-18 and has therefore already been established in principle. This issue is also addressed under Section 7.5 of this report below.
- 7.4.6. The appellants have raised concern in relation to the quantum of parking proposed, and which was not increased following the addition of another unit in the response to further information. The absence of any visitor parking spaces is also noted, which it is submitted by the appellants will result in overflow parking in the nearby estate.
- 7.4.7. The proposed parking arrangement which includes 7 no. spaces is located along the western part of the site.
- 7.4.8. The Transport Department of the planning authority notes the parking provision and find it acceptable, requiring only that the footpath and kerb be dishd and widened the full width of the proposed development entrance, in addition to other standard conditions.
- 7.4.9. I consider that a car parking provision of 7 spaces is appropriate in serving 6 no. apartments and is generally in accordance with Development Plan standards as set out in Table 11.24. I also note the provision of on-site bicycle parking and proximity to the surface car park associated with the Bugler Public House and bus stops/routes, and cycle lanes in the immediate vicinity of the site.
- 7.4.10. The appellants have raised concern in relation to traffic safety noting that the Traffic Management Report submitted with the application is inadequate. There are also concerns in relation to pedestrian safety given that a section of the existing footpath will be removed to facilitate access to the development.

- 7.4.11. I have had regard to the detailed report prepared by Stephen Reid Consulting Traffic and Transportation Limited which accompanied the application. I am satisfied that a robust rationale for the trip distribution rate utilised in the report has been presented.
- 7.4.12. In particular I note that there is an alternative exit only point from Bolton Park via Bolton Avenue further to the north. This exit is onto Glendoher Road close to the four arm junction between Ballyboden Road R115 and Ballyroan Road R817 and Ballyroan Boys National School.
- 7.4.13. I also note that on the day of my site inspection around midday on a weekday that traffic volumes entering and exiting the one way traffic layout to the Bolton Park development which comprises 21 houses were low. In my opinion the volume of traffic generated from the proposed development is negligible and the issue of traffic safety has been overstated in the appeal.
- 7.4.14. I am satisfied, therefore, that the proposed access and car parking arrangement is acceptable and will not give rise to a traffic hazard.

7.5. Loss of Open Space, Trees and Ecology

- 7.5.1. The appellants have raised concern in relation to the loss of an existing grassed area of open space adjoining the northern boundary of the site, in addition to a row of Poplar trees which it is asserted provides a habitat for bats. In my opinion this small area of open space is of little amenity value, and while the loss of the Poplar trees is regrettable, I note from my site inspection the condition of these trees which include extensive ivy growth.
- 7.5.2. I have had regard to the Arborist Report, the Tree Protection Plan and Tree Constraints Plan prepared by Arborist Associates, which I consider comprehensive for a development of this scale, particularly in the context that existing trees on site do not benefit from tree protection orders/designation. I also note the report of the Parks and Landscape Services/Public Realm section of the P.A. which had no objection subject to conditions. I am therefore, satisfied that the proposed development is acceptable.

- 7.5.3. I accept that the issue raised in relation to the potential impact on Bats was not addressed by the P.A. however, I also note that no bat survey has been carried out to evidence the presence of bats on site. I also note the proximity of mature trees located within the grounds of the Bolton Park development along an unnamed stream, and area of dense trees further along the Owendoher River to the west of Ballyboden Road, both of which I consider are far more likely to be used by Bats for foraging and nesting.
- 7.5.4. I have considered the appropriateness of attaching a condition to a grant of permission requiring a bat survey be undertaken in order to monitor bat activity in the area. However, in the context of the appeal site which adjoins existing residential development and floodlights associated with the access roadway and adjoining commercial development, I consider that such a condition is not warranted in this instance.
- 7.5.5. In relation to the issues raised by the appellants in relation to the National Pollinator Plan and Climate Action objectives, I consider that these concerns are valid but overstated in the context of the current proposal. The application is accompanied by a landscape plan for the site including details and specifications in relation to soft and hard specifications and planting proposals. In my view the proposed development adequately provides for biodiversity on site.
- 7.5.6. In summary, I am satisfied that the proposed development is acceptable and issues raised in relation to the loss of open space, trees and impact on ecology are not a basis in this instance for refusing permission.

7.6. Other Matters

- 7.6.1. *Sufficient Legal Interest* - The appellants have raised concern in respect of the applicants' legal interest to carry out the works as they have not submitted a letter of consent from the registered owners of the site.
- 7.6.2. The issue of ownership/rights of way are civil matters and I not propose to adjudicate on this issue. I note here the provisions of s.34(13) of the Planning and Development Act: 'A person shall not be entitled solely by reason of a permission under this section to carry out any development'. Under Chapter 5.13 'Issues

relating to title of land' of the 'Development Management – Guidelines for Planning Authorities' (DoECLG June 2007) it states, inter alia, the following: 'The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts...'

- 7.6.3. I would also note that under ABP-302933-18, a similar approach was adopted by the planning inspector. Notwithstanding, if the Board are minded to grant planning permission, an advisory note stating the provisions of section 34(13) of the Planning Act should be included.
- 7.6.4. *Procedural Matters* – The appellants have raised concern in relation to the validity of the application in the absence of written consent from the registered owners of the site. These are not matters on which the Board can adjudicate.
- 7.6.5. The appellants also note the description of the development does not refer to the additional apartment unit. In my opinion I do not consider it necessary to require revised notices in this regard. The appeal before the Board is valid and the third party's right to participate is given full effect.
- 7.6.6. *Boundary Treatment* – The appellants have noted that insufficient details were submitted in relation to the proposed boundary treatments, and I would concur. Condition No. 5 of the notification of decision to grant permission refers to boundary treatments of the rear gardens but given that the boundary to the surface car park and along the northern boundary are particularly visible, I consider it appropriate to attach a condition in relation to boundary treatments.
- 7.6.7. *Relocation of Recycling Bottle Banks* – There are a number of existing recycling bottle banks located within the surface car park currently located along the southern boundary of the site. The future location of this civic amenity is a matter for the operators of the service and owners of the surface car park and is not in my opinion a planning matter.

7.7. **Appropriate Assessment**

Having regard to the nature and scale of the proposed development, being an infill residential development in an established urban area, no Appropriate Assessment

issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. I recommend that planning permission should be **granted** subject to conditions for the reasons and considerations as set out below.

9.0 Reasons and Considerations

Having regard to the location of the site on lands zoned for residential development in the South Dublin County Development Plan 2016 – 2022, to the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas issued by the Department of the Environment, Heritage and Local Government in May, 2009, and to the design and layout of the proposed infill development, it is considered that, subject to compliance with conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would not be prejudicial to public health and would not endanger public safety by way of a traffic hazard. 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 submitted on 5th day of June, 2019, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed 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. All windows above ground floor level on the side elevations shall be finished in opaque glazing. The side panel to the proposed first floor balcony nearest no. 1 Bolton Avenue shall also be finished in opaque glazing.

Reason: In the interest of residential amenity.

3. 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. Roof colour shall be blue black or slate grey in colour only, and ridge tiles shall be the same colour as the roof.

Reason: In the interest of visual amenity.

4. Footpath reinstatement at the developers' expense shall comply with the detailed standards of the planning authority for such works.

Reason: In the interest of orderly development.

5. 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 house.

Reason: In the interests of amenity and public safety.

6. Prior to commencement of development, details of the following shall be submitted to, and agreed in writing with, the planning authority:

- (i) A hard landscaping plan with delineation and specification of site boundary details including the external finishes.

- (ii) A soft landscaping plan incorporating native/indigenous species.

- (iii) Details of proposed boundary treatments.

Reason: In the interest of visual and residential amenity.

7. Measures for the protection of those trees which it is proposed to retain shall be submitted to, and agreed in writing with, the planning authority before any trees are felled.

Reason: To facilitate the identification and subsequent protection of trees to be retained on the site, in the interest of visual amenity.

8. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise management measures, measures to ensure the safe removal, handling and disposal of asbestos and any other hazardous waste and off-site disposal of other construction/demolition waste.

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

9. Water supply and drainage arrangements, including 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.

10. The applicant or developer shall enter into water and/or waste water connection agreement(s) with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

11. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials 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 interest of residential amenity, and to ensure the provision of adequate refuse storage.

12. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of public open spaces, roads and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

13. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground within the site. Ducting shall be provided by the developer to facilitate the provisions of broadband infrastructure within the proposed development.

Reason: In the interest of visual and residential amenity.

14. Site development and building works shall be carried out only between the hours of 0800 to 1900 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.

15. Proposals for naming, 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 signs, and apartment numbers, shall be provided in accordance with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

Reason: In the interest of urban legibility and to ensure the use of locally appropriate placenames for new residential areas.

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

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

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 pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting 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 the 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 developers 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.

Note: The applicant is advised of the provision under Section 34(13) of the Planning and Development Act, 2000 which stipulates that a person shall not be entitled solely by reason of a planning permission to carry out any development.

Susan McHugh
Senior Planning Inspector

18th February 2020