



An
Bord
Pleanála

Inspector's Report PL06F.246732

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| Development | Demolition of 4 no. uninhabited houses and construction of a nursing home ranging from 3-5 storeys over basement, footbridge over the Wards River, new vehicular entrance and all associated works at Lands at the corner of Bridge Street/Church Street, Swords, Co. Dublin |
| Planning Authority | Fingal County Council |
| Planning Authority Reg. Ref. | F15A/0467 |
| Applicant(s) | Carechoice Swords GP Ltd. |
| Type of Appeal | First & Third |
| Planning Authority Decision | Grant |
| Appellant(s) | 1. Carechoice Swords GP Ltd. (First) 2. Barry Lynch (Third) |
| Observer(s) | None |
| Date of Site Inspection | 13 September 2016 |
| Inspector | Una Crosse |

1.0 Site Location and Description

- 1.1.** The site has a stated area of 0.53 hectares and comprises a dilapidated area of ground which accommodates 4 vacant/derelict residential properties of varying size in 4 separate lots. The site is overgrown and inaccessible for large parts. The site falls in gradient from the southwest to the northeast.
- 1.2.** The site is adjoined to the east by the Ward River beyond which is a small shopping centre and parking area. There is an existing walkway along the eastern side of the river which adjoins the rear elevation of the shopping centre and which terminates at Bridge Street which no opening onto same. This walkway facilitates pedestrian access onto the Main Street. The site is adjoined to the south by the Old Vicarage residential development which incorporates a three bay two-storey protected structure. To the west the site is adjoined by Church Road which is one-way and which accommodates residential properties along its western side. To the north the site is adjoined by Bridge Street with a mix of development north of Bridge Street including Swords Castle to the northeast. Directly to the northeast of the site Mill Bridge includes both vehicular and pedestrian access with a weir located to the south of the Bridge adjoining the site.

2.0 Proposed Development

2.1. As Submitted

- Demolition of 4 no. detached dwellings currently uninhabited;
- Construction of a Nursing Home with a total internal floor area of 8,319m² (including Retail/GP space) which is proposed over 3-5 floors over basement;
- 145 no beds (161 bedspaces) with communal living spaces, dining areas, communal facilities, examination room and admin areas,
- Three external landscaped garden decks at ground floor and a roof garden at 4th floor, south and north facing balconies and a roof terrace at 5th floor;
- Retail and GP facility located at basement level (253m²);

- Basement level including staff changing rooms, laundry room, ESB sub-station, switch room, mechanical plant room, bin store, 30 bicycle spaces and 72 no. car spaces;
- Pedestrian footbridge over the Ward River, public river amenity walk accessed from Bridge Street integrating with a public amenity walk access from Church Road;
- New vehicular entrance onto Bridge Street with new boundary treatment to Bridge Street and Church Road, 5 surface car parking spaces, ambulance set down area adjacent to entrance;

2.2. Revisions at Further Information

Further information was submitted in respect of a request from the PA related to 14 items. The scheme was not amended materially with additional information in respect of boundary treatments, foul sewer, points of detail in relation to access, archaeology and the pedestrian bridge and walkway.

3.0 Planning Authority Decision

3.1. Decision

Permission granted subject to 27 conditions which included:

C3) Developer to provide a pedestrian bridge over the River ward as part of development with full details to be submitted and bridge to be ceded on completion;

C8) Lands identified in yellow in Drawings No. 3371-P-001 Rev B (22/04/2016) to be ceded free of charge to the PA on completion with all works, planting, pathways/cycle tracks to be completed by the Developer before ceding;

C9) Following completion engineering report on structural stability riverside bank and features;

C12) Archaeological requirements

C26) Section 48 development conditions of €454,750;

C27) Section 49 contribution – Metro North Scheme;

3.2. Planning Authority Reports

The report of the area planner can be summarised as follows:

Proposal accords with the MC zoning and is located within the town centre within easy reach of services with the proposal complying with the requirements of objective CI24 in relation to an audit of services. It is stated that the proposal is no taller than previous permitted proposals with footprint somewhat reduced with increased separation distance created along a number of boundaries. The proposed houses to be demolished are not considered to have any merit architecturally however a record of same is required. Considered the proposal has regard to residential amenity of properties in the area. An AA screening report notes the proposal is not likely to impact on any designated sites and a Bat survey finds no evidence of bats roosting.

It is stated that details in relation to the construction of the pedestrian bridge and walkway adjacent to the river were not provided and unclear if area of open space and walkway to be ceded to the Council with an updated tree survey required. Reference is made to concerns expressed by the Conservation Officer regarding works to the Mill Bridge which is a protected Structure, concerns also expressed about the boundary treatment on Church Road are noted. Further information is recommended.

In response to the request for further information it is noted that omissions of work to Mill Bridge is welcomed with entrance arrangements satisfactory. The proposal to retain the boundary to Ardium House is acceptable; Sufficient information is considered to have been submitted in respect of the photographic survey of the buildings to be demolished. The visualisations submitted are considered acceptable subject to the replacement of a tree which screens the proposal when viewed from

the entrance to Swords Castle. The response to Item 5 regarding access/entrance, rainwater pipes, Church Road elevations, signage and finishes is considered acceptable. It is noted in relation to Item 6 that a Construction Environmental Management Plan with Water Quality measures is proposed in relation to the River Walkway. It is noted at part (h) that the applicant states that it is not now proposed to provide a pedestrian footbridge. In response to Item 7 a drawing is submitted in respect of the works to the Church Road/Bridge Street junction. Capacity constraints in the Swords WWTP will have been removed by commencement of proposal.

Drawing 3371-P-100 Rev F addresses concerns regarding access to properties on Church Road. A drawing outlining the revised boundary treatment and Tree Constraints Plan are outlined and the combined pedestrian/cycle path is indicated as being 2.5m. Reference is made to the report from the DAHG in response to the Archaeological Impact Assessment requested at Item 10 & 11 and notes that subject to implementation of mitigation measures that there is no objection. The response to Item 12 includes Drawing 3371-P001-Rev B and outlines the lands along the river to be ceded. In relation to Item 13 it is noted that the proposal by the applicant not to provide the pedestrian bridge was considered unacceptable by the Parks Division as proposed in the public notices. It is noted that a response to Item 13(b) and (c) were not provided by the applicant and stated that it is considered appropriate that a condition be included requiring the Developer provide a pedestrian bridge. The response to Item 14 that a condition for a CMP is included is considered acceptable. In conclusion it is stated that the amended scheme will provide a high quality development with significant benefits accruing to the development from its town centre location. The scheme it states will also provide significant improvements in terms of connectivity complying with Objective 292.

3.3. Other Technical Reports

3.3.1. Transportation Section

The report references parking, the junction with Church Road, sightlines, the mobility management plan and states FI is required in respect of the proposed of vehicular access to units 6, 4, 2, 1 & 5. In response to the FI it is stated that the information submitted is acceptable and that a cycle path along Church Road may not be necessary. Conditions recommended.

3.3.2. Water Services

Further information is requested. No objection following response to RFI.

3.3.3. Conservation Officer/Architects Department

Reference is made to the adjoining protected structures (Mill Bridge & The Old Vicarage) and the sites location within the zone of archaeological potential. Further information is requested in respect of works to Mill Bridge, boundary to Church Road, Record of the Buildings to be demolished, visualisations and details of the proposed design. In response to the FI it is considered that the matters raised were satisfactorily addressed. The visualisations submitted are considered acceptable subject to the replacement of a tree which obscures the proposal when viewed from the entrance to Swords Castle. A report prepared by an Archaeology Consultancy notes that features were identified on the site with the development having an adverse impact on the remains and while there is a preferment for preservation in-situ that it is considered the current design and the truncated nature of the remains indicate preservation by record could be undertaken with the decision on same lying with the DAHG.

3.3.4. Parks and Green Infrastructure

Reference is made to the request for additional information but no report has been provided by Fingal. In response to the further information, reference is made in the Planners Report (18/05/2016) to a verbal report in which they specified the requirement for a pedestrian bridge as set out in the public notices.

3.3.5. EHO

Conditions recommended including hours of construction and no activity which be expected to cause nuisance between 7pm and 8am.

3.3.6. Irish Water

Further information is required in respect of the junction of Bridge Street and Church Street and a layout of public services within same. It is requested that prior to commencement that applicant liaise and confirm that adequate capacity exists in the Swords WWTP. No objection following response to RFI.

3.3.7. Transport Infrastructure Ireland (TII)

Recommends the inclusion of the Section 49 Metro North Levy.

3.3.8. Department of Arts, Heritage and Gaeltacht (DAHG)

Location of site within zone of archaeological potential noted with requirement for an Archaeological Impact Assessment. In response to the FI it is stated that there are no objections to permission being granted and that the preservation of the 13th centre rock-cut ditch should be described and detailed in advance of the commencement of any works.

3.3.9. Inland Fisheries Ireland

Notes that the Ward system is exceptional amongst urban river systems in supporting Atlantic Salmon in addition to Brown Trout and presence of these species highlights sensitivity of local watercourses. Conditions recommended in respect of ensuring comprehensive protection of local aquatic ecological integrity.

3.4. Third Party Observations

Issues raised as per grounds of appeal below.

4.0 Planning History

- 4.1. **Reg. Ref. F13A/0179** – permission granted for amendments to F09A/0673 to increase size of primary care centre by 1,284 sq.m and reduce size of nursing home, pharmacy, etc., relocation of pharmacy and alterations to elevations;
- 4.2. **Reg. Ref. F09A/0673** – permission granted for mixed use development of 11,970sq.m site area 0.7936ha) comprising 2 blocks ranging in height from 4-5 storeys over a 101 space lower ground parking area with new vehicular access from Bridge Street which will also accommodate a restaurant/café, retail units etc. including a 65 bed nursing home and independent living accommodation units with pedestrian footbridge over the Ward River and public river amenity walk.
- 4.3. **Reg. Ref. F05A/1001** – Permission granted for a mixed use development of 9396 sq.m (site area 0.7936ha) comprising 5 blocks ranging from 4-6 storeys over a lower ground floor 112 space car park accommodating 70 no. apartments and 3 no retail units, restaurant and commercial space, pedestrian footbridge over Ward Rover, public river amenity walk and new vehicular access from Bridge Street. Appeal to the Board withdrawn.

5.0 Development Plan

Site is zoned Major Town centre in the Fingal County Development Plan 2011-2017 the objective of which is to protect, provide for and/or improve major town centre facilities. Residential care home/retirement home is listed as being permitted in principle.

Local Objective 292 applies to the site and seeks ‘to provide for a pedestrian connection between the riverside walk on the west side of Main Street and Bridge Street’. Site is located with the Zone of Archaeological Potential for Swords (RMP Ref. DU011-034). There are a number of protected structures close to the site including RPS 352 (Mill Bridge), RPS 362 (The old Vicarage), RPS 342 (Swords Castle), RPS 360 (St. Columbas Church) and RPS 361 (Sexton’s House).

Local Objective 297 seeks to ‘preserve existing good quality views of the castle, church and round tower from within Swords and where feasible to open up new views’

Objective AH01 - Recognise the importance of archaeology or historic landscapes and the connectivity between sites, where it exists, in order to safeguard them from developments that would unduly sever or disrupt the relationship and/or inter-visibility between sites.

Objective Swords 9 - Protect and conserve the historic core of Swords including the Zone of Archaeological Potential in the centre of the town.

Objective Swords 12 - Develop a ‘green necklace’ of open spaces which are linked to each other and to the existing town centre of Swords.

Objective GI25 - Provide attractive and safe routes linking key green space sites, parks and open spaces.

Objective GI36 - Elements of the archaeological and architectural heritage are fully integrated into proposals for new developments at the project design stage.

Objective GI37 - Proposals for new development take full account of Architectural Conservation Areas (ACAs).

Objective GI38 - Seek to provide and/or enhance access to archaeological and architectural heritage assets in a sustainable manner, where appropriate, thus facilitating opportunities for education and understanding.

Objective GI41 - Ensure green infrastructure provision responds to and reflects landscape character including historic landscape character, conserving, enhancing and augmenting the existing landscapes and townscapes of Fingal which contribute to a distinctive sense of place.

Section 7.6 of the Plan includes a section and some objectives in respect of residential care home/nursing homes and includes:

Objective C123 – located in towns and villages for reasons including accessibility, social inclusion and availability of services;

Objective C124 – audit of availability of accessible services and community services to be submitted with applications;

Objective C125 – consider existing character of the area and compatibility of the use;

6.0 Natural Heritage Designations

There are 17 Natura 2000 sites within 15km of the subject site. An appropriate assessment is undertaken in section 9.3 below.

7.0 The Appeal

7.1. First Party Grounds of Appeal

The grounds of appeal can be summarised as follows:

- Conditions 3 & 8 appealed which require provision of public and community infrastructure which considered excessive and overly burdensome given Conditions 26 & 27 include significant financial contributions applied under Section 48 & 49;
- Appears from Planners report that PA unclear as to which party should construct and provide the community infrastructure but never applicant's intention to construct the full extent of the works solely at their own expense;
- Applicant understands a contribution must be paid in lieu of providing public infrastructure however extent of levies required a significant imposition;
- If the PA is not clear as to the funding of infrastructure the default position should not be the applicant;

- Applicant willing to cede the lands within the eastern part of the site free of charge to the Council, located next to the Ward River it will facilitate the development of the community infrastructure items;
- Area of land to be ceded increased in area in order to achieve cost savings in building the public amenities;
- Ceding of larger area of land shows applicants intention to co-operate and contribute to public amenities and would highlight that provision of larger section of land contingent on PA not requiring the applicant provide the Bridge which is what Condition 3 requires;
- Site is currently underutilised and dilapidated with proposal resulting in significant civic improvements including connectivity between the River and town centre and complies with local objective 292;
- While completion of significant community infrastructure would improve civic amenity the provision of such works should not be at expense and detriment of applicant;
- Accepted that portion of the benefits experienced by the residents of the Nursing Home however given extent, scope and quality of facilities large number of walkers and passers-by and general public will benefit;

7.2. Third Party Grounds of Appeal

The grounds of appeal can be summarised as follows:

- Proposal inconsistent with the protection, conservation and enhancement of the historic core of Swords;
- Previous report on F00A/0648 noted that Church Road is an integral part of the historic heritage of the area connecting Swords Castle with the round tower and church at Swords Glebe;

- Church Road is oldest thoroughfare in Swords connecting the Round tower and the Castle, with attractive village feel and quality retained;
- This observation supported by Swords Cultural Quarter Masterplan 2014 and Swords Castle and Lands Architectural Plan 2015 recognising Swords Castle and the Round Tower as Special places;
- Importance of the connectivity between sites recognised in Objective AH01 with Local objective 297 seeking to preserve views in Swords;
- Visual images submitted in response to FI show height, width and monumentality of proposal on the sensitive site with view Y mislabelled with view requested as 4a not supplied;
- View Z looking south west from the Castle shows to a limited degree only the enormity of the proposed from the Castle entrance with views further west from the Park entrance towards the Round Tower obscured by the proposal;
- Proposal neither enhances nor promotes the natural or built heritage of Swords or the Objectives included in Objective Swords 9 & 12, or Objectives GI25, GI36, GI37, GI38, GI41 related to Parks, Open space, Archaeological and Architectural and landscape;
- Church Road is currently exclusively residential with recent sympathetic residential development at the Old Vicarage and road is part of Tourist Trail with proposal overlooking and compromising residential properties;
- Church Road is a narrow, downhill, one-way road with a blind bend and narrow strip of pedestrian pavement with concealed entrances and a school entrance with pavements not sufficiently raised to protect pedestrians;
- Church Road carries high volumes of traffic including HGV's despite weight restriction and inclusion of double yellow lines increasing traffic speeds;

- Traffic likely to increase further with population growth, pedestrianisation of Main Street and traffic associated with proposal;

7.3. Planning Authority Response

The PA response addresses development contributions, the first party appeal and third party appeal as outlined in the following sections.

7.3.1. Development Contributions

- Outlines the application of Section 48 & 49;
- States Condition 26 (Section 48) should be attached;
- Stated that the NTA has notified the PA that the Government is proceeding with a revised Metro North Project and while similar has significant differences and advised that existing Supplementary Contribution Scheme for Metro North should be revoked with resolution for same to cease at a meeting in June 2016 and recommended condition No. 27 be omitted;

7.3.2. Response to First Party Appeal

- Condition No. 3 requiring construction of a pedestrian bridge gives effect to proposals initiated by the applicant and which formed part of the development description and included in the public notices;
- PA contests assertions that never appellant's intention to construct the bridge and that the PA unclear as to which party would construct the feature with Item 13 of the RFI requesting further details of the footbridge given the deficit of information submitted with the application despite inclusion in the notices;
- At no time was it understood that the PA would provide/fund the footbridge and PA did not adopt a default position;

- Response of the applicant to the RFI on footbridge was incomplete and considered necessary to include a condition requiring full details/specification;
- At no time was arrangement for ceding more land on basis applicant would not be required to build bridge discussed or agreed to;
- Local objective 292 of the CDP which applies to the site seeks the provision of a pedestrian connection between the riverside walk on the west side of the Main Street and Bridge Street;
- Considered reasonable that such works as are required to provide same are carried out by the developer as part of a permission relating to the landholding;
- Board requested to uphold conditions 3 & 8;

7.3.3. Response to Third Party Appeal

- Historical context of the site fully considered in the assessment;
- Development assessed and found to be compliant with Development Plan objectives pertaining to the preservation of the character of Swords and its heritage;
- Particular attention given to scale and positioning of buildings on site and potential visual impact on important landmarks such as the Castle and Tower;
- Topography of site allows height on north and north eastern elevations and along the River;
- Residential amenity on Church Road protected by set back and reduced building height and provision of garden area with existing boundary to Ardriam House retained;
- Vehicular access is via Bridge Street with proposal not anticipated to exacerbate traffic levels on Church Road which is one way with access and parking arrangements proposed found to be satisfactory;

7.4. Further Responses

7.4.1. First Party Response to Third Party Appeal

- Substantial effort at pre-planning and during application process to develop a suitably designed and scaled building for the site with issues raised by third parties addressed in PA assessment;
- Attributes of the scheme are outlined as is the positive planning history on the site for development including a primary care facility;
- Photomontage 'View Y' not mislabelled with positions map outlining the location of all views with views from St Columba's Church included as View X and all views requested by the PA provided;
- A full archaeological survey of the site was undertaken and submitted in response to RFI with no recorded monuments on site but two features of interest found which should be preserved insitu if possible or by record and ground disturbances monitored;
- Conservation Dept. consider preservation by record appropriate with no objection from the Department;
- Provision of riverside walkway a significant contribution to meeting objective G1125;
- PA consider that design, scale and finishes integrate successfully with the local environment;
- Proposal designed to include generous set-back distances and a low-lying, low-density design demonstrated in photomontages with restrained height helping to preserve residential amenity;

- Proposal will improve traffic by improving the existing pedestrian and cycling network with significant civic improvements for the area on what is a derelict and overgrown site;
- Site well served by public transport, connectivity to bus stops improved and main vehicular entrance on Bridge Street;

7.4.2. Third Party Response to First Party Appeal

- First party contention that Church road is likely to accommodate fewer pedestrians and mainly serve dwellings located on the road misguided;
- Appears based on premise that proposed pathway and cycle track on east and particularly on west will reduce pedestrian/cycle footfall;
- Misses point that for 20 years there is an existing north/south footpath/cycle track running along the proposed development from Bridge Street through the Castle Shopping centre to Church Road which has not resulted in reduced pedestrian or cycle traffic on Church Road;
- Dangerous situation of pedestrian traffic on Church Road exacerbated by the proposal;

8.0 Assessment

8.1. First Party Appeal

8.1.1. Condition 3

While separate conditions, I would note that there is some crossover between the requirements contained in Condition No. 3 and Condition No. 8 which is discussed in the next section. Condition No. 3 requires that the developer shall provide a

pedestrian bridge over the River Ward as part of the development. Details of the location and design of the bridge are required prior to commencement and on completion it is required that the Bridge is ceded to the Local Authority free of charge in tandem with the transfer of lands along the eastern site boundary. The first party consider that it appears from the Planners report that the PA were unclear as to which party should construct and provide the community infrastructure but that it was never the applicant's intention to construct the full extent of the works solely at their own expense. They state that they understand a contribution must be paid in lieu of providing public infrastructure however the extent of levies required is a significant imposition. The PA contests the first party's assertions that it was never their (first party) intention to construct the bridge and that the PA was unclear as to which party would construct the feature. The PA state that they were clear as to their requirements for the construction of the Bridge.

In order to address the matter, I would suggest that it is necessary to look at the policy pertaining on the site, previous permissions on the site and then at what emerged during the current application process.

Local Objective 292 applies to the site and seeks 'to provide for a pedestrian connection between the riverside walk on the west side of Main Street and Bridge Street'. The Riverside walk to the west of Main Street currently runs along the eastern bank of the River Ward and terminates to the rear of the shopping centre as it joins Bridge Street with no access to Bridge Street. There is a vehicular and pedestrian Bridge over the River Ward at this location, known as Mill Bridge which is a protected structure. The intention of the objective is to facilitate access across the River in this vicinity to provide a connection between this walkway and Bridge Street.

The First Party state that the site is currently underutilised and dilapidated with the proposal resulting in significant civic improvements including connectivity between the River and town centre and that it complies with local objective 292. While I would suggest that the proposal would result in visual improvements to the area by the redevelopment of the site, the connectivity required by LO292 would not in my

opinion be facilitated without the inclusion of a pedestrian bridge over the River. The cycle and pedestrian paths proposed along Bridge Street and into the site and along the river terminate at the southern boundary of the site and therefore do not provide any connectivity between Bridge Street and Main Street. The PA consider that it is reasonable that such works as are required to provide same (requirements of LO292) are carried out by the developer as part of a permission relating to the landholding. The local objective applies to this site, the symbol on the development plan is included within the site and the requirements of the objective are clear, the provision of pedestrian connection between the riverside walk on the west side of Main Street and Bridge Street. The inclusion of Condition 3 seeks such a connection and I consider that on the basis of the requirement of LO292 that Condition 3 is appropriate.

As noted above, permission was previously granted on the subject site for a development of similar scale (Ref. F09A/0673 as amended by F13A/0179) and included a pedestrian footbridge over the Ward River in the public notices. I would note that the drawings included in the application (F09A/0673) included a footbridge as set out in Drawing No. 08093-1PL-11 which showed the location of the footbridge (copy in pouch). The Planners report for F09A/0673 referred to specific local objective 178 included in the Swords Master Plan Area which requires the provision of a pedestrian connection between the riverside walk on the westside of the Main Street and Bridge Street. It refers to concerns expressed by the Parks Department about the design of the bridge across the Ward River with Further Information required.

Item 16,17 and 24 of the RFI related to the Bridge with the first noting the location of the pedestrian bridge outside the redline boundary and requesting sightlines the second item relates to landownership and rights of way which are required to facilitate the proposed bridge with written consent of all necessary landowners. Item 24 referred to the proposed design with the width and design of the bridge questioned and a drawing stated to be submitted requested. In response the

applicant stated that the location shown is indicative of a possible location with the construction of the bridge the responsibility of the PA. A site plan included with the response to the further information (Drawing No. 08093-AI-03) showed a dotted line across the River and states possible location of future footbridge. Reference was made to the applicant's proposal to cede the lands on the understanding that the applicant will not be responsible for any of the works in the area including the provision of the footbridge. Reference was also made to concerns expressed by the Parks Department in relation to the pedestrian bridge which they consider may lead to dead-space to the rear of the shopping centre and potential for anti-social behaviour. It was stated that it is proposed to link the riverside walk to Council lands at the vicarage and a right of way to the school. Clarification of FI was considered necessary.

In response to Item 10 of the Clarification it is stated in the report that there will be no public right of way through the proposed development as the pedestrian footbridge which would have linked the upper plaza level with the Castle Shopping Centre is now omitted. I note the site plan submitted in response to the clarification (Drawing No. 08093-CAI-01) which does not include any reference to a footbridge. It is further stated that the Parks Department indicated that separate proposals are planned to provide a future bridge crossing at an alternative location in the vicinity. Reference is made to the benefits accruing from the ceding of land along the riverbank. Neither the public notices nor the Planners report for F13/0179 make any mention of the pedestrian bridge.

I would also note that a previous permission on the site granted under Ref. F05A/1001 for a mixed use development also included the development of a pedestrian footbridge over the Ward River. A condition attached to the permission states that the bridge, related access and the river walk amenity and related boundary structures shall be in place and available for pedestrian access prior to occupation of the commercial and residential units on the site. The reason for the condition is stated to be to achieve objective 178 of the Fingal Development Plan.

Therefore, there is a precedent established on the site for the provision of a pedestrian bridge albeit not the most recent permission.

The PA state that Condition No. 3 requiring the construction of a pedestrian bridge gives effect to the proposals initiated by the applicant and which formed part of the development description and were included in the public notices. As the PA state, the public notices notifying of the proposed development included the following 'the development includes a pedestrian footbridge over the Ward River, a public river amenity walk accessed from Bridge Street integrating with a public amenity walk access from Church Road'. I would suggest that the proposal to provide a pedestrian footbridge is clear. The notice states that the development includes a pedestrian footbridge. Therefore, I do not consider it is now reasonable for the first party to state that it was never their intention to provide same when the notice clearly says that such a bridge is included.

The PA refer to Item 13 of the RFI which requests further details of the footbridge given the deficit of information submitted with the application despite its inclusion in the notices. I would note that Item 13 states that it is unclear from Drawing ref. 3371-P-100 and the documents submitted if the applicant intends to construct as part of the development, the pedestrian river path, pedestrian link path and new link bridge. It is also noted that on the drawing that the bridge in question is shown outside the red line boundary of the site. The RFI continues by requesting the applicant confirm that same will be constructed and made available for public use and ceded free of charge. Additional details in respect of landownership and design specification are also required.

The response to the further information request (Item 13) continues by referring to a number of meetings between the applicant's architects and the Parks Department including a review meeting of the additional information where it states that footbridge and walkway were discussed. It is stated that it was proposed that the applicant would cede the lands along the west bank of the River to facilitate the walkway but not construct same or the footbridge. It is stated that the PA required

that the walkway be constructed as agreed and permitted under Ref. F09A/0673 & F13A/1079 and that the applicant agreed to do same and has proposed to cede a greater area of their lands to facilitate the river walkway.

The PA state that at no time was it understood that the PA would provide/fund the footbridge. They state that the response by the applicant to the RFI on the footbridge was incomplete and it was considered necessary to include a condition requiring full details/specification. The PA state that at no time was there an arrangement discussed or agreed to for ceding more land on the basis that the applicant would not be required to build the bridge.

It could be argued that the language used in Item 13 of the RFI by the PA in respect of the construction of the Bridge suggests an option for the delivery of same. In response to the RFI the applicant stated that in relation to the pedestrian bridge that its initial inclusion emanated from the previous applications on the site (F09A/0673 & F13A/1079) and that during the process for those applications that the PA and Parks Department eventually concluded that the bridge should not be provided as noted in a Planning report dated 23/02/10 (Item10). As I note above it is clear that the footbridge was omitted from the proposal and was not conditioned. It is not clear, therefore, why the applicant included the proposal for the pedestrian bridge as part of the current application in the first place and it is possible that it was included erroneously.

What is clear is that there are two interpretations in respect of agreements on the delivery of the pedestrian bridge. The first party, while including it in their public notices, excluded it from the proposal at FI stage on the basis that it was not required as part of the previous permission and have proposed additional land be ceded in lieu of same. The PA disagree with this position and require that the bridge is delivered.

While this may be the first party's interpretation, LO292 pertains on the site, the objective of which is to create connectivity between Bridge Street and the west of

Main Street which would require some form of bridge over the river. This site provides the opportunity for the delivery of same. I consider that the first party has an obligation to meet this objective given it pertains on the site and I do not consider that their proposal for the ceding of additional lands, which I discuss below, is sufficient to meet the objective. I would suggest that the Board have a number of options as follows:

1. Refuse permission for the proposed development on the basis that the proposal does not meet the requirements of LO292 pertaining on the site;
2. Include Condition No. 3 requiring the developer deliver the bridge; or
3. Include a Section 48(2)(c) condition requiring that the developer pay a contribution to the PA for the delivery of the bridge which would include the design and specification of same.

I consider that if there are issues regarding rights of way and the requirement for written consent from landowners, which I note was requested as part of the further information request, that the third option above, the inclusion of a special development contribution may be the most appropriate option to meeting the objective and facilitating the delivery of a piece of public infrastructure. I would recommend that such a condition is included.

8.1.2. Condition No. 8

While separate conditions I would note that there is some crossover between the requirements contained in Condition No. 3 as discussed above and Condition No. 8 which I will address in this section. This condition is appealed on the basis of its connection to Condition 3 which the first party require is omitted. It is stated that the inclusion of Condition 8 is sufficient burden on the applicant together with the Development Contributions required and as such renders Condition 3 unreasonable.

Condition No. 8 requires that the lands identified on Drawing No. 3371-P-001 Rev B submitted 22nd April 2016 shall be ceded free of charge to the PA on the completion of the development. The developer is also required to complete all works in relation to tree planting and removal and the provision of riverside pathway/cycle track and associated works.

The first party state that they are willing to cede the lands within the eastern part of the site located next to the Ward River free of charge to the Council and that it will facilitate the development of the community infrastructure items. They state that the area of land to be ceded was increased in area in order to achieve cost savings in building the public amenities. The first party consider that the ceding of a larger area of land than originally proposed shows the applicants intention to co-operate and contribute to public amenities and would highlight that the provision of a larger section of land was contingent on the PA not requiring the applicant provide the Bridge which is what Condition 3 requires. However, the PA disagree with this contention. There is no evidence to support the first party's assertion that ceding a larger area of ground was in some way offsetting the requirement for the footbridge.

The previous permission on the site included a drawing (Drwg No. 08093-CAI-08) dated 18 November 2010 which shows the area of land to be ceded to the PA as part of that permission. I would note that the area appears to be similar to the area proposed in the current application. There is therefore a precedent for the ceding of land and for its setting out as an amenity area with walkway/cycle paths. I do not consider that the inclusion of Condition 8 reduces the first party's responsibility to discharge an objective as set out in the Development Plan or to contribute to same as I have recommended above. I would recommend that Condition No. 8 is included in any grant of permission if the Board are minded to grant permission.

8.2. Third Party Appeal

I consider the key issues in determining the third party appeal are as follows:

- Visual Impact and Impact on Cultural Heritage

- Traffic
- Residential Amenity

8.2.1. Visual Impact and Impact on Cultural Heritage

The main concerns expressed in the appeal relate to the potential impact of the proposal on the cultural heritage of Swords and most particularly the Castle and the Round Tower and the visual connection between same. I would suggest that while there are many policies and objectives outlined in the Development Plan seeking to protect and conserve the cultural heritage of Swords, the policies do not express a prohibition on development within the centre of the town. The policies require that proposed development take due cognisance of the historic context of the area. The photomontages submitted provide a thorough assessment of the potential impact of the proposal on the historic centre. I would also refer to the planning history pertaining on the site and permissions granted for development with similar scale and bulk. This is a town centre site which fronts the River and a number of public roads and would in my opinion present a good quality visual response to the context within which the site is located.

In relation to the Round Tower it is my opinion that the proposal will not impact on the views from same given that the site will effectively knit into the existing urban context of the town centre. I would note the comments from the Conservation Officer in respect of the photomontages submitted to outline the potential visual impact of the proposal and in particular the montage from the Castle. When looking from the Castle Entrance towards the site, there is a very large mature tree screening the site. This is shown in View Z and View 3. The Conservation Officer expressed the need to screen the proposal with a tree of similar scale/variety in order to maintain the screening shown in the current context. I would concur with this consideration.

I note Objective AH01 as set out in the Development Plan which seeks to recognise the importance of archaeology or historic landscapes and the connectivity between

sites, where it exists, in order to safeguard them from developments that would unduly sever or disrupt the relationship and/or inter-visibility between sites. In respect of connectivity between the Castle and the Round Tower I do not consider that the proposal would create a jarring visual impact between same. The development will be visible along Church Road when viewed from the Round Tower however I do not consider that it would create any negative visual impact and would read as part of the urban fabric.

I would note that the matter of archaeology has been addressed during the application process with the preparation of an archaeological impact assessment and the proposal to record the features found on the site. I consider that given the location of this site adjoining the river within the town centre and the improvements proposed to the visual amenity of the area by the development of the site that the proposal to record the features is acceptable.

I do not consider that the proposal would impact negatively on the visual amenity of the area with the proposal carefully designed so as to integrate into the urban fabric. The cultural heritage of this area of Swords would not be impacted given that the site was already developed albeit for a significantly smaller scale of development of 4 residential properties. However, the site which is unkempt will be developed such that the area will be significantly improved visually. I consider that the proposal will not impact negatively on the visual amenity or cultural heritage of the area.

8.2.2. Traffic

I note the concerns raised by the appellant in respect of Church Road and its alignment and its one-way flow. The proposed development is proposed to be accessed from Bridge Street and therefore there is not likely to be any perceptible impact on Church Road as a result of the proposal particularly given the one-way flow on Church Road. I note that the PA sought clarification at further information stage on access arrangements to a number of properties on Church Road and I would suggest to the Board that the matter has been satisfactorily addressed. I

would also note the planning history on the site which has established a significant scale of development on this site and the location of the access at the location now proposed creating a precedent for same.

8.2.3. Residential Amenity

The subject site is located in close proximity to a number of residential properties both on Church Road and within the residential development known as the Old Vicarage also on Church Road. I would note that the proposed internal courtyard is located along the boundary with Church Road. The actual elements of the development which do address Church Road do not have any windows on the elevation which is opposite the existing properties. This would provide that there would not be any negative impact on the residential amenity of properties existing along Church Road. In relation to the Old Vicarage, the proposed building line closest to the boundary with the Old Vicarage is set back a minimum of 11m from this boundary. The proposed block along this boundary is three storeys in height. I consider that this is appropriate and would not impact on the residential amenity of existing properties in the Old Vicarage or properties along Church Road.

8.3. Appropriate Assessment

The subject application was accompanied by a report entitled 'Provision of Information regarding Appropriate Assessment Screening' for the appeal site and comprises a screening report.

There are 17 Natura 2000 sites within 15km of the site, all of which are identified in a map in the screening report (Figure 1). They are as follows:

1. Malahide Estuary SAC (000205) – 1.4km north-east;
2. Malahide Estuary SPA (004025) – 1.3km north-east;
3. Rogerstown Estuary SAC (000208) – 5.5km north-east;

4. Rogerstown Estuary SPA (004015) – 5.2km north-east;
5. Baldoyle Bay SAC (000199) – 6.9km south-east;
6. Baldoyle Bay SPA (004016) – 7km to south-east;
7. North Dublin Bay SAC (000206) – 9.7km south-east;
8. Rockabill to Dalkey SAC (003000) – 10.2km east;
9. Ireland's Eye SAC (002193) – 11.7km east;
10. Ireland's Eye SPA (004117) – 11.3km south-east;
11. Howth Head SAC (000202) – 12.7km south east;
12. Howth Head Coast SPA (004113) – 13.4km south-east;
13. Lambay Island SAC (000204) – 13.1km north-east;
14. Lambay Island SPA (004069) – 13.4km north-east;
15. South Dublin Bay SAC (000210) – 13.5km south-east;
16. North Bull Island SPA (04006) – 9.7km south-east;
17. South Dublin Bay and River Tolka Estuary SPA (04024) – 10.6km south-east;

It is noted in the screening report that the no records of any species or habitats for which European sites listed above are designated were recorded within the site or surroundings. The Ward River is adjacent to the eastern boundary of the site and forms part of the Broadmeadow River Catchment with the water quality in the Ward River classified as 'Moderate (Q3-4)' as is the Broadmeadow River into which it flows.

I would suggest that in terms of potential impacts the following potential impacts are considered most relevant, direct loss of land/habitat, surface water, domestic

wastewater, and disturbance to habitats during construction, disturbance to birds during construction and operation and shadowing of habitats by buildings.

I would note that foul effluent from the proposal is proposed to discharge to the Swords WwTP which is currently being upgraded. I note from the Irish Water website that the project is currently in progress and is due for completion in Winter 2016 which would precede any development being completed on the appeal site. The Swords WwTP discharges into Malahide Bay however the discharge is treated and licenced. The location of the site adjacent to the Ward River gives rise to the potential of release of suspended solids into this surface water body particularly during works to the pathways and footbridge. However, given the distance to the nearest designated sites and the proposed Construction Management Plans it is unlikely that any pollutants would reach the coastal waters. In respect of the sites mentioned above, I consider that due to the limited value of the vegetation on site, the separation distances of the appeal site from these sites and the nature of the proposed development that it is reasonable to conclude that on the basis of the information on the file which I consider to be adequate that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on Malahide Estuary SAC (000205), Malahide Estuary SPA (004025), Rogerstown Estuary SAC (000208), Rogerstown Estuary SPA (004015), Baldoyle Bay SAC (000199), Baldoyle Bay SPA (004016), North Dublin Bay SAC (000206), Rockabill to Dalkey SAC (003000), Ireland's Eye SAC (002193), Ireland's Eye SPA (004117), Howth Head SAC (000202), Howth Head Coast SPA (004113), Lambay Island SAC (000204), Lambay Island SPA (004069), South Dublin Bay SAC (000210), North Bull Island SPA (04006), South Dublin Bay and River Tolka Estuary SPA (04024) in light of the site's Conservation Objectives and a Stage 2 Appropriate Assessment is not therefore required.

9.0 Recommendation

9.1. I recommend that planning permission should be granted, subject to conditions, as set out below.

10.0 REASONS AND CONSIDERATIONS/ REASONS

Having regard to the location of the site within the town centre of Swords, the planning history pertaining and the zoning of the site it is considered that the proposed development would not seriously injure the character of the area or the amenities of property in the vicinity, would not have unacceptable impacts on ecology, water quality or the landscape 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.

11.0 CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 22nd 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. Lands identified in yellow on Drawing No. 3371-P-001 Rev B submitted on 22nd April 2016 shall be ceded free of charge to the Local Authority on completion of the development. All works in relation to removal and replanting of trees, provision of riverside pathway/cycleway track and associated railings as well as the stabilisation works to the riverside bank including all re-pointing works shall

be completed in full by the Developer prior to the ceding of the lands to the Local Authority.

Reason: In the interest of public amenity.

3. The proposed Retail Unit shall be restricted to that use identified in Class 1, Part 4 of the Exempted Development Regulations, 2001, no other use shall take place without the prior grant of planning permission by the planning authority or An Bord Pleanála on appeal.

Reason: To protect the amenities of the area and in the interest of the proper planning and sustainable development of the area.

4. Water supply and drainage arrangements, including the attenuation and disposal of surface water and provision for existing foul sewer connections within the site, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

5. The internal road network serving the proposed development, including turning bays, junctions, parking areas, footpaths and kerbs and the underground car park shall be in accordance with the detailed standards of the planning authority for such works.

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

6. Public Lighting shall be provided in accordance with a scheme, (which shall include lighting along pedestrian routes through open spaces), 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 residential unit.

Reason: In the interest of amenity and public safety.

7. 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 interest of visual and residential amenity.

8. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,

- (b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and

- (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

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

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

9. Site development and building works shall be carried out only between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 on Saturdays and not at all on Sundays and public holidays. Deviation from these

times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

10. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise management measures, railway safety and offsite disposal of construction/demolition waste including any excess soil arising from the proposed excavation of the site.

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

11. A plan containing details of the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

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

12. 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.

13. 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.

14. 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 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.

15. The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2) (c) of the Planning and Development Act 2000, as amended, in respect of the provision of a pedestrian footbridge over the Ward River in accordance with Local Objective 292 as set out in the Fingal County Development Plan 2011-2017. The amount of the contribution 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 for determination. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be 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.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

Una Crosse

Senior Planning Inspector

September 2016