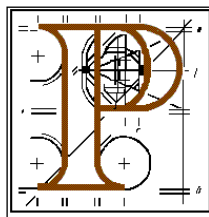


An Bord Pleanála Ref.: PL29N.245922

An Bord Pleanála



Inspector's Report

Development: Demolish 2 houses, construct 2 no. 1, 2 and 3 storey over basement apartment block consisting of 16 apartments at 193 - 195 Howth Road, Clontarf, Dublin 3.

Planning Application

Planning Authority: Dublin City Council

Planning Authority Reg. Ref.: 3747/15

Applicant: Auxerento Ltd

Type of Application: Permission

Planning Authority Decision: Grant Permission

Planning Appeal

Appellant(s):
1. Auxerento Ltd Consultants
2. Hughes Planning and Development

Type of Appeal: 1st Party & 3rd Party

Observers: 1. Gerard and Siobhan Burke

Date of Site Inspection: 10th March 2016

Inspector: Fiona Fair

Appendices: Photographs, Site location Map
Excerpt from City Development Plan 2011 - 2017
Dublin City Council DCS 2016 - 2020

1.0 SITE DESCRIPTION (see photographs and location map)

The appeal site, which has a stated area of 1831 sq. m, is located fronting onto the Howth Road, Clontarf, Dublin 3. The site lies adjacent to the junction of Howth Road and Castle Avenue and within close proximity of Killester Dart Station and a number of commercial premises within Killester Village centre.

The appeal lands have a site frontage of some 50m onto the southern side of the Howth Road. The site is of rectangular shape, flat and currently occupied by two vacant bungalows. The gardens of the two dwellings on the site have reverted to scrub and rough grassland. The boundary of the site comprises a block wall ranging in height from some 2m to the southern and western boundaries, with a low wall with screen planting along the site frontage to the north, the eastern boundary is undefined.

The surrounding environment is mainly suburban housing. The southern boundary of the site abuts the rear gardens of residential dwellings on Dunserverick Road. No 197 Howth Road located to the east of the appeal site is currently under construction having been granted planning permission on foot of Reg. ref. 2576/15 for 2 number detached 2.5 storey dwellings. St. Anne's Park and Clontarf Golf Course are located a short distance to the east of the site.

2.0 PROPOSAL:

The development will consist of:

- The demolition of 2 no. existing habitable 3 bed bungalow structures (approx. 95sq.m. each) and associated outbuildings.
- Construction of 2 no. 1, 2 and 3 storey over basement apartment blocks, containing a total of 16 No. apartments with balconies and ground floor terraces. Comprising of:
 - 2 No. 1 bed units,
 - 11 No. 2 bed units

- 3 No. 3 bed units
- 4 No. surface car parking spaces and 16 no. basement level car parking spaces, basement storage and plant areas.
- Vehicular and pedestrian access/egress onto the Howth Road as per previous planning permissions. Reg. Ref. 5815/07, 4933/08 & 4104/09.
- Along with all landscaping and other ancillary site works.

Application accompanied with:

- Day Light Sun Light Report by OCSC
- Drainage Report
- Appropriate Assessment (Screening) Report

3.0 PLANNING AUTHORITY'S DECISION

Dublin City Council Granted Planning Permission subject to 21 no. conditions.

Conditions of note include:

Condition 4 Prior to commencement of any development on site the applicant shall submit details for the written agreement of the planning authority indicating:

- a) Apartment units 5, 6 and 7 omitted from the proposal and the footprint incorporated into the communal open space area, with details of revised elevation to the main apartment block also to be submitted.
- b) The eastern sides of the balconies to apartment units 12 and 16 shall be fitted with 1.8m opaque screens with the external projecting element redirected to the south west by recessing the western side of the projection back to the balcony opening.
- c) The proposed opes to the apartment block's eastern 1st floor side elevation – shall be replaced by high level opaque opes at least 1.8m above finished floor level.
- d) Details of external vents from the basement within the site layout.

Condition 6 The developer shall pay the sum of €4000 per residential unit (updated at the time of payment in accordance with changes in the Wholesale

Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office), to the planning authority as a special contribution under section 48 (2) (c) of the Planning and Development Act 2000, as amended, in respect of public open space. This contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

4.0 TECHNICAL REPORTS

The reports are summarized as follows.

4.1 Planners Report:

The planners report reflects the decision to grant permission subject to conditions.

4.2 Drainage Division:

Report recommends no objection subject to condition.

4.3 Roads and Transportation Planning Division:

Report recommends no objection subject to condition.

4.4 Objections/Submissions

A number of objections were received, concerns raised are similar in nature to those raised in the third party appeal and observation, summarised in detail below.

5.0 APPEAL GROUNDS

5.1 A first party appeal has been lodged by Tom Philips Associates on behalf of the applicant Auxerento Limited. The grounds of appeal are summarised as follows:

- Sets out the context and relevant planning history of the appeal site
- Appeal against conditions, only.
- Request that ABP omit Condition no. 4 (a) and Condition no. 6 in their entirety.
- No clear justification for the removal of three units
- Propose a slight angulation of windows to Bedrooms 1 and 2 of Apartment No. 5 as per Drawing 3272-P-122-Revision A (Ground Floor Plan) to avoid overlooking.
- Drawing No. 3272-P-122 – Revision A (Ground Floor Plan) and Drawing No. 3272_P-123 – Revision A (First Floor Plan) at Appendices 1 and 2 include a Brise-Soleil covering over the terrace area of Apartment No. 6. The covered terrace area would be separated from the communal garden by a 1.8m high obscured glazed privacy screen.
- Drawing 3272-P-122-Revision A (Ground Floor Plan) includes an additional terrace to the east of Apartment no. 6 which would provide additional private open space accessed directly from the Kitchen and Bedroom 2.
- The south facing private terrace area of Apartment no. 7 would be enclosed by a 1.8m high wall. As the windows from the living / kitchen area look out onto this enclosed terrace area there would be no possibility of overlooking of adjacent property from those openings.
- The eastern elevation of apartment no. 7 would be 15.525m from the windows in the western elevation of apartment no. 6 but the fact that the patio / terrace of apartment no. 6 would be covered means that there would be no direct line of sight between the windows of these two units.
- Propose that the window beside the entrance to apartment 7 would be glazed with opaque glazing and angulation of the windows to Bedroom

1, the living area on drawing no. 3272-P-123 – Revision A (first floor plan) attached in appendix 2

- Plot ratio and site coverage are all in accordance with development plan standards and each apartment is compliant with internal space standards and private / semi private open space standards.
- Sunlight report indicates that the development will not impact on 3rd party's access to daylight or sunlight above the permitted baseline impacts.
- The Development Plan states that in certain circumstances financial contributions may be proposed towards the provision and enhancement of open space and landscape in the locality, as set out in the City Council Parks Programme. However, the Development Plan does not set out a methodology for the calculation of such financial contributions and the planning authority is bound to apply the statutory procedures set out in the Planning and Development Act 2000 (as amended) for the calculation of all special contributions incl. contributions towards the provision and / or enhancement of open space and landscape in the locality which directly facilitates and benefits any proposed development.
- Have reviewed the City Development Plan and have consulted with the office of the local authority parks and landscape service and can confirm that the authority has no plans to acquire or redevelop any additional areas of public open space in the vicinity of the subject site.
- No recommendation on file relating to 'specific exceptional costs'
- Given the site size the applicant proposes a high quality communal garden in lieu of on-site public open space.
- The communal garden is bounded by a 2.5m high rendered all to provide a high level of privacy for the residents of the proposed scheme and to protect the established amenities of the neighbouring properties.
- In addition each of the proposed apartments would have their own area of private open space in the form of balconies and terraces, ranging in size from 8.2 sq. m to 53 sq. m

- The proposed apartment building would be set back from the northern boundary of the subject site to provide space for vehicular circulation and landscaping
- Clontarf Promenade, Clontarf Golf and Bowling Club, Clontarf Cricket and Football Clubs, Mayfield Park, Abbeyfield Park, Hadden Park and St. Anne's Park are all within the vicinity of the appeal site.
- There is a lack of basis for charging of a special contribution. The Development Contributions Guidelines for Planning Authorities (2013) contain advise that *'A special contribution may be imposed under section 48(2) (c) where specific exceptional costs, which are not covered by the general contribution scheme, are incurred by a local authority in the provision of public infrastructure or facilities which benefit very specific requirements for the proposed development...'*
- The €4000 special contribution imposed at condition no. 6 is without basis or foundation and does not meet the basic requirements of the Act in relation to the charging of such special financial contribution.
- The Dublin City Council Development Contribution Scheme (DCCDCS) makes specific provision for community facilities, parks, open space facilities and amenities and the general financial contribution for new residential amenity provides for such services.
- Precedent case PL29S.245006 on foot of which the Board agreed with the Inspector that a requirement for an additional contribution in lieu of public open space provision should not be attached in addition to the standard section 48 development contribution condition.
- Appeal accompanied with:
 - Drawing no. 3272-P-123 Revision A – First Floor Plan
 - Drawing no. 3272-P-122 Revision A – Ground Floor Plan

5.2 A third party appeal has been lodged by Hughes Planning & Development Consultants. The grounds of appeal are summarised as follows:

- Concern with regard to the height, bulk, density, scale and mass of the development proposed.
- Overbearing Impact
- Loss of light and overshadowing
- Proposal would be visually intrusive and out of character with the existing two storey streetscape
- Negative impact upon adjacent dwellings to the south (Dunseverick Road), south east (Castle Avenue) and east (Howth Road). Concern of domineering impact to the private gardens of adjacent properties.
- Balconies on both 1st and 2nd floor levels will directly overlook the rear gardens of the existing dwellings to the south, south east and east.
- Intrusion, in particular from apt No. 12, which is located less than 11m from the site boundary with no. 163A, will result in serious overlooking and loss of privacy to the rear gardens of adjacent properties.
- Intrusion on privacy of habitable rooms in the roof space of No. 163, 163A and 163B Castle Avenue
- Loss of residential amenity to surrounding properties in the vicinity, unwarranted overlooking of the private amenity spaces of existing dwellings, loss of light, overshadowing and overbearing impact.
- Traffic hazard due to increase in number of vehicles entering and existing the site. 20 additional on-site car parking spaces.
- Concern that the proposed access crosses over the public footpath onto the extremely busy Howth Road. Traffic hazard to pedestrians.

6.0 RESPONSES

6.1 A response to the appeals has been received from the Planning Authority. It states: the observations of the Dublin City Planning Officer on the grounds of appeal have been sought and these will be forwarded as quickly as possible. No further correspondence on file.

6.2 A response to the third party appeal has been received from JNP Architects on behalf of the First Party Auxerento Ltd. The response is summarised as follows:

- The proposed development adheres to the development zoning parameters for the site as well as the residential development criteria as set out in the 2011 – 2017 Dublin City Development Plan.
- The apartments exceed the requirements of the 2016 – 2022 Dublin City Development Plan in relation to apartment's sizes.
- Traffic movements are designed to have an 'in only / out only' arrangement to ensure maximum safety for pedestrians and drivers, therefore there would be no detrimental impact to pedestrian safety.
- No traffic concerns were raised by Dublin City Council
- The application proposes a reduction in the number of units previously permitted on the site on foot of Reg. ref. 4933/08
- All planning submissions for this site since the granting of Reg. Ref. 5815/07 have strictly adhered to the design parameters approved in that permission.
- The appellants has quoted from a planner's report which is no longer relevant.
- Lands immediately adjacent to the eastern boundary have recently been approved for a 3 storey development Reg. ref. 2576/15 refers.
- Visual massing provided by the appellant is grossly misrepresented.
- The proposed design takes precedent from the previously granted permissions, integrates with the existing urban landscape and is to a high quality of design.

- The shadow and day light report carried out indicates that there would be no negative impact to 3rd party properties.
- Glazing along the rear elevation of the first and second floor levels is set back 16m from the south boundary wall onto the rear of no.'s 11 and 13 Dunseverick road.
- Windows from apartments 5, 6 and 7 have been designed to look inwards to the communal garden, where appropriate 1.8m high privacy screens have been utilised to prevent direct overlooking.
- The development will not result in overlooking of No. 163 A & B Castle Avenue – apartment 6 is single storey and located 21.3m from the rear elevation of 163 A & B. Both dwellings have garden structures in their rear gardens.
- 10 % useable open space is proposed by means of a communal garden.
- The appeal site is in close proximity of high quality public open space
- The use of privacy screens, fenestration orientation and a 2.5m high rendered boundary wall provides a high level of privacy for both residents of the proposed scheme and adjoining properties.
- The development proposes much needed high quality residential accommodation for the local area.

7.0 OBSERVATION

7.1 An observation has been received from Gerard and Siobhan Burke, 11 Dunseverick Road. It is summarised as follows:

- The proposal constitutes:
 - Over development
 - Too dense
 - Concern with respect to traffic safety and congestion
 - Negative impact upon existing residential amenity; Overlooking, overbearing, loss of privacy.
 - Drainage and subsequent impacts
 - Cumulative impacts

- Proximity of apartments 5, 6 and 7 to their neighbours is of concern
- The building footprint has increased by an additional 16% from 687 sq. m to over 798 sq. m from Reg. Ref. 4933/08. The decision to remove apartments 5, 6 & 7 should be upheld.
- The redesign solution is of poor design, functionality and fit for purpose.
- The proposed views from the rear of apartment 5 stare at a wall less than 2m away.
- Inappropriate intensification of the site. Density proposed is not reflective of the whole area, just has regard to the mixed use Howth Road. Adjoining property to the south comprises low density residential development.
- Increased pressure for on street car parking.
- Traffic hazard due to increased traffic.
- Potential for overlooking to property on Dunseverick Road.
- Proximity of apartments 5, 6, & 7 is of concern due to noise, lighting and loss of residential amenity to rear gardens
- High water table in the area – no account has been taken of this.
- Concern with respect to the basement car park. Possible impact to adjoining properties during or as a consequence of excavation works.
- Cumulative impact of the proposal should be considered in particular in light of the development permitted at 191A Howth Road – which represents a notable intensification of use on a site adjacent to low density residential development.

8.0 PLANNING HISTORY

8.1 Reg. Ref. 4104/09 Permission **Granted**, Dec 2009, for the development of general practitioner medical suites; nursing treatment; physiotherapy; home help and associated medical and administration services (Gross Internal Floor Area 1955 sq. m) and underground car parking within a one, two and three storey building over basement with ancillary landscaping and site works. Vehicular access / egress onto Howth Road as per existing approved permission Ref: 5815/07 & 4933/08.

The permission was the subject of a third party appeal to ABP PL29N.235795 however the appeal was subsequently withdrawn.

8.2 Reg. Ref. 4933/08 Permission **Granted**, January 2009, for alterations to previously approved planning permission ref 5815/07, located at 193-195 Howth Road Dublin 3. The alterations comprise an increase from 15 no. apartments to 17 no. apartments and revisions to the previous mix of apartments to provide 3 no. 1 bed, 12 no. 2 bed and 2 no. 3 bed units. Internal alterations are proposed to the apartment layouts previously granted planning permission. The building height increases in part from 2 no. storey to 3 no. storey and 1 no. storey to 2 no. storey to the rear of the main building. 2 no. stand alone single storey apartments to the rear have been repositioned 700mm closer to the east boundary. Additional storage and plant room area have been provided. Rear garden wall to be increased in height from 2.0m to 2.5m. Along with all landscaping and all other ancillary works.

8.3 Reg. Ref. 5815/07 Permission **Granted**, Feb 2008, for development on a 1831sqm site to consist of: (a) Demolition of 2 no. existing habitable 3 bed bungalow structures (approx. 95sqm each) and associated out buildings; (b) Construction of a 2 and 3 storey over basement apartment block containing a total of 17no. apartments (comprising 13 no. 2 bed units and 4 no. 3 bed units) with balconies provided on the 2nd and 3rd level on the northern facade and on all levels on the southern facade: (c) 3 no. surface car parking spaces, 25 no. basement level car parking spaces and 17 no. basement level bicycle parking spaces; (d) with vehicular and pedestrian access from the Howth Road; and (e) landscaping and all other ancillary site works.

9.0 NATIONAL & REGIONAL PLANNING POLICY

- Quality Housing for Sustainable Communities DoEHLG Best Practice Guidelines 2007
- Sustainable Residential Development Guidelines for Planning Authorities 2009

- Design Manual for Urban Roads and Streets (DMURS) 2013
- Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2015

9.1 LOCAL PLANNING POLICY

The Dublin City Development Plan 2011 – 2017 (CDP) shows the appeal site as being subject to the zoning objective ‘Z4’, ‘District Centres (incorporating key district centres)’ with the land – use zoning objective ***‘To provide for and improve mixed services facilities’***.

The following policies, sections and appendices of the City Development Plan are considered of relevance, relevant excerpts attached as appendix to this report:

QH3 To encourage and foster the creation of attractive mixed use sustainable neighbourhoods

QH15 To promote the provision of high quality apartments within sustainable neighbourhoods

Section 4.4.3.1 Making a More Compact Sustainable City

Section 16.2.3 Sustainable Urban Drainage Systems (SUDS)

Section 17.1.1 Design

Section 17.6 Building Height in a Sustainable city

Section 17.9.1 Residential Quality Standards

Section 17.40.13 Residential Car Parking in Apartments

Section 17.41 Cycle Parking

Appendix 8 – Roads Standards for Various Classes of Development

10.0 ASSESSMENT

I have read through the file documentation, the relevant provisions of the County Development Plan and have carried out a site inspection. I highlight that the subject appeal is twofold in that the first party have appealed specifically against: Condition no. 4 (a) and Condition no. 6, and a third party appeal has been brought under section 37 of the Planning and Development Act 2000, as amended. Given the foregoing and having regard to section 139 (1) of the Planning and Development Act, 2000, as amended, I consider that the Board are empowered to consider this application *de novo*. In my judgement the principle factors for consideration in this appeal relate to:

10.1 Planning History and Nature of the Proposal

10.2 Revised Design

10.3 Height, Massing and Scale of the Proposal

10.4 Impact Upon Residential Amenity

10.5 Traffic, Car parking and Access

10.6 Hydrology & Appropriate Assessment (AA)

10.7 1st Party Appeal against Conditions 4 (a) and 6

10.1 Planning History and Nature of the Proposal

As is evident from section 8.0 'Planning History', of this report above, planning permission has been granted on three separate occasions over the past eight years for the replacement of the two vacant properties on the site. Most recently on foot of Reg. Ref. 4104/09 a development comprising a general practitioner medical suites; nursing treatment; physiotherapy; home help and associated medical and administrative services and underground car parking with a one, two and three storey building over basement (Gross internal floor area 1,955sq.m). This permission was granted an extension of duration of permission (Reg. Ref. 4104/09X1) and does not expire until July 2020.

Prior to that, planning permission was granted, on foot of Reg. Ref. 4933/08, for a residential development on the site which constituted alterations to previously approved planning permission Reg. Ref. 5815/07 comprising an increase from 15 no apartments to 17 no. apartments and revisions to the previous mix of apartment types. Permitted residential development Reg. Ref. 4933/08, which has now expired, comprised two and three storeys over basement apartment blocks with balconies provided on the 2nd and 3rd level of the northern façade and on all levels on the southern façade, total of 17 no. apartments. 3 no. 1 bed units (81 – 87 sq. m), 12 no. 2 bed units (81 – 87 sq. m) 2 no. 3 bed units (100 – 102 sq. m)

The subject appeal scheme proposes a total of 16 no. apartments comprising 2 no. 1 bedroom units (67 – 70 sq. m), 11 no. 2 bed units (80 - 95.8 sq. m) and 3 no. 3 bed units (110 – 126.7 sq. m)

Albeit the planning authority have indicated in their assessment of the proposal that the appeal site is zoned Z1 and their assessment reiterates this throughout. From my investigation it would appear the appeal site, which had in previous developments plans been zoned 'Z1', is now Zoned 'Z4' 'District Centre', in the Dublin City Development Plan 2011 - 2017. I note that residential development is a 'permissible use' within lands zoned 'Z4', the land-use objective of which is *'to provide for and improve mixed services facilities'*.

Having regard to the Z4 zoning objective of the appeal site, its location within 500m of Killester Dart Station, the planning precedent set on the site itself and that permitted on adjoining sites. I consider that the proposal is in principle acceptable at this location. I highlight however that impact upon residential amenity, impact upon visual amenity of the surrounding area and streetscape, traffic impact and hydrology will be addressed separately below in the succeeding sections of this report

10.2 Revised design

The First Party in their appeal requests that the Board consider a slightly revised design which seeks to overcome issues of overlooking raised by the planning authority. The revised design put forward by the applicant is as follows:

- Angulation of windows to Bedrooms 1 and 2 of Apartment No. 5
- A Brise-Soleil covering over the terrace area of Apartment No. 6. The covered terrace area would be separated from the communal garden by a 1.8m high obscured glazed privacy screen.
- An additional terrace to the east of Apartment no. 6 which would provide additional private open space accessed directly from the Kitchen and Bedroom 2.
- A 1.8m high wall enclosing the south facing private terrace area of Apartment no. 7
- The window beside the entrance to Apartment 7 would be glazed with opaque glazing and angulation of the windows to Bedroom 1 and the living area.

Two revised Drawings have been submitted with the appeal, namely, Drawing 3272-P-122-Revision A (Ground Floor Plan) and Drawing No. 3272_P-123 – Revision A (First Floor Plan). I note the first party have not submitted revised public notices. Regard being had to Section 132(1) of the Planning and Development Acts 2000-2006 it is my opinion the revisions put forward by the applicant are not too significant a deviation from that considered and Granted by Dublin City Council, regard being had to proposed height, design, nature of the proposal and no. of apartments proposed. I am of the opinion that the revision is such that revised public notices are not required.

Given, I consider, that the amendments to the design are minor in nature it is my intention to have cognisance to same in my assessment of this planning application.

10.3 Height, Massing and Scale of the Proposal

Third party concern has been expressed with regard to the height, bulk, density, scale and mass of the development proposed. It is submitted that the proposal would be visually intrusive and out of character with the existing two storey streetscape.

The appeal site is located within a District Centre' zoning, on the perimeter of Killester Village and is well served by public transport including Killester Dart Station, <500m distant. The proposal is a slight reduction in density of residential development from the previous permitted 17 unit apartment scheme (Reg. Ref. 4933/08) from 94 uph to 89 uph, but will have a similar potential bedspace density of 366 bsph.

The site coverage of 43% is well below the 80% indicative site coverage standard set out in the City Development Plan for Z4 zoned lands. While the plot ratio is stated as being 1.95 which is below the 2.0 indicative plot ratio set out in the City Development Plan for Z4 zoned lands.

I agree with the planning authority that this portion of the Howth Road streetscape is clearly evolving. The height, massing, scale and design of subject proposal has cognisance to the permitted medical facility application and the preceding apartment developments (see section 8.0 of this report above) permitted on the appeal site. The height of the buildings has increased slightly by c. 400mm from the previous residential permission, but still being at 3 storeys and being less than 11m in dimensional height. I note the planning authority observations that the height remains below the City Development Plan's height requirements which for the site being within 500m of a Dart Station, it could in theory host a 6 storey and 19m high development.

The mix of units complies with the Development Plan requirements for same and each apartment is compliant with internal space standards and private / semi private open space standards set out in the Development Plan. 100% of the proposed apartments are dual aspect. All units meet or exceed the

specific accommodation requirements incl. unit size, ceiling heights, main bathroom size, minimum storage, minimum entrance hall and minimum balcony area and dimensions set out in the Development Plan. Cognisance being had to standards and guidance set out in Quality Housing for Sustainable Communities (2007) and the Sustainable Urban Housing design Standards for New Apartments Guidelines for Planning Authorities (2015), it is noted that all units comply and exceed required minimum floor areas and standards.

10.4 Impact Upon Residential Amenity

Third party concern is expressed with regard to overbearing impact, loss of light and overshadowing to the private gardens of adjacent properties. In particular it is submitted that the development would result in negative impact upon adjacent dwellings to the south (Dunseverick Road), south east (Castle Avenue) and east (Howth Road). Concern is expressed that balconies on both 1st and 2nd floor levels will directly overlook the rear gardens of the existing dwellings to the south, south east and east.

I consider it of significance that the permitted medical facility and the preceding permitted apartment schemes were of similar height, mass, bulk and contemporary design to that currently proposed. The residential scheme permitted on foot of Reg. Ref. 4933/08 & Reg. Ref. 5815/07 were structures of 3 storeys in height with balconies provided on the 2nd and 3rd levels on both the northern and southern facades. In the subject case the overlooking opportunities are largely the same for 3rd parties as was previously permitted. The rear above ground floor balconies and opes are set back c. 14.5 and greater from the rear southern party boundary. Apartment 7's (first floor) southern terrace comes within 1.8m of the party boundary but is contained by a 1.8m high screening wall. It is submitted that given the windows from the living / kitchen area look out onto the enclosed communal open space area there would be no possibility of overlooking of adjacent property from those openings.

The planning authority raises concern of overdevelopment and considered that *'the layout looked quiet cramped'*. It was considered that the proposed units to the rear being in such close proximity to each other would lead to a sense of mutual overlooking and overbearing. Further it was considered the open space proposed was disaggregated and would not adequately serve the occupants of the scheme. Consequently condition 4 (a) of the notification of decision to grant permission, forthcoming from the planning authority, Reg. Ref. 3747/15 omitted the rear apartment units, namely, no. 5 (ground floor 2bed unit), no. 6 (single storey 3 bed detached unit) and no. 7 (first floor 1 bed unit)

The first party argues that there is no clear justification for the removal of three units. It is submitted that minor amendments as set out above in section 10.2 'revised design' of this report would overcome the problem of overlooking from windows and to private open space. I note for the attention of the Board the two revised drawings submitted with the appeal, namely, Drawing 3272-P-122-Revision A (Ground Floor Plan) and Drawing No. 3272_P-123 – Revision A (First Floor Plan)..

The eastern elevation of apartment no.'s 5 & 7 would be 15.525m from the windows in the western elevation of apartment no. 6. I am of the opinion that the inclusion of the 3 backland apartments would give rise to over development of the appeal site. I have concern with respect to inclusion of a Brise-Soliel in conjunction with 1.8m high obscured glazed screens to the terrace / balcony of Apartment 6 and Apartment 5 and a 1.8m high screen wall to the terrace of Apartment 7. It is my opinion that the design resolution fails to have regard to the potential amenity value for prospective occupiers of the scheme, in terms of overlooking, privacy between the units and light permeation.

The Development Plan requires 12 – 15 sq. m per bedspace of Private / Communal Open Space, which equates to a requirement of 792 – 990 sq. m in the subject appeal case (proposed 16 no. apartments (33 bedrooms = 66 bed spaces)).

From my calculations 438.8 sq. m is proposed by way of private terraces / balconies and approx. 169 sq. m is proposed by way of communal open space. I note other incidental open space to the east of apartment 6 however I have not included this in my calculation. Therefore the proposal has an overall provision of Private / Communal Open Space of approx. 607.8 sq. m. I highlight that private terraces / balconies range from 8.2 sq. m to 93 sq. m. Six apartments have private balcony / terrace space of 13 sq. m or less. Given my calculations I am of the opinion that the proposed development would give rise to overdevelopment of the appeal site and is deficient on communal open space. I therefore agree with Condition 4 (a) of the notification of decision to grant permission by the planning authority, which omits 3 number apartment units from the scheme. I recommend that should planning permission be forthcoming from the Board that it be included in any grant of planning permission.

The Daylight Sunlight Report submitted indicates that the development will not impact on 3rd party's access to daylight or sunlight above the permitted baseline impacts. The report which has regard to BER Guidelines on 'Site Layout Planning for Daylight and Sunlight' looked at three adjoining sites as the most sensitive receptors. I note that sensitive site 01 i.e. 197 Howth Road has since been demolished and is currently under construction with replacement two no. 2.5 storey houses. The report concludes that calculations for the Vertical Sky Components were carried out which show that Ratio of Impact of the VSC to be greater than 80% of its former value. It is submitted this proves there is negligible impact from the proposed building.

The subject appeal site is located to the north of adjoining houses in Dunserverick Drive. Having examined the documentation on file and following an inspection of the site and its surrounding context I am of the opinion the proposal would not result in significant adverse overshadowing or give rise to significant diminishment of day light / sunlight as would warrant a refusal of the proposal on such grounds.

10.5 Traffic, Car parking and Access

Vehicular access arrangements to the development are similar to that granted under Reg. Ref. 4104/09, Reg. Ref. 4933/08 and Reg. Ref. 5815/07. A one way system is proposed through the site with access and egress from the Howth Road. A gated access to the basement car park is proposed. A pedestrian access from the Howth Road is also proposed.

It is proposed to provide 20 car parking spaces four of which are reserved for visitor parking at ground floor level. Each apartment shall have its own storage area at basement level which can be used for bicycle parking.

The Roads & Traffic Planning Division of Dublin City Council have no objection to the proposed development.

The appeal site is located on lands zoned Z4 and within walking distance to a number of high quality public transport facilities. A number of bus routes travel directly adjacent to the site (QBCs) and the site is also within 500m of Killester Dart station. I am of the opinion that the quantum of bicycle parking and pedestrian access to the site is acceptable and that road layout and geometry is compliant with the requirements of DMURS.

10.6 Drainage & Appropriate Assessment (AA)

A concern has been raised with respect to ground water, it is claimed there is a high water table in the area and no account has been taken of this. It should be noted that Dublin City Council Water and Drainage Division have no objection to the proposal in its current form.

Cognisance is had to the Drainage Report by Behan Consulting Engineers on file and also information attached to the file that indicates O'Connor Sutton Cronin (Consulting Engineers) carried out a report on the site previously (on foot of Reg. Ref. 5815/07) which included trail hole testing and concluded that

the installation of a basement structure would not have any adverse impact on the water table.

Given the information on file and the fact that Dublin City Council Water and Drainage Division have no objection it considered that the proposal is acceptable on hydrological grounds.

The application was accompanied with an AA Screening report. The Stage 1 Screening Statement concludes that the proposed development will have no likelihood of any significant effects on any European Sites arising from the proposed development, either alone or in combination with other plans or projects. Therefore stage 2 AA is not required.

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 North Dublin Bay SAC, South Dublin Bay SAC, Howth Head SAC / SPA, Baldoyle Bay SPA / SAC, Irelands Eye SAC / SPA, Rockabill to Dalkey Island SAC / SPA, Malahide Estuary SPA / SAC, Rogerstown Estuary SAC / SPA or North Bull Island SPA / SAC, or any other European Site, in view of the sites conservation objectives and a stage two AA is not therefore required.

10.7 1st Party Appeal against Conditions 4 (a) and 6

Condition 4 (a) is set out in full in section 3.0 of this report.

I reiterate, as set out above in section 10.4 'Impact Upon Residential Amenity' of this report, it is my opinion, that there is merit to condition 4 (a) and it should be attached to any decision to grant planning permission forthcoming from the Board.

The omission of three apartments, namely no.'s 5, 6 and 7 is required in order to overcome overdevelopment of the site. The development to the rear of the site give rise to privacy issues, overlooking, potential negative amenity value

to future occupants by way of inadequate light infiltration and inadequate communal open space. I therefore recommend that should the Board agree that permission be forthcoming that Condition 4 (a) be attached to any decision to grant permission.

Condition 6, set out in full in section 3.0 of this report above, requires that the developer shall pay the sum of €4000 per residential unit, to the planning authority as a special contribution under section 48 (2) (c) of the Planning and Development Act 2000, as amended, in respect of public open space.

The first party submits that there is a lack of basis for charging of a special contribution. It is submitted that the special contribution imposed is without basis or foundation and does not meet the basic requirements of the Planning and Development Act 2000, as amended, in relation to the charging of such special financial contribution.

I note that the Dublin City Council Development Contribution Scheme (DCCDCS) 2016 – 2020, copy attached as appendix to this report, makes specific provision for ‘community facilities and amenities’ (€10.27 per sq. m of residential development) and ‘parks & open space facilities’ (€14.83 per sq. m of residential development) under the general financial contribution. Section 11 goes on to talk about ‘contribution in lieu of open space’ it is stated: *‘The Plan provides that in the event of the planning authority considering a site to be too small or inappropriate to fulfil Dublin City Development Plan requirements for open space provision a financial contribution towards provision of or improvements to a park and or enhancement of amenities in the area in line with the City’s Parks Strategy shall be required’*

No public open space is included in the appeal scheme. Section B1 of the city Development Plan 2011 – 2017 states that *‘in new residential developments, 10% of the site area shall be reserved as public open space.’* The Plan goes on to state; *‘in some instances it may be appropriate to seek a financial contribution towards its provision elsewhere in the vicinity.’*

I note Condition 2 of the notification of decision to grant planning permission Reg. Ref. 3747/15 which requires that €106,660.08 be paid to the planning authority as a general contribution under Section 48 of the Planning and Development Act. The planning authority have not indicated how this calculation was arrived at or which of the classes of public infrastructural development, set out in section 10 of the DCS, is included. From my calculations it would not appear that the total of contributions payable €86.40 was charged. From the information on file I note the '*max gross external floor area (excluding basement)*' is stated as 2152.5 sq. m – if the full contribution was charged under the general contribution it would amount to €185,976

The first party highlights the inspectors report on foot of PL29S.245006 which considered that an additional contribution in lieu of public open space should not be attached, for a development at 13 St. James Terrace, Dolphin's Barn, Dublin 8, in addition to the standard section 48 development contribution condition.

Regard being had to section 23 of the Dublin City Council DCS 2016 – 2020, which details 'Special Development Contributions' I am of the opinion that a requirement for a special contribution in lieu of public open space would not be consistent with the provisions for the Development Contribution Scheme adopted by Dublin City Council. In particular, it would not come within the scope of the provisions of section 48 (2) (c) providing for special development contributions in the case of developments that cannot proceed without the infrastructure to which the payment would be required.

In the event that permission is to be granted I recommend that Condition 6 which requires an additional special contribution in lieu of public open space provision be omitted.

11.0 RECOMMENDATION

I have read the submissions on file, visited the site, considered the provisions of the Development Plan and taken into account all other relevant matters. I recommend that planning permission be Granted subject to the conditions set out below.

12.0 REASONS AND CONSIDERATIONS

Having regard to the zoning, planning history and pattern established in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development, would not seriously injure the amenities of the area, would not adversely affect the character of the area, would be acceptable in terms of car parking, traffic safety and drainage and would not, therefore, be contrary to the proper planning and sustainable development of the area.

13.0 CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail 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. That this permission authorises 13 residential units, only.

Reason: In the interests of clarity.

3. Prior to commencement of any development on site the applicant shall submit details for the written agreement of the planning authority indicating:

- a) Apartment units 5, 6 and 7 omitted from the proposal and the footprint incorporated into the communal open space area, with details of revised elevation to the main apartment block also to be submitted.
- b) The eastern sides of the balconies to apartment units 12 and 16 shall be fitted with 1.8m opaque screens with the external projecting element redirected to the south west by recessing the western side of the projection back to the balcony opening.
- c) The proposed opes to the apartment block's eastern 1st floor side elevation – shall be replaced by high level opaque opes at least 1.8m above finished floor level.
- d) Details of external vents from the basement within the site layout.

Reason: In the interests of residential amenity

4. No residential unit shall be occupied until all the services have been connected thereto and are operational.

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

5. 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.

6. External apartment lighting shall comply with the recommendations for 'E3' Suburban Environmental District as set out in the Institute of Lighting Engineer's Guidance Notes for the Reduction of Obtrusive Light

Reason: In the interests of residential amenity

7. The development shall comply with the following requirements of Roads and Traffic Planning Division of Dublin City Council:

a) Footpath and kerb to be dished and new access and egress provided to the requirements of the Area Engineer, Roads Maintenance Department.

b) All costs incurred by Dublin City Council, including any repairs to the public road and services necessary as a result of development, shall be at the expense of the developer.

c) The developer shall be obliged to comply with the requirements set out in the Code of Practice.

Reason: In the interests of traffic safety

8. No additional development shall take place above roof level, including lift motors, air handling equipment, storage tanks, ducts or other external plant other than those shown on the drawings hereby approved, unless authorised by a prior grant of Planning Permission.

Reason: To safeguard the amenities of surrounding occupiers and the visual amenities of the area in general.

9. 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.

10. That all public services to the proposed development, including electrical, telephone cables and associated equipment be located underground throughout the entire site.

Reason: In the interest of amenity

11. The developer shall adopt precautionary measures as necessary to avoid damage to the infrastructural services including drainage of the adjoining road(s) through which vehicles/machinery servicing the proposed development will traverse. In the event of the proposed development being associated with any such damage to these infrastructural services, the developer shall immediately repair such damage to the satisfaction of the Planning Authority at the expense of the developer/contractor. The beam of construction lights (if any) shall be directed away from windows of existing houses.

Reason: In the interests of residential amenity

12. (a) Prior to the commencement of development, the applicant shall delineate on a map those areas which are to be taken in charge for written agreement of the Planning Authority. In relation to those areas not taken in charge a Management Company shall be set up. The Management Company shall provide adequate measures for the future maintenance and repair in a satisfactory manner of private open spaces, roads, footpaths, car park and all services, together with soft and hard landscaping areas, where not otherwise taken in charge by the Local Authority.

Reason: In the interests of the future maintenance of this private development, in the interests of residential amenity and the adequate provision of community facilities

13. The car park hereby approved shall be retained for ancillary and associated use by the occupiers of the premises and shall not be sold, rented or otherwise sub-let or leased to other parties.

Reason: In the interests of sustainable transportation.

14. 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 hours of working, noise management measures and off-site disposal of construction/demolition waste.

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

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 social housing in accordance with the requirements of section 96 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 the Board 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. Site development and building works shall be carried only out between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 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.

17. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

18. 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. 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 developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

Fiona Fair
Planning Inspector
31.03.2016