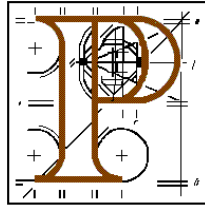


## An Bord Pleanála



### Inspector's Report

**PL06D.246304**

**Development:** Demolition of dwelling and construction of 35 no. apartments

**Location:** Rockall, The Birches, Torquay Road, Dublin 18.

#### **Planning Application**

Planning Authority: Dún Laoghaire Rathdown County Council

Planning Authority Reg. Ref. No: D15A/0839

Applicant: Targeted Investor Opportunities ICAV

Type of Application: Permission

Planning Authority Decision: Grant

#### **Planning Appeal**

Appellants: (1) C & A O'Sullivan  
(2) Theresa Murray & John Lynch  
(3) Academy Geographic Limited  
(4) The Residents of the Birches  
(5) Ivano Caffolla

Type of Appeal: Third Party

Observers: Barry & Grace-Ann Connolly

**Date of Site Inspection**                      6/7/16

**Inspector:**                                      Siobhan Carroll

## **1.0 SITE LOCATION AND DESCRIPTION**

- 1.0.1 The appeal site is located at Rockall, The Birches, Torquay Road, Dublin 18. The Birches is a residential cul-de-sac located on the eastern side of Torquay Road which contains circa 32 no. properties. The surrounding area is characterised by relatively large detached housing on long plots. Foxrock Golf Course which is an nine hole course is situated to the east of the subject site.
- 1.0.2 The site comprises the plot of Rockall it has a stated area of 0.643. Rockall is a large detached dormer bungalow with an area of 215sq m. It is set within a densely planted plot which extends back 136m from the front boundary. The property is served by a gated vehicular entrance. The site is bounded by high mature trees and fencing and a section of wall along the boundary with the Golf Club.
- 1.0.3 The western site boundary adjoins the rear gardens of five other dwellings within the Birches. The southern site boundary adjoins no. 10 the Birches and a section of open space area.

## **1.1 THE PROPOSED DEVELOPMENT**

Permission is sought for the demolition of an existing two-storey detached dwelling and the construction of 35 no. apartments and associated development. Features of the scheme include;

- Site area 0.643 hectares,
- Floor area of existing dwelling to be demolished – 215sq m,
- Floor area of existing outbuilding to be demolished – 51sq m,

## **1.2 THE PLANNING AUTHORITY'S DECISION**

### **Internal Reports:**

Transportation Planning Section – No objections subject to conditions.

Drainage Planning, Water Services Department – No objections subject to conditions.

Parks & Landscape Services Department – Refusal recommended.

Housing Department – No objections subject to condition regarding compliance with Part V.

Building Control – No objections subject to conditions.

### **External Reports:**

Irish Water – No objections subject to conditions.

### **Submissions**

The Planning Authority receive 22 no. submissions/observations in relation to the application. The main issues raised are similar to those set out in the appeals and observation to the appeals.

### **Decision**

The Planning Authority decided to grant permission subject to 21 no. conditions.

## **1.3 PLANNING HISTORY**

Reg. Ref. D15A/0525 – Permission was refused for the demolition of the existing dwelling and the construction of 2 no. buildings accommodating 46 no. apartments. Permission was refused for the following reason

1. The proposed development having regard to the height, scale and limited separation distances would be overbearing and unduly impact on the residential amenity of adjoining properties. It is considered that the proposed development constitutes over-development of the site and would be contrary to the zoning objective 'To protect and/or improve residential amenity' and contrary to the Building Height Strategy (Variation 5 of the Dun Laoghaire-Rathdown County Development Plan, 2010-2016). The proposed development would seriously injure the amenities or depreciate the value of property in the vicinity and would, therefore, be contrary to the proper planning and sustainable development of the area.

## **2.0 PLANNING POLICY**

### **2.1 Dún Laoghaire Rathdown County Development Plan 2016 – 2022**

The subject site at Rockall, The Birches, Torquay Road, Dublin 18 is identified as being Zoned Objective A 'to protect and/or improve residential amenity'.

Chapter 8 – Development Management

Section 8.2.3.3 refers to Apartment Development

## **2.2 National Policy**

- Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities, (2015).
- Best practice guidelines “Quality Housing for Sustainable Communities” (2007).
- “Sustainable Residential Development Guidelines for Planning Authorities” (2009).
- Design Manual for Urban Roads and Streets - ‘DMURS’, (2013)

## **3.0 APPEAL**

The Board has received five third party appeals from the following;

- (1) C & A O’Sullivan
- (2) Theresa Murray & John Lynch
- (3) Academy Geographic Limited
- (4) The Residents of the Birches
- (5) Ivano Caffolla

### **(1) C & A O’Sullivan**

- The appellants are concerned that the issues raised in the submissions and objections to the application were not satisfactorily taken into consideration.
- The site has a history of flooding. There is an underground watercourse running south from the car park in Foxrock Golf Club under Barnagh lane through the appellant’s site and through the boundary between Foxrock Golf Club and Rockhall. The appellant also encountered a watercourse under their property in 1989 which is 25m from the site. No account has been taken in the application for the significant watercourse which may traverse the site.
- The proposed underground basement car park would impact the existing drainage regime and the removal of trees would alter the existing drainage and would result in a flood risk.
- The density, scale and height of the proposed development is considered excessive.
- The proposed development would generate a significant increase the level of traffic which would constitute a hazard. The proximity of the site entrance and the confluence of two roads is noted.

- It is noted that there is an existing right of way into Foxrock Golf Club from the Birches. The appellants state that they have a right of way from Torquay Road through the Birches main road directly onto Foxrock Golf Club and on to the Rockall entrance. It is suggested that a revised access to Rockall should be designed as a four way crossroads type solution.
- The proposed development would involve the removal of circa 70 trees and therefore it would have a detrimental impact upon the sylvan character of the area.
- The bird survey included with the application is incomplete.
- The proximity to and frequency of public transport to the site is questioned.

**The Board received a further submission from the appellants C & A O’Sullivan on the 26<sup>th</sup> of May 2016.**

- The appellants have reiterated their concerns regarding the validity of the application, the matter of flood risk, traffic generation and the proposed basement.
- The appellants have submitted copies of correspondences from their Solicitors confirming their Right of Way from Torquay Road to the Golf Club lands.

**(2) Theresa Murray & John Lynch**

- It is stated that inaccurate information has been provided in relation to the height and roof level of their property no. 11 The Birches. They state that the dwelling height is 2.5m lower at roof level and 1m at eaves level than is indicated on the applicant’s drawings.
- The applicant has stated that there is an extensive tree canopy between the site and the neighbouring dwellings to the west and that it is proposed to be retained to provide a buffer. The appellant’s rear garden has a width of 26m. There are seven trees along the boundary with the appeal site. Three of which are grouped together. There are gaps of 5-6m between each tree along the boundary which therefore exposes the appellant’s property to being overlooked.
- The Building Height Strategy – Variation No. 5 of the Development Plan, states that a general recommended height of two storeys will apply for suburban areas including Foxrock. The policy allows 3-4 storey apartments and townhouses in appropriate locations. The policy allows for an upward or downward modifier. The applicant proposes an upward modifier on the basis that the site is greater than 0.5 hectares and therefore it can dictate its own height. The perimeter landscaping

and proximity to public transport are also cited as reasons to allow for increased heights.

- The appellants consider that a downward modifier should be applied as the proposed development would adversely affect their residential amenity, it would be two-storey higher than the surrounding houses and would be 8m above the eaves of the their property.
- The density is considered excessive having regard to the distance of 2km from the closest Luas stop and 1.8km from the QBC. The amenity space provided is at the minimum level.
- The scheme is considered contrary to the residential zoning objective as it would give rise to overlooking, overshadowing, security and boundary issues and traffic and car parking issues.
- The matters of flood risk and impact upon biodiversity and the ecology on site have also been raised.

**The Board received a further submission from the appellants Theresa Murray & John Lynch on the 18<sup>th</sup> of April 2016.**

- The contents reiterate the issues raised in the original appeal.

**The Board received a further submission from the appellants Theresa Murray & John Lynch on the 26<sup>th</sup> of May 2016.**

- It is noted that the applicant has acknowledged that they inadvertently provided inaccurate drawings.
- The applicant has not responded to the appellants concerns regarding overlooking and the proximity of Block B.
- The appellants raise the issue of overbearing and state that the Planning Authority did not satisfactorily take the issue in to consideration.
- It is noted that the boundary trees are deciduous and therefore the visual impact of the development is increased during the winter months.
- The appellants considered the applicants have not satisfactorily address the matter of boundary treatment.
- The shadow analysis submitted does not include analysis for early morning. The appellants consider that the development would result in the blocking of morning sun for approximately two hours every day for the first half of the year.

### **(3) Academy Geographic Limited**

- The issue of land ownership is raised in relation to two areas indicated within the site boundary. These are the area of land to the end of the entrance road leading to the Golf Club lands and the entrance to Rockall and the area of land adjoining the hammer head cul-de-sac.
- It is stated that roads and drainage infrastructure within the Birches were not designed to accommodate additional development of this scale.
- There are serious concerns regarding flooding.
- The proposed development is contrary to the zoning as it would not protect or improve the residential amenity of the area.
- The height, design and scale of the apartment development is out of character with surrounding development.
- The density at 56.5 units per hectare is excessive and out of character with the low density form and character of the area.
- The proposed four storey building would be significantly above the two-storey baseline set out in the Building Height Strategy and is therefore contrary to the Building Height Strategy set out in the County Development Plan.
- The proposed scheme would cause overshadowing, overlooking and overbearing.
- The additional traffic generated would have a significant negative impact upon the character of the area and could have potential traffic safety implications.
- The proposed development requires the removal of a large number of trees. It is noted that the Parks and Landscape Services Department have indicated that the trees add significant amenity value and should be retained.
- It is requested that permission be refused for the reasons set out in the appeal.

**The Board received a further submission from the appellants Academy Geographic Limited on the 26<sup>th</sup> of May 2016.**

- The appellants have provided details regarding the legal ownership of the property no. 10 The Birches and also that the property includes the small section of the adjoining hammerhead.
- The plot of no. 10 The Birches is indicated on a copy of a Land Registry map.



#### **(4) The Residents of the Birches**

- The proposed scheme is considered excessive in density having regard to the design character of the area.
- The Planning Authority does not specify a density for the Foxrock Area and a broad range of density is permitted between 35-50 houses per hectare and a density of 50 units per hectare is encourage close to public transport.
- The proposed density is 55 units per hectare. The site is 1.73km from the N11 QBC and 2.37km from the Luas. It is noted that the no. 63 Bus only serves Foxrock village once a day and that the site is located 1.8km from the closest district centre at Cornelscourt. Therefore the site is at some remove from good public transport and shopping facilities and it would be largely car dependence which would be contrary to the Council's objectives in respect of sustainability.
- The proposed development will give rise to 94% increase in car ownership and traffic movements. The increased vehicular traffic load on an already strained local road network and would cause further congestion.
- The proposed vehicular entrance is located at a bend and at the junction between the main road to the Birches and a spur road. It is considered that there are insufficient sightlines available.
- There is a Right of Way from the Birches to Foxrock Golf Club which are enjoyed by Foxrock Golf Club and no. 1 Barnagh Lane. The proposed scheme involves the use of part of this area which would obstruct the potential for access to those properties.
- The height of the proposed development is considered excessive and out of character with the adjoining development.
- The scheme would cause overlooking to adjoining properties and would be visually obtrusive and have an over bearing impact.
- The issue of light glare and its impact upon neighbouring properties is raised.
- There are serious concerns in relation to flooding in the area.
- The Planning Authority have not restricted the on-site work hours in their decision to grant permission. It is requested that if the Board grant permission that a condition be attached restricting the hours to Mondays to Fridays only.
- It is the appellant's understanding that the site is not in the ownership of the applicants and they have not clarified the matter to date.
- It is requested that the Board overturn the decision of the Planning Authority to refuse permission.

## **(5) Ivano Caffolla**

- Many of the matters set out in the previous refusal reason issued under Reg. Ref. D15A/0525 have not been addressed by the applicants in the current scheme.
- The existing density in the area is 7 units per hectare. The proposed density at 56 units per hectare is considered excessive.
- The proposed four storey apartment building would be excessive in height and out of character with the surrounding two-storey dwellings.
- A separation distance of 6-7m is indicated between the basement wall and the appellant's boundary. This separation distance would not allow for the existing mature planting to be retained. The proposed piling and ground works close to the appellant's property could cause flooding or drying out depending on the underground conditions.
- The rear of the appellant's property no. 12 the Birches adjoins the Rockall site. The appellant's property enjoys privacy and seclusion. The proximity of the four storey apartment building would result in an unacceptable level of overlooking.
- The bulk of the proposed development would cause overshadowing.
- The case for higher density development based on the proximity of public transport has not been made.
- The proposed basement is not appropriate to the site. The proposed works would involve the removal of rock and soil which would cause excessive noise for residents. The excavation works would result in the displacement of groundwater to adjoining properties. Therefore the proposed development would increase the risk of flooding in the area.
- The proposed scheme includes 56 no. car parking spaces and this would double the traffic in the area. The limited provision of visitor car parking would result in on-street parking within the Birches.
- The proposed scheme would involve a significant level of tree removal. It is noted that the Parks and Landscape Service Department recommended refusal.
- The proposed layout includes an access onto Birches Green to the south. The appellant is of the opinion that the applicant does not have ownership of the wall between the site and Birches Green.
- Ownership issues are also raised regarding the area of land at the site entrance.
- The proposed development would impact upon the value of the appellant's property.

**The Board received a further submission from the appellant Ivano Cafolla on the 26<sup>th</sup> of May 2016.**

- The appellant has reiterated his concerns regarding the proximity of the proposed apartment building to his property.
- It is requested that should the Board decide to grant permission that the Block A be omitted that the top floor of Block B be omitted, that the basement also be omitted, that the professional consultants involved in the project be liable for any negligence and that a 2m granite wall be provided between the boundary of the site and the appellant's property no. 12 The Birches.

### **3.1 First party response**

A first party response was received from Stephen Little & Associates on behalf of Target Investment Opportunities ICAV on the 20<sup>th</sup> of April 2016. The main issues raised are as follows;

- A copy of a letter from A&L Goodbody Solicitors states that the applicants Target Investment Opportunities ICAV have a sufficient legal estate and interest in the entirety of the site to carry out the development which is proposed.
- The appellants Academy Geographic Limited claim similar ownership over the land adjacent to the hammerhead. The applicant disputes this claim and it is acknowledged that the matter may have to be resolved in the Courts.
- The provisions of Section 32(13) of the Planning & Development Act 2000, as amended are noted in respect of the matter of site ownership.
- Regarding the claims by a number of appellants that they have a right of way between The Birches and Foxrock Golf Club, it is responded that there is no evidence of this in the appeals and the Planning Authority do not have any concerns in relation to the issue.
- It is noted that it is not possible to see any evidence of any physical right of way between The Birches and the Golf Course. The boundary between the Golf Course and the public road is fence off and heavily planted.
- Regarding the matter of inaccurate measurements at no. 11 The Birches the applicant confirms that there was an inadvertent error on the drawings prepared by Cody Architects and revised drawings have been submitted to clarify the issue.

- Regarding the previous refusal on site it is stated that the currently proposed scheme was changed significantly for the previous one.
- Regarding the compliance with the Objective A zoning. The applicant considers that the proposed scheme is fully in accordance with the residential zoning objective and the relevant Development Plan policies and objectives.
- The proposed density of 56.5 units per hectare is appropriate to the site having regard to the proximity to public transport. The proposed scheme represents infill residential development.
- The Building Height Strategy recommends a general height of two-storeys for residual suburban areas including Foxrock. Heights of 3-4 storeys may be permitted in appropriate locations including large redevelopment sites providing they have no detrimental effect on the existing character and residential amenity.
- The applicant considers that the appellants are incorrect in their assertion that the Building Height Strategy envisages only two storey development in areas such as Foxrock.
- It is considered that the specific local context of the site affords the possibility of 3 & 4 storeys.
- The applicants have provided two examples of applications for apartment developments in suburban areas of Dún Laoghaire Rathdown. Under PL06D.243799 the Board granted permission for a residential scheme at Knockrabo, Mount Anville Road, Goatstown including 4 & 5 storey apartments. Under PL06D.243193 the Board granted permission for a residential scheme at Brighton Road, Foxrock which included a 3 storey apartment block. The appellants refer to appeal case PL06D.244399 where permission was refused for a scheme of 9 no. dwellings. The applicant notes that case is not directly comparable to the currently proposed scheme. It was concluded that the proposed development has an adequate level of flood protection up to the 100 year return event.
- The impact on existing residential amenity in terms of building height and dominance have been addressed in the design of the building. This includes the use of tapering in the height. The four storey section is located close to the boundary with the Foxrock Golf Course. The penthouse floor is set back from the eastern parapet to minimise the visual impact to the Foxrock Golf Course.

- It is noted that the Planning Authority did not raise the issue of dominance or overbearing. A Visual Impact Assessment prepared by Coady Architects which depicts the views of the scheme from 12 different locations around the site. View no's 1-9 were submitted with the application and view no's 10-12 were produced in response to the concerns raised by the appellants. Coady Architects have stated that they are satisfied that views 1-9 are fully representative. Views 10-12 represent views of the scheme from within the rear garden of the 3 remaining houses at The Birches. The design and location of the buildings footprint, ensures appropriate separation distances and a tapered height strategy ensuring there is no feeling of dominance or overbearing on the existing residents.
- In relation to the separation distance from the proposed building to no.11 The Birches it is stated that a separation distance of between 29m and 40m is provided to the nearest point on Block A. The separation distance is in accordance with development plan standards. The orientation of the house would not provide for overlooking of Block A. The principal rooms in the apartments within Block A are directed in opposite directions from the house. It is proposed to retain and reinforce the landscape buffer along the boundary.
- In relation to the separation distance from the proposed building to no.12 The Birches 'Casalittico' it is stated that a separation distance of between 22m and 34m is provided to the nearest point on Block A. The separation distance is in accordance with development plan standards. The principal rooms in the apartments within Block A are directed in opposite directions from the house. The ridge height of the existing house is 85.02OD and the closest apartment building is 86.82OD and it is 30m from the dwelling and there is a tree lined boundary between the house and the proposed development. Therefore the applicant states that there is little prospect for overlooking between the properties or that there would be an overbearing impact.
- Regarding overshadowing concerns, a shadow study was prepared by Coady Architects. An addendum Shadow Study was also prepared by Coady Architects to address the concerns of the appellants. The results of the shadow studies indicate that proposed scheme will not cause any undue shadow impact on adjoining properties over and above that caused by the existing tree cover.
- In relation to the issue of light glare the applicant states that the proposal for 5m high lamp posts at the proposed pedestrian entrance

was to provide adequate light to ensure safe access for pedestrians. The applicant is amenable to the inclusion of a condition requiring the details of light be agreed with the Planning Authority to ensure that no light spillage will occur on surrounding properties.

- Regarding vehicular access and parking concerns it is stated that the Design Team have comprehensively addressed all transportation matters and that the Transportation Planning Section in the Council have no objections to the proposed development.
- In relation to the footprint of the basement there is a reduction in the number of car parking spaces in line with the reduced number of dwellings within the basement structure.
- The issue of potential flooding has been raised in the appeals. DBFL Consulting Engineers prepared a Site Specific Flood Risk Assessment to address the appellants concerns.
- Appellants have raised the matter of construction hours and have requested that no works are permitted on Saturdays. The Planning Authority attached two conditions regarding construction works. Condition no. 15 requires the applicant to prevent mud, dirt and debris from being carried onto the public road. Condition no. 16 specifies the hours of operation which includes 8.00am to 2.00pm on Saturdays. The applicant is amenable to the inclusion of such conditions should the Board decide to grant permission.
- In relation to proposed materials and design it is noted that only three materials are proposed for the treatment of the elevations. They are brick, glass and grey powdered coated aluminium. These materials reflect the style and character of traditional Foxrock residential architecture.

### **3.2 Planning Authority response**

A response was received from Dun Laoghaire-Rathdown County Council on the 12<sup>th</sup> of April 2016. The main issues raised are as follows;

- The Board is referred to the previous Planner's Report.
- In relation to the issues raised in the third party appeal lodged by C & A O'Sullivan it is considered that the matters raised in the appeal were raised during the course of considering the application and that they have been discussed in detail and addressed in the Planner's Report.

- Under Reg. Ref. D15A/0525 permission was refused for 46 no. apartments. Following this decision the applicant entered into pre-planning discussions to address the reason for refusal.
- A pre-planning meeting was held on the 6<sup>th</sup> of November 2016. The applicant provided drawings via email on the 4<sup>th</sup> of November 2016. Following the advice issued at the pre-planning meeting the applicant submitted revised drawings on the 25<sup>th</sup> of November 2016.
- The proposed development has been designed to address the previous refusal. The scale of the proposed development has been significantly reduced and the design and layout has been revised to reduce the impact on the neighbouring properties.

### 3.3 Observations

**An observation to the appeals was submitted by Barry & Grace-Ann Connolly on the 18<sup>th</sup> of April 2016. The main issues raised are as follows;**

- The observers live at 'Birchfield', Westminster Road, Foxrock which is situated to the south-east of 'Rockall'.
- The observers have raised concern at the proposed underground basement which they state will disrupt the natural watercourses in the area.
- Contrary to the details contained in DBFL Consulting Engineers Infrastructure Design Report the observers state that the site at 'Rockall' floods regularly.
- No ground investigations have been carried out to ascertain the suitability of the site for an underground basement car park.
- In 2014/2015 the north-eastern corner of the observer's site at 'Birchfield' was flood. Investigations were carried out to find the source of the water. The ground level of 'Birchfield' is approximately level with that of 'Rockall'. The ground level of the property between the two sites 'Weston' is 1.2m higher and it is stated that water from 'Weston' entered lands at 'Rockall' and caused flooding across the southern end of the site.
- There are a series of underground streams in the area which flow into the culvert running along the north-east boundary of the golf course.

- It is requested that permission be refused on the basis that the proposed development presents a risk of flooding of surrounding properties.

#### **4.0 ASSESSMENT**

Having regard to the above, and having inspected the site and reviewed all documents on file, the following is my assessment of this case. Issues to be considered in the assessment of this case are as follows:

- Development Plan policy
- Design and layout
- Impact upon amenity
- Access and Traffic
- Flood Risk
- Appropriate Assessment
- Other Issues

#### **4.1 Development Plan policy**

4.1.1 This appeal relates to the development of a residential scheme comprising 35 no. apartments on an infill site with of area 0.643 hectares at Rockall, The Birches, Torquay Road, Dublin 18. The site is zoned Zoned Objective A 'to protect and/or improve residential amenity'. Accordingly, residential development is permitted in principle. Chapter 8 of the Dún Laoghaire-Rathdown County Development Plan 2016-2022 refers to Principles of Development and the Building Height Strategy is set out in Appendix 9. The Strategy provides guidance in the assessment of building heights proposed in individual planning applications.

#### **4.1.2 Density**

Section 2.1.3.3 of the Development Plan refers to Residential Density and policy RES3 sets out the Council's policy in relation to residential densities. Policy RES3 states;

*"It is Council policy to promote higher residential densities provided that proposals ensure a balance between the reasonable protection of existing residential amenities and the established character of areas, with the need to provide for sustainable residential development. In promoting more compact, good quality, higher density forms of residential development it is Council policy to have regard to the policies and objectives contained in the following*

*Guidelines:*



- *‘Sustainable Residential Development in Urban Areas’ (DoEHLG 2009).*
- *‘Urban Design Manual - A Best Practice Guide’ (DoEHLG 2009).*
- *‘Quality Housing for Sustainable Communities’ (DoEHLG 2007).*
- *‘Irish Design Manual for Urban Roads and Streets’ (DTTaS and DoECLG, 2013).*
- *‘National Climate Change Adaptation Framework - Building Resilience to Climate Change’ (DoECLG, 2013).”*

4.1.3 The Development Plan does set out specific density standards it is required that as a general rule the minimum density for new residential developments (excluding lands on zoning objectives GB, G and B) shall be 35 units per hectare. Higher densities of 50 units per hectare are encouraged by the Planning Authority where a site is located within circa 1 kilometre pedestrian catchment of a rail station and/or Luas line, and/or 500 metres of a Quality Bus Route, and/ or 1 kilometre of a town or district centre. The Ministerial Guidelines - Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities published in 2009 provides specific guidance in relation to housing schemes. The guidelines seek to encourage increased densities in appropriate location through more economic use of existing infrastructure and serviced land. Policy RES3 of the Dún Laoghaire-Rathdown County Development Plan has been framed having regard to the provisions of these guidelines.

4.1.4 The proposed scheme of 35 no. apartments on the 0.643 hectares site equates to a density of roughly 54 no. units per hectare. The subject site at The Birches, Torquay Road is situated roughly 1.8km from closest Luas Stop at Central Park and is roughly 1.5km from the N11 which is a QBC. The lies 470m from the centre of Foxrock village. Therefore while the site is not located within a closer catchment of 1km from the Luas Line or 500 metres of a Quality Bus Route to warrant a higher density of 50 units per hectare, I consider that it is appropriate given the relative proximity of the site to public transport nodes and also Foxrock village.

4.1.5 In relation to the matter of the proposed building height of the apartment block the Building Height Strategy - Appendix 9 of the Development Plan provides guidance. Section 3.4 of the Strategy refers to ‘Suburban Infill’ and states that that are many examples of this form of development are located on prominent corner sites, or on sites with frontage onto a wide road. The general approach in terms of building heights in these sites has been to taper height from a high point in the centre of the site down to the site boundaries where the height of adjacent buildings can often be lower.

- 4.1.6 Section 3.4 of the Strategy refers to 'Policy for Residual Suburban Areas not included within Cumulative Areas of Control' and Foxrock is included as an area covered by this policy. In relation to residual suburban areas it is stated that a general recommended height of two storeys will apply. However, the policy provides for situations where a minor modification up or down in height could be considered. The factors that may allow for this are known as 'Upward or Downward Modifiers'.
- 4.1.7 Section 4.8.1 refers to 'Upward Modifiers' and sets out the circumstances where the upward modifiers can be applied. These include where the development would create urban design benefits, the built environment or topography would permit higher development without damaging the appearance or character of the area, a development would contribute to the promotion of higher densities in areas with exceptional public transport accessibility and where the size of a site, e.g. 0.5ha or more, could set its own context for development and may have potential for greater building height away from boundaries with existing residential development.
- 4.1.8 The subject site has an area of 0.643 hectares and it is proposed to locate the apartment block within the centre of the site with the height tapered down from four storeys at the boundary with Foxrock Golf Club to three storeys at the western section of the site which is located closest to the existing properties within The Birches. Accordingly, I consider that the site size and building design including the tapering of the height in this case would allow for the upward modifiers to be applied

## **4.2 Design and layout**

- 4.2.1 The proposed scheme involves the demolition of an existing dormer dwelling and the construction of a part 2, 3 and 4 storey apartment building containing 35 no. apartments. The appellants have raised concerns regarding the design of the scheme relative to the surrounding properties and also in relation to the provision of open space and the loss of planting on site. In relation to the proposed design the apartment building it is to be stepped down in height from east to west from 4 storeys on the eastern side to 3 storeys on the western side and 2 storeys on the southern side. The proposed external finishes are glazing, brick cladding and powder coated aluminium. The main section of glazing is located on the east facing elevation. Cody Architects have prepared a Visual Impact Assessment in response to the appellants concerns regarding the visual impact of the proposed scheme. On inspection of the site I noted the dense tree planting around the majority of the site boundary. There are a few sections along the boundary with properties within The Birches where

the boundary is defined by a low wire fence. I also note that the trees on site are primarily deciduous and therefore the cover would be reduced during the winter months. As indicated on the Visual Impact Assessment the proposed apartment building would not be directly visible from the public road within The Birches, while the two upper floors would be visible from Foxrock Golf Course to the east. While I note the tree screening would be reduced in the winter months I consider the tapering of the building height further reduces the overall visual impact from the development as viewed from the Birches to the west. Accordingly, having regard to the proposed design and layout and existing tree screening which surrounds the site I am satisfied that the proposed development would not have an overbearing impact or that it would appear unduly visually obtrusive.

4.2.2 A Landscape Design report was produced by Cunnane Stratton Reynolds and was submitted with the application. It is required under the Development Plan provisions that a minimum of 25% of the site area is provided for the development. Therefore an area of circa 1,615sq m would be required. As indicated in the Landscape Design report a total of 1,574sq m of communal open space is provided on the site. Therefore there is a shortfall of 41sq m. The site is located within 1km of the Leopardstown racecourse lands. Accordingly, having regard to the recreational amenity provided by the proximity of the site to the Leopardstown racecourse lands, I consider that the proposed on-site communal open space provision is acceptable.

4.2.3 Having reviewed the site layout plans, I am satisfied that the areas of the balconies and terraces have been provided in accordance with the required standards set out in Section 8.2.8.4 (iv) of the Development Plan which refers to Private Open Space for Apartment Developments.

### **4.3 Impact upon amenity**

4.3.1 In relation to the matters of overlooking and overshadowing which are raised in a number of the appeals I note that the applicants have sought to further address these issues in their appeals responses. Firstly, regarding overlooking, I note that the closest residential properties to the site are situated to the west and south within The Birches. These are Casalattico, no. 11 and Weston. At the closest point the rear of Casalattico is 22m from the western elevation of the apartment building. At the closest point the rear of No. 11 is 28m from the western elevation of the apartment building and at the closest point the side elevation of Weston is 15m from the southern elevation of the apartment building.

4.3.2 It is required in the Development Plan that for opposing upper floor windows a minimum separation of 22m is provided between opposing

windows. This separation has been provided. Furthermore, I note that the western elevation which addresses the rear of the properties in The Birches features a limited section of glazing and limited balconies. I note that the Planning Authority attached a condition requiring that units 1 and 11 located on the ground and first floors shall be amended to provide fixed opaque windows approximately 0.8m wide on the west elevation. Having regard to the separation distance provided to closest dwellings I do not consider this is a necessary measure.

4.3.3 Accordingly, having reviewed the proposed site layout of the scheme relative to the existing surrounding properties, I consider having regard to the proposed siting and design of the apartment building the relative separation distances to the existing dwellings to the west and south of the site that the proposed scheme would not result in any undue overlooking of residential properties.

4.3.4 The applicants submitted a Shadow Analysis prepared by Coady Architects with the application to address the matter of overshadowing. Furthermore, an addendum Shadow Study was also prepared by Coady Architects to address the concerns of the appellants. Having reviewed the relevant shadow drawings I note that the proposed apartment building would not result in any additional shadowing to neighbouring residential properties which does not already occur from the existing tree cover.

4.3.5 A number of appeals raised the issue of potential impacts from construction works and also the proposed hours of operation. In order to ensure that construction and demolition works on site would have as limited an impact as possible, I consider that should the Board decide to grant permission that a condition be attached requiring that the developer shall submit a detailed Construction Management Plan to the Planning Authority for their agreement. The plan should include details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels, off-site disposal of construction/demolition waste and details of the timing and routing of construction traffic. In relation to the hours of operation for site development and building works, I note that the condition attached by the Planning Authority limited it to between the hours of 08.00 to 18.00 Mondays to Fridays inclusive, between 08.00 to 14.00 hours on Saturdays. I consider these hours are reasonable and appropriate and should the Board decide to grant permission I would recommend that the same operating hours are conditioned.

#### **4.4 Access and Traffic**

4.4.1 The proposal entails the provision of a total of 35 no. dwelling units within an apartment block. The existing dwelling is served by a vehicular access off The Birches to the north. It is proposed to access the development from this same location and upgrade and improve the

access arrangements. The proposed layout provides for 4 no. surface parking spaces for the visitor parking to the north of the building. Access to the proposed basement car park is located along a section of road along the eastern site boundary which is away from the existing properties within The Birches.

- 4.4.2 Table 8.23 of the Dún Laoghaire Rathdown County Development Plan 2016-2022 sets out the car parking standards for residential schemes. Generally 1 no. car parking space is required for a one bedroom unit, 1.5 car parking spaces are required for a two bedroom unit and 2 car parking spaces are required for an apartment with three bedrooms and larger. The proposed scheme contains a mix of apartment size. A total of 7 no. one bedroom units are proposed. 21 no. two bedroom units are proposed and 7 no. three bedroom apartments are proposed. The scheme therefore requires a minimum of 52.5 no. car parking spaces in accordance with Development Plan requirements. A total of 53 no. spaces are proposed within the basement car park. The basement also contains an area for 38 no. cycle parking spaces. Accordingly, I am satisfied with the proposed car parking provision and arrangements and cycle parking arrangements.
- 4.4.3 The matter of the suitability of the location of the proposed site entrance is raised in a number of the appeals. In relation to this matter, I note 'Preliminary Design Stage Quality Audit' prepared by DBFL Consulting Engineers and Transportation Planners. Regarding the site access at the junction with The Birches it is recommended that adequate visibility splays are provided to the right and left at the site access junction. I also note that the Transportation Planning Section have no objection to the proposal subject to the works to improve the access to be carried out at the applicant's own expense.
- 4.4.4 A number of the appeals have raised the suitability of the existing road network to accommodate the additional traffic which would be generated by the proposed development. It is notable that a Transportation Statement was submitted with the proposal. The Transportation Statement includes modelling to estimate trip generation for the proposed development as well as an assessment of construction traffic. The Transportation Statement concludes that the proposed development would generate 10 no two-way vehicle trips in the AM peak period and 10 no two-way vehicle trips in the PM peak period. This traffic generation when compared with the existing traffic flow on Torquay Road is minimal and therefore would have a negligible impact on the capacity and operation of the existing road network across the peak hours and that it results in a relatively low increase in overall traffic levels on the local network.
- 4.4.5 The proposed scheme is for a residential development within an established suburban area. In terms of overall scale and intensity the proposed development is relatively modest in scale. The nature of the

traffic associated is residential which is not out of character with the existing type of traffic that frequents the road network in the vicinity of the site. Furthermore, I note that the Transportation Planning Section have no objections to the proposed development. Having inspected the site and road network in the vicinity I would consider that such is of sufficient capacity to deal with level of traffic likely to be generated by the proposed development.

## **4.5 Flood Risk**

4.5.1 The issue of potential flooding has been raised in the appeals. The proposed development site lies within Flood Zone C category where where the probability of flooding from rivers and the sea is low (less than 0.1% or 1 in 1000 for both river and coastal flooding). DBFL Consulting Engineers prepared a Site Specific Flood Risk Assessment to address the appellants concerns.

4.5.2 The key findings include:

- The proposed development is suitable for this flood zone category.
- For storms less than 1% AEP(1:100 year) pluvial event the developments drainage design will be exceeded. The localised ponding caused would accumulate to a minimal level at only one location at the entrance before discharging to the proposed attenuation swale.
- The proposed ground floors within the development will not be compromised as all the dominant flood paths are directed away from the apartment building.
- That adjacent properties will not be impacted by the development for up to the 1% AEP(1:100 year) flood event.
- The peak surface water from the proposed site is in excess of 70% less than the existing site's un-attenuated peak runoff.

4.5.3 The report concludes that the development has been so designed to ensure it will be safe from flooding and will not increase flood risk elsewhere. Based on the information submitted, I am satisfied that the development will not likely give rise to unacceptable flood risk either on the site or as a result of the development.

## 4.6 Appropriate Assessment

4.6.1 The application was accompanied by a report titled *'Appropriate Assessment Screening Report for a Residential Development at Rockall, Foxrock, County Dublin'* by bec Consultants. The report concludes that there are no elements of the development that could, on their own or in combination with other plans or projects, lead to risk of significant impacts on European Sites. Having regard to the nature and scale of the development proposed and the distance between the site and designated European Sites, I would concur with the above mentioned report, I do not consider that significant effects on European Sites or their conservation objective are likely to arise from the Scheme, either alone or in combination with other plans or projects.

## 4.7 Other Issues

### Accuracy of drawings

4.7.1 The appellants have raised a number of issues relating to perceived errors in a number of the submitted drawings. Having regard to the extensive detail on file including a number of revised drawings submitted by the applicant and specifically the fact that the applicant confirms in relation to the matter of inaccurate measurements at no. 11 The Birches that there was an inadvertent error on the drawings prepared by Cody Architects and revised drawings have been submitted to clarify the issue, I am satisfied that the applicant has provided more than sufficient material on which to make an informed assessment of all aspects of the proposed development.

### Legal issues

4.7.2 A number of the appellants have referred to a Right of Way between The Birches and Foxrock Golf Club and also the third party appellant Academy Geographic Limited have stated that their property includes the small section of land adjoining hammerhead which is indicated on the submitted plans and drawings as part of the application site.

4.7.3 In response to these matters the applicant states that they dispute this claim and also acknowledged that the matter may have to be resolved in the Courts. As part of the first party appeal response a copy of a letter from A&L Goodbody Solicitors has been submitted which states that the applicants Target Investment Opportunities ICAV have a sufficient legal estate and interest in the entirety of the site to carry out the development which is proposed.

4.7.4 The Planning and Development Act 2000, as amended, requires that the applicants have sufficient legal interests in the lands to carry out the development. Furthermore, I note that it is not within the remit of the Board to determine legal interests and/or obligations held by the

applicant, in relation to such lands. Section 34(13) of the Planning and Development Act, 2000, as amended, relates as follows: "A person shall not be entitled solely by reason of a permission or approval under this section to carry out a development." This subsection makes it clear that the grant of permission does not relieve the grantee of the necessity of obtaining any other permits or licences which statutes or regulations or common law may necessitate." Accordingly, I do not consider that these matters are reasonable and substantive grounds for refusal of the proposed development.

## **5.0 Recommendation**

5.0.1 I have read the submissions on file, visited the site, and had due regard to the provisions of the Development Plan and all other matters arising. In the light of this and the assessment above, I recommend that permission be granted for the reasons and considerations set out below.

### **Reasons and Considerations**

Having regard to the provisions of the Dún Laoghaire-Rathdown County Development Plan 2016-2022, to the pattern of existing development in the area and the design, scale and layout of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### **CONDITIONS**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, and as amended by the further plans and particulars received by the Board on the 20<sup>th</sup> day of April, 2016 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to



commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The site access arrangements and the internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs and the basement car park shall be in accordance with the detailed standards of the planning authority for such works and the requirements of the Transportation Planning Section shall be agreed in writing with the planning authority in respect of the site entrance and basement car park.

**Reason:** In the interest of amenity and of traffic and pedestrian safety.

3. 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.

4. Details of the proposed site boundary treatment shall submitted to, and agree in writing with, the planning authority prior to commencement of development.

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

5. 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.

6.
  - (a) The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
  - (b) The applicant shall retain the services of a suitably qualified Landscape Architect (or suitably qualified Landscape Designer) throughout the life of the site development works. A Practical Completion Certificate is to be signed off by the Landscape Architect when all landscape works are completed to the

satisfaction of the Planning Authority in consultation with the Parks and Landscape Services Department; and in accordance with the permitted landscape proposals.

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

7. The proposed development shall be undertaken under the supervision of a qualified arborist, in accordance with details, including details of all reporting and certification requirements, to be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

**Reason:** In the interest of the protection of existing trees proposed to be retained.

8. Prior to commencement of development or any related construction or tree felling, the applicant shall –

- (a) lodge a tree bond to a minimum value of €5,000 with the planning authority to ensure the protection of trees on the site and to make good any damage caused during the construction period. The bond lodgement shall be coupled with an arboricultural agreement, empowering the planning authority to apply such security, or part thereof, to the satisfactory protection of any tree or trees on or adjoining the site, or the appropriate and reasonable 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. Any replacement planting shall use large semi-mature tree size(s) and species or similar as may be stipulated by the planning authority.

- (b) After the period three years post practical completion, the developer shall submit an arboricultural assessment report and certificate signed by a qualified arborist to the planning authority. Any remedial tree surgery, tree felling works recommended in that report shall be undertaken by the developer at his/her expense, under the supervision of the arborist. The tree bond shall not be released as and until the report, certificate and any remedial works have been fully undertaken, to the satisfaction of the planning authority.

**Reason:** To ensure the protection and long-term viability of trees to be retained on site.

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

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

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

10. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any unit.

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

11. Prior to commencement of development, proposals for an estate name, apartment numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority.

**Reason:** In the interest of orderly development.

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. Site development and building works shall be carried out only between the hours of 08.00 to 18.00 Mondays to Fridays inclusive, between 08.00 to 14.00 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

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 and noise management measures.

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

15. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July, 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

**Reason:** In the interest of sustainable waste management.

16. Prior to commencement of development, the developer shall submit, and obtain the written agreement of the planning authority to, a plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials, and for the ongoing operation of these facilities.

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

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

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

18. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services

required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion of the development.

19. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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**Siobhan Carroll,**  
**Inspectorate**  
**13/7/16**