



An
Bord
Pleanála

Inspector's Report PL06F.246755

Development	Part demolition, repair, refurbishment and sub-divisions of 'St. Marys' to provide 9 no residential units, construction of 17 no. residential units and all associated site works at 'St. Marys', Dublin Street, Baldoyle, Co. Dublin.
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F15A/0438
Applicant(s)	Crekav Landbank Investments Limited
Type of Appeal	First & Third
Planning Authority Decision	Grant
Appellant(s)	<ol style="list-style-type: none">1. Crekav Landbank Investments (First)2. Stephen Brogan;3. European Province of the Christian Brothers;4. Graham & Alison McCann & others

Observer(s)

None

Date of Site Inspection

20th September 2016

Inspector

Una Crosse

1.0 **Site Location and Description**

- 1.1. The appeal site has a stated area of 0.725 hectares and is located on Dublin Street in Baldoyle. The site accommodates a protected structure known as St. Mary's comprising the former Christian Brothers retirement home built c.1913. The structure comprises a two-storey over basement building with a gable fronted element close to the road accommodating a chapel. There are a number of more recent additions to the structure. The site is surrounded by a variety of boundary treatments. The site is currently unkempt and overgrown with the area behind the main structure grassed and that area behind the more recent constructions tarmacked. There is an existing entrance to the site from Dublin Street which runs along the western boundary of the site into this tarmacked area.
- 1.2. The site is adjoined to the west by a recently constructed retirement home which includes recently constructed single storey self-contained units to the rear. To the south the site is adjoined by an area of open space which has an existing perimeter walkway around the space and mature planting and seating within the space. To the south of this open space there is a row of semi-detached and detached two-storey properties within the Turnberry residential development which back onto the boundary with the open space. To the east of the stone boundary wall of the appeal site, there is a graveyard.

2.0 **Proposed Development**

- 2.1. The proposal comprises two elements, firstly, works to the protected structure known as St. Mary's and secondly new build residential development within the curtilage of the site.
- 2.2. It is proposed to create 9 residential units within the protected structure comprising 4 two-bed apartments, 3 three-bed apartments and 2 two-bed duplex units ranging from 95sq.m to 251 sq.m in area. The works to the protected structure comprise the demolition of a 20th century structure to the west with a floor area of 256sq.m. It is

proposed to demolish to central stair core section to the west of the chapel, external stair cores to the front and side of the structure, a glass house (43 sq.m) and garage/grotto (23sq.m). Removal of some internal partition walls, bathrooms. The provision of a new extension (133 sq.m) to the west of the chapel and construction of a rear entrance block (10 sq.m) are proposed. It is proposed to construct new internal walls and opening up of existing internal walls, changes to the front and rear facade of the eastern wing to provide new door openings and entrance stairs and other alterations to some of the door and window openings in the structure.

- 2.3. It is proposed to construct 17 three-storey residential units, 9 along the southern boundary and 8 units along the western boundary of the site, each with three bedrooms ranging in size from 121 sq.m to 172 sq.m and an area of private open space to the rear. The units have a proposed car port on the ground floor. The Type A units have a roof terrace proposed on the rear elevation at first floor level. The Type B units have a roof terrace proposed on the front elevation at second floor.
- 2.4. The site is also proposed to accommodate a bin store, car parking within the site and also parking spaces along the front boundary with Dublin Street. A new vehicular access is proposed as is an area of open space within the site with a stated area of 7,250 sq.m. The proposal also provides for the provision of a walkway and pedestrian access gates to the southeast and southwest of the site to facilitate access from the nursing home to the graveyard. An access gate is also proposed along the southern boundary of the site from within the proposed residential development onto this walkway. A new 2m high wall is also proposed on the southern edge of the walkway running south of and parallel to the existing wall along the southern boundary of the site. A new access gate is proposed along this wall into the open space to the south.
- 2.5. The development was supported by a planning design statement, architects design statement, architectural heritage impact assessment, photomontages, landscape plan, site specific floor risk assessment and engineering services report.

2.6. In response to further information a number of amendments were made to the scheme which include the omission of Apartment No. 9 in the protected structure with the reduction of the new build strip along the central core and reconfiguration of internal accommodation and openings. Revisions made to house type B which is now 2-storey and 3-bed with no car port with other amendments including replacement of house type C (plot 17) with house type B2. Amendments were also made to the design of the open space.

3.0 **Planning Authority Decision**

3.1. **Decision**

Permission was granted subject to 27 conditions which included the following:

C2 – permission authorises 25 residential units (17 houses and 8 apartments);

C4 – proposed new access gates positioned along the western boundary of the site (drwg pS00 002) to be omitted and a separate application for this part of the site to be submitted;

C5 – details of proposed new access gate along the eastern boundary of the site to be submitted for written agreement of the PA with the 2m boundary wall to the south of the site to be capped and rendered;

C7 – details of front boundary treatment to be agreed in writing;

C10(a) – stained glass within window openings;

3.2. **Planning Authority Reports**

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

3.2.1. The assessment addresses zoning objectives with the proposal acceptable in principle and density with the density at 36 units per hectare considered acceptable. In terms of impact on adjoining residential amenity the proposal was considered

acceptable. The impact on the protected structure is considered to require revision although the conversion of the building is welcomed. Revisions are considered necessary to the proposed public open space and the matter of the open space to the south of the red line boundary is addressed. The housing mix is considered acceptable as is the design of new dwellings although it is considered that the private open space provided should be 75 sq.m. The design of the apartments within the protected structure is considered acceptable. In relation to transportation issues the car parking proposal is acceptable although the location of two spaces to be altered with the delineation of shared surfaces to be provided and details of taking in charge. In relation to water and drainage issues a justification test is required in accordance with Objective SW02 with additional information required. The proposals for social housing are considered acceptable in principle and it is noted that no screening assessment for appropriate assessment was submitted.

3.2.2. Further Information was requested in relation to the following matters: Public Open Space, ownership boundaries, amendments to the design of the protected structure, justification test for location of the site in Flood Zone B, water services, private open space within units 11-16, car spaces, shared surfaces and taking in charge drawing, screening for appropriate assessment, front boundary treatment of the site, location of attenuation tanks and delineation of open spaces.

3.2.3. In response to the further information it was considered (Item 1) the majority of open space provides SuDS for the site with a financial contribution in lieu of open space to be conditioned and use of open space to south clarified. The blue site boundary has been amended and the entrance gate from the nursing home has been increased from 2 to 3m in width with a 2m high wall proposed to the north side of the open space. Reference is made to the gate and wall undertaken along the western boundary. Apartment 9 omitted from the proposal addressing concerns raised with other matters raised in respect of the protected structure addressed or capable of remedy by condition. Justification test for Flood Risk management considered

acceptable. A revised SuDS scheme addresses concerns of Water Services. House Type B revised to meet minimum private open space standards. Transportation issues have been addressed other than proposed to take in charge parking for apartments which is permeable paving. Screening statement submitted for AA and PA of view proposal will not adversely impact Natura 2000 sites. It is stated that the PA

3.3. **Other Technical Reports**

Irish Water – Further Information required in respect of waster location, missing drawing, connection agreement. No objection following submission of FI.

Housing Procurement – confirm receipt of email proposing provision of 10% of the units on site in the form of apartments.

Architects Department – additional information – proposed additions to the protected structure unresolved. Conditions proposed following FI submission;

Parks Planning Section – there are two report dates 9/11/16 & 10/11/16 both requesting additional information required in relation to shortfall of open space, use of the open space to the south of the site, location of proposed surface water attenuation tank, pathways between private and public spaces, planting and footpath material and plan showed areas to be taken in charge. Response to FI acceptable subject to financial contribution and open space not to be taken in charge.

Water Services – Further information including justification test for location of part of site within Flood Zone B, missing drawing, revised storm water drainage layout;

Transportation – Further information – relocation of car parking spaces to northwest of the site so they can be overlooked, details of proposed shared spaces, turning head at end of access road and taking in charge map. No objection following FI subject to conditions including revised taking in charge drawing omitting parking spaces for apartments;

Development Applications Unit – Dept Arts, Heritage & Gaeltacht – Archaeological monitoring required;

Heritage Officer – following submission of screening statement in response to FI, Heritage Officer stated that proposed development will not adversely impact on Natura 2000 sites.

3.4. **Third Party Observations**

Issues raised in the appeals. I would note that the observation from the European Province of the Christian Brothers sought amendments to the plans such that the pedestrian gates would be 3m rather than 2m to accommodate a hearse, a 2m wall to the east and west of this open space and to amend the blue line boundary surrounding the open space to the south. Reference is made to water pressure/capacity issues and the future use of the open space between the development and Turnberry.

4.0 **Planning History**

- 4.1. Part XI – Application approved in 2008 in association with Cowper Care to develop former lands of the Christian Brothers to construct 112 residential units including conversion of St Marys and convert St Patricks Nursing Home to a primary care centre;
- 4.2. FS5/006/15 – proposal to construct 2m high wall and gates at two locations to rear of former retirement home. Gates deemed exempt and wall deemed not exempt;
- 4.3. St Patricks Nursing Home – F09A/0675 – 22-bed extension to the rear of nursing home, 13 terraced and semi-detached single storey houses for sheltered housing, boundary fence to the east of the nursing home; Amendments granted under F11A/0091 & F11A/0050 for alterations to the nursing home. F14A/0234 – permission granted for additional bedrooms and a section of new east boundary wall and raised boundary walls to Dublin Street and west boundary for flood protection.

5.0 Development Plan

Site is zoned RS in the Fingal County Development Plan 2011-2017 the objective of which is to provide for residential development and protect and improve residential amenity. St Mary's is a protected structure (RPS no. 795) and is described as an early 20th century building and former Christian Brother Retirement Home. A seven bay two-storey over basement building with 2-storey chapel extension perpendicular. All other extensions are stated to be excluded.

Objective RD16 relates to increased densities at appropriate locations.

Objective UC04 provides for higher densities with higher quality design.

Objective UD01 – detailed design appraisal.

Objective AH13 – development/alteration to protected structure to be sensitive and compatible.

Objective OS02 & OS02A – quantity of public open space

Objectives OS40, OS41, OS44 & OS 44 – private open space

Objective SW02 – justification test for floodplains

6.0 Natural Heritage Designations

The matter of Appropriate Assessment is addressed separately in Section 8.4 below.

7.0 The Appeal

7.1. First Party Grounds of Appeal

The grounds of appeal can be summarised as follows:

- Appeal against Conditions 4 & 5 of the PA decision;

- Wall and gate mentioned in Condition 4 and referenced in Planners report not built by applicant with contract of sale requiring building of wall and gate as per application submitted with no ability to negotiate same;
- Likely that the adjoining neighbours have built a wall and gate within their ownership and not on the boundary line;
- Applicant not in a position to take enforcement action in respect of the wall and gate nor is applicant in a position to apply for retention of the wall and gate and permission can't be implemented with Condition No. 4;
- Removal of Condition No. 4 necessary to enable development proceed with no response from Fingal County Council to remove condition under Section 146A 1(a)(ii);
- Request condition No. 5 is removed as assume it relate to the expected grant of permission for retention of wall along western boundary for the gate and wall and Planner seeks wall on eastern boundary to match that on western boundary;
- Reference to Illium case where a planning application cannot be used to rectify unauthorised development;
- Contract of sale requires wall and gate applied for in application are built;

7.2. Third Party Grounds of Appeal

The grounds of appeal can be summarised as follows:

- Status of the southern part of the lands bordering Turnberry questioned by the Council with agreement of sale containing special requirements which are not consistent with proper planning and conflicts with policies in the Plan such as surveillance of open spaces;
- Questions validity of application given inclusion of aspects post original submission and construction of elements of development prior to permission;

- Roof terraces at rear of Type A houses will create overlooking and loss of privacy at Turnberry Square with 40m separation insufficient where terraces overlooking at first floor and windows at 2nd floor and should be redesigned as per Type B which have roof terraces to the front;
- No requirement for access gate between plots 9 & 10 at south west of site as no requirement for access with no detail as to why access required with access to open space to the south of the site stipulated in contract for sale to be for Nursing home only;
- No requirement for existing path on open space to south of site to enable vehicles or have vehicular access as existing vehicular accesses available to access the graveyard and the Nursing Home with use of path for vehicles impacting on residential amenity of property in Turnberry;
- Wall should not be built along the open space to south of the site as detracts from visual amenity, facilitates anti-social behaviour and does not comply with contract of sale with one such wall already built without permission;
- Proposal is overdevelopment with overall density of 36 units/ha misleading given low density in the existing structure and high density of between 50-85 units/ha in new units;
- Scale of terraced houses too high relative to the established character of two-storey units in the area with proposal resulting in loss of open character of institutional lands;
- Car parking provided as a car port which could easily be converted to a bedroom using exempted development provisions resulting in loss of parking;
- Private open space at 60m² would be sub-standard if car port converted with minimum open space for 4-bed units of 75m² required;

- Area liable to flooding and concerns about surface water disposal which are exacerbated by the extent of overdevelopment with concern that open space to south of site proposed to provide for surface water drainage;
- Appellants seeking clarification on conditions 4 & 5 and require deletion of same noting part of contract of sale required a 3m wide electronic gate to enable a hearse cross the site to the graveyard and agreed a wall be built from proposed development site across the open space to meet the boundary wall at Turnberry with the gates and access required to meet the functional needs of the Brothers;
- Adjoining nursing home operator appears to have installed a timber gate where electronic gates proposed which is not part of the agreement or was not installed by the Brothers;
- Brothers not in a position to apply for retention as they did not build the wall and Section 146A 1(a)(ii) may be used to amend a permission granted;
- Permission granted under Ref. F16A/0142 for a memorial wall at the graveyard

7.3. Planning Authority Response

- PA submission outlines its response to the first party appeal noting the rationale for the inclusion of Conditions 4 & 5;
- States that the PA has no issues with a boundary or gate from a planning perspective and does not object to any amendment of the Condition by the Board but would like clarity by way of condition in terms of treatment of this boundary to avoid further confusion;
- In response to third parties, considers boundary treatment is necessary at this location to afford privacy and security to the new dwellings to rear of nursing home and to facilitate appropriate boundaries between property owners while allocating continued access along the existing route to the burial ground and informal green space;

- In relation to issue of Section 146A(1)(a)(iii), PA has no objection to provision of a wall and gate on the eastern boundary but requires relevant drawings and does not consider that Condition No. 4 impedes the operation of the permission;
- PA has not attempted to mould the application to its will as implied and is of the view that proper process should be complied with in terms of third party rights;
- PA has no objection to inclusion of a condition restricting exemption rights in relation to this development;

7.4. First Party Response to Third Party Appeals

- Response outlines the stipulations required in relation to boundary treatments, vehicular access and use of the southern open space as included in the contract for sale;
- Wall along the western boundary which has been constructed was permitted under Ref. F14A/0234 for the nursing home;
- Following discussions between applicant, Christian Brothers and Cowper Care, applicant has agreed to transfer the lands in blue (south of the site) to Cowper Care who will control and supervise the area by way of CCTV and applicants happy to amend the site plan to omit any access from the residential scheme to the area with revised site plan submitted with the response (date received 15 July 2016) with a condition welcomed to include this plan in any grant of permission;
- In response to concerns of third parties it is stated that the transfer of lands and management and control of same removes potential for anti-social behaviour;
- No new wall is now proposed along the path to the graveyard and Board can omit same;
- In relation to overlooking, proposal provides for a separation of 38-52m between proposal and dwellings within Turnberry exceeding minimum standards set out in

objective OS35 with appeal site north of Turnberry limiting impacts on sunlight and overshadowing;

- Also propose to place obscure glazing along the terraces to the rear of the dwellings backing onto Turnberry;
- Vehicular access for a hearse will not be a regular event with vehicular maintenance required for maintenance;
- Density proposed at lower end of what considered appropriate for a brownfield site and while accept character of proposal different from Turnberry so is Turnberry different from other housing in the area with 3-storey apartments in Turnberry Sq.;
- Concerns about conversion of car ports can be dealt with by condition with the private open space of sufficient size;
- Flooding addressed in the application;

7.5. Third Party Responses to First Party Appeal

- Oppose suggestion by applicant that Board use powers under Section 139(1) of PDA with the appeal required to be considered de novo;
- Board must consider the proper planning and development of the piece of land to south bounded by two proposed 2m high walls, the Turnberry site to the site and the St Mary's lands to the north;
- Contract of sale requires the piece of land to be used for recreational purposes with Objectives OS16-OS22 relevant and which requires open space be overlooked, not enclosed and with passive surveillance to avoid anti-social behaviour;
- Agreement between applicant and Christian Brothers not binding on the Planning Authorities;

- Cowper Care granted permission under F14A/0234 to build a wall of up to 1.8m along the western boundary as a flood protection measure with no provision for a gate;
- If the Board decide to amend condition 4 it should match the existing planning for this boundary which is for a flood protection wall;

7.6. **Third Party Responses to Third Party Appeals**

- Proposal extremely high density and should be assessed independently;
- Car port could be converted to fourth bedroom using exempted development provisions resulting in loss of parking with parking insufficient and request restriction to exempted development rights;
- Private open space provision inadequate for 4-bed house if converted;
- Validity of application questioned given requirement to amend boundary following Christian Brothers submission;

8.0 **Assessment**

8.1. **Consideration of the Appeal**

I note the request of the first party in respect of the consideration of the appeal under Section 139(1) as they are appealing specific conditions, I would note that two third party appeals were received and therefore it is appropriate for the Board to consider the appeal de novo. In the following sections I shall address the first party appeal followed by the third party appeals.

8.2. **First Party Appeal**

The first party have appealed Conditions 4 & 5 of the PA's Notification and require they are omitted from the decision to grant permission. As they both relate to the boundary treatment of the boundaries to the west and east of the open space to the south of the site some of the issues will be common to both. However, I will address

each in turn for ease of reference. Firstly, Condition No. 4 deals with the western boundary and required that:

“The proposed new access gate positioned along the western boundary of the site (as indicated on Drawings PS00 002) shall be omitted from this development. A separate planning application for this part of the site will be necessary and should be submitted within 3 months of this permission”.

There are a number of issues with the western boundary treatment. Firstly, the first party state that they did not construct the wall and gate which have been constructed on this boundary and refer to contractual obligations they have in respect of this boundary which is what they have proposed in their application. They state that the location of the wall and gate may be on the Nursing home site and not on the first party's boundary. Notwithstanding, if a gate has been constructed without the necessary permission the most appropriate course of action is for the PA to pursue enforcement action with the party responsible for constructing the gate rather than to seek to amend the situation by way of a condition. The PA state that they have not raised an issue with provision of a wall and gate at this location and considers same appropriate from a planning perspective, but consider it reasonable that elevational drawings are submitted. I would note that this is a shared boundary between the first party and the owners of the Nursing Home and it is proposed in the first party's response to the appeal that this area of open space to the south of the site in the first party's ownership be transferred to the owners of the Nursing Home.

I would note that the PA in their response outlines the position in respect of the wall and gate on the western boundary noting that a wall and gate were not there on their initial inspection of the site with a 1.8m timber fence proposed on this boundary under Ref. F09A/0675. I would note that as referred to by the first and third partys a planning application was made under Ref. F14A/0234 for amendments and extensions to the nursing home to the west of the appeal site. Part of this development provided for a section of new east boundary wall (east of Nursing Home site). The site plan (Drwg No. 150/201) indicated a new concrete block

boundary wall along this boundary the top of which would not exceed 4m OD. Therefore, the 1.8m fence referred to by the PA has been amended to a concrete block wall therefore providing a precedent along this boundary for a block wall. I would suggest to the Board that if as it is proposed that the first party is transferring the lands to the Nursing Home operator, that it would be appropriate to seek details of the agreed boundary treatment between the current party boundaries and given this area to the south of the development site is currently within the first party's ownership and I consider that it is reasonable to seek drawings of the proposed boundary treatment including for the gate which is included in the public notices for the current proposal.

Condition No. 5 states:

“Details of the proposed new access along the eastern boundary of the site shall be submitted for the written agreement of the Planning Authority. The 2m high boundary wall to the south of the site shall be suitable capped and rendered on both sides”.

Firstly, I would note that in their response to the third party appeals that the applicants now propose to omit the 2m high boundary wall to the south of the site which would have created the walkway/driveway. I consider that this is an appropriate measure as I outline below in Section 8.3.4. Therefore, I consider that this element of the condition is no longer relevant. With regard to the requirement to submit details of the proposed new access along the eastern boundary of the site I would refer the Board to the PA's comments in respect of the first party appeal where they state that the elevational drawings of the western and eastern boundaries of the open space to the south of the appeal site were submitted by a third party and not the appellant and therefore Condition No. 5 was attached. I consider that the PA are seeking to ensure that there are drawings prepared by the applicant which address the boundaries. I do not consider that it is unreasonable to request same, given that the boundaries in question were included in the applicant's landownership in the application documentation and outlined in blue to define same.

I consider that a condition could be attached seeking details of both the western and

eastern boundary treatment for this area of the site as the public notices indicated that the development included the provision of a walkway and pedestrian access gates to the rear of this site to provide access from the nursing home to the graveyard. The matter of whether the proposed amendments during the application process from 2m to 3m wide gates is a separate issue which is discussed in Section 8.3.4 below.

In conclusion I would suggest to the Board that Conditions 4 & 5 as proposed are omitted and that a condition is attached seeking details of the boundary treatments on both the western and eastern boundaries of the open space to the south including the proposed gates. The matter of the existing boundary wall and gate is a matter for the enforcement section of the LA if it is considered that permission does not exist for same. The Board may also include a provision in the condition that if agreement cannot be reached that the matter can be referred back to the Board.

8.3. Third Party Appeal

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

- Principle of Proposal
- Impact on Residential Amenity
- Density, Design and Open Space
- Existing and Proposed Vehicular and Pedestrian Accesses within and surrounding the Site
- Appropriate Assessment

8.3.1. Principle of Proposal

The subject site is zoned for residential use in the current Fingal Plan. The site is adjoined by a mix of residential, residential care and institutional uses. The site is therefore an appropriate and acceptable location for residential use. The proposal

seeks to refurbish and reuse a protected structure which is currently disused. The building was constructed c.1913 by a religious order and has been used by religious orders until its most recent closure. I would suggest that the proposal to convert the property into residential apartments is an appropriate use of the building. The proposal will provide for the removal of elements of the building which are inappropriate and the addition of a new extension which has been revised to integrate more successfully with the protected structure. While the proposal requires internal and some external alterations to the building to facilitate its conversion, I consider that subject to the conditions proposed by Fingal's conservation officer that the impact on the protected structure will be positive and I would suggest that a condition is attached requiring compliance with the requirements of the Conservation Officer as outlined.

8.3.2. **Density, Design and Open Space**

The third party have raised concerns about the proposed density of the proposal considering same to be too high. I would note that the density is c.36 units per hectare. The site is located within a suburb of Dublin City with access to Dublin Bus services and Dart Services in Sutton c.1km away from the site. I do not consider that the density is inappropriate for the site location. In relation to the design of the units and their impact on the character of the area, I would note that the 3-storey design proposed is appropriate within an urban setting as it provides for more sustainable use of serviced urban land. I would note, as referred to by the first party, that there are three storey blocks within the Turnberry development and therefore the proposal would not be out of character. Notwithstanding, the development of three storey residential properties is a common feature across the city both recently and historically.

In relation to the proposed car port and the concern that same would be converted to use as an additional bedroom with a potential impact on parking within the area and private open space. I would suggest that the space could be converted for living

space or a myriad of other uses, such a study or games room. However I do acknowledge the potential effect such a conversion would have on parking and I would agree that including a condition limiting the availability of exemptions would facilitate the Planning Authority with assessing the potential impact of same on the overall site and its parking context.

In relation to the open space provided on the site, I would note that the open space to the south of the site which is not part of the development boundary of the proposal is discussed separately in section 8.3.4. In relation to the open space proposed within the application boundary it is noted that there is a shortfall of c.665 sq.m in the area of open space which is required for the proposed development. I note that the PA have imposed a condition requiring the payment of a financial contribution under Section 48(2)(c) of the PDA. I consider that this is appropriate and recommend that such a condition is included in any grant of permission if the Board are minded to permit this scheme. The proposal herein will provide for the reuse of a substantial protected structure creating a sustainable residential use of same and protecting the structure into the future. The open space proposed within the scheme is sufficient and creates an amenable open space within the scheme. Therefore, I consider that the open space proposed is satisfactory.

8.3.3. Impact on Residential Amenity

The third party appellants are concerned about the potential impact of the proposal on their residential amenity. I discuss the potential impacts of the proposed access and gates separately in the next section. In relation to the impact of the proposed residential units on the existing housing development at Turnberry and Turnberry Square, I would note that the proposed units which back onto the southern boundary of the site are proposed as house type A, A1 and A2. The units are three storeys in height and have a roof terrace on the first floor on the rear elevation. The Turnberry development backs onto an area of open space to the south of the site. The distance between the existing housing at Turnberry and the proposed units is a minimum of

38m close to the eastern boundary of the site increasing to the west. This exceeds the minimum standard of 22m and allowing for the third floor in the proposal is still an acceptable separation distance. I would also note that the trees within the open space to the south of the appeal site create additional screening of the proposal from the appellants although I would acknowledge that they would have less impact during winter months. Therefore, while the separation distances would prevent actual overlooking, I would suggest that there may be a perception of overlooking on the part of the third party appellants. I note that the first party have suggested in their response to the third party appeals placing obscure glazing along the terraces to the rear of the dwellings backing onto Turnberry and have included drawings of the units along this boundary showing the proposed translucent glass. While this would not eliminate the perceived overlooking, it would assist in lessening the perception of overlooking.

8.3.4. Open Space to the South and Vehicular and Pedestrian Accesses and boundaries within and surrounding the Site

I would note that the first party appeal above deals with the matter of the boundary walls and gates on the western boundary of the open space located to the south of the site and north of the residents in Turnberry and therefore is relevant to this section. There are a number of other matters arising in relation to the open space to the south in addition to the boundary issue addressed above. I will discuss the matters in turn.

The open space was not included in the application site boundary but was outlined in blue indicating it is within the ownership of the applicant/first party. The open space to the south of the appeal site and north of Turnberry is currently enclosed on three boundaries. The northern boundary comprises a high wall which exists between the appeal site and the open space. The southern boundary comprises an existing high wall between the open space and the Turnberry development to the south. The western boundary currently comprises the concrete wall which is the subject of the

first party appeal above. There is no existing wall along the eastern boundary. The original site plan submitted with the application proposed the creation of a new 2m high wall c4.5m south of and parallel to the southern boundary of the appeal site/northern boundary of the open space. This created an enclosed c4.5m wide pathway road with gates proposed at either end of this pathway along the western and eastern boundary of the open space. A gate was also proposed within this new wall into the open space to the south. In addition to the gates at either end of this pathway a gate was also proposed within the southern boundary of the appeal site from the proposed new residential scheme onto this pathway.

The rationale for same has not been explained and there would not appear to be any reasonable explanation for the gateway from the proposed residential scheme onto this walkway. The proposed enclosed walkway is in my opinion inappropriate creating an imposing walled roadway. I would refer the Board to the most recent site plan submitted by the first party in response to the third party appeals and received by the Board on 15 July 2016 (Drawing pS00 002 Rev C). This drawing shows the proposed wall to the south of the southern boundary of the appeal site omitted from the proposal and the proposed gate from the appeal site into the open space along the southern boundary also omitted. I would suggest that these two amendments are significant improvements to the amenity of the area facilitating the pathway but creating a more amenable open space and if the Board are minded to grant permission that the revised site plan should be conditioned.

As noted by the PA, as detailed in Section 8.2 above, the applicant/first party has not to date submitted any details as to the proposed boundary treatment along the western and eastern boundary of the open space to the south of the site. The agent on behalf of the European Province of Christian Brothers in their submissions to the PA included proposed boundary treatments. What requires consideration I would suggest is whether it is acceptable to enclose the open space on all sides and whether the use of the pathway for vehicular access is appropriate. The third party appellants are opposed to same given the absence of any natural surveillance of the

space and the potential for anti-social behaviour. I would note that the applicant/first party in their response to the third party appeals have proposed to transfer the open space to Cowper Care who operate the adjoining nursing home. I would refer the Board to the most recent site plan submitted by the first party in response to the third party appeals and received by the Board on 15 July 2016 (Drawing pS00 002 Rev C) which states same. It is proposed that the space is managed and controlled by CCTV. While I would agree with the third party's in principle that areas of open space should ideally be overlooked thereby creating natural surveillance, I consider that there is also precedent for the creation of walled gardens within the curtilages of for example large houses and institutions. Such spaces were enclosed with gates facilitating access to such spaces. In this regard I would consider that subject to ongoing surveillance of the space by CCTV that the proposal to enclose the space and facilitate access via the gates along the western and eastern boundaries is acceptable.

In relation to the use of the pathway by vehicles the proposal seeks to facilitate hearses from the Nursing Home to the graveyard. I would suggest that this would be infrequent and therefore I would propose that a condition is attached limiting the vehicular use of this pathway to hearses. I would note that the Brothers in their submission requested that the gates be widened from 2m to 3m. I do not consider that this would have any material impact on the proposed development or the amenities of the adjoining residents on the basis that vehicular access is restricted solely to hearses

8.4. Appropriate Assessment

At further information stage, a screening assessment of Appropriate Assessment for the appeal site was requested and a report entitled Screening Assessment for Appropriate Assessment was submitted dated November 2015 and received by the PA on 27 April 2016. and comprises a screening report.

There are 14 Natura 2000 sites within 15km of the site, all of which are identified in a map in the screening report (Figure 2). They are as follows:

1. Baldoyle Bay SAC (000199) – 0.2km
2. Baldoyle Bay SPA (004016) – 0.2km
3. North Dublin Bay SAC (000206) – 1km;
4. North Bull Island SPA (04006) – 1.7km;
5. Ireland's Eye SAC (002193) – 4km;
6. Ireland's Eye SPA (004117) – 4km;
7. Howth Head SAC (000202) – 4km;
8. Howth Head Coast SPA (004113) – 4km;
9. Rockabill to Dalkey SAC (003000) – 4.5km;
10. Malahide Estuary SAC (000205) – 6km;
11. Malahide Estuary SPA (004025) – 6km;
12. South Dublin Bay and River Tolka Estuary SPA (04024) 7km;
13. Rogerstown Estuary SAC (000208) – 14km;
14. Rogerstown Estuary SPA (004015) – 12km;

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. The site is located c.0.2km from Baldoyle Bay SAC and SPA however, I would consider that given the proposed connection to existing foul and surface networks that the proposal would not have any adverse effect on the conservations objectives of these

sites. In addition, significant attenuation is proposed within the open space proposed in the development with petrol interceptors also providing mitigation against any oils entering the surface water network.

I would note that foul effluent from the proposal is proposed to discharge to the Ringsend WwTP. While there are no direct links from the site to any watercourse which enters a designated site, surface water from the site is proposed to discharge into the local surface water network. However, given the distance to the nearest designated sites and the use of public foul and surface water networks 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 Baldoyle Bay SAC (000199), Baldoyle Bay SPA (004016), North Dublin Bay SAC (000206), North Bull Island SPA (04006), Ireland's Eye SAC (002193), Ireland's Eye SPA (004117), Howth Head SAC (000202), Howth Head Coast SPA (004113), Rockabill to Dalkey SAC (003000), Malahide Estuary SAC (000205), Malahide Estuary SPA (004025), South Dublin Bay and River Tolka Estuary SPA (04024), Rogerstown Estuary SAC (000208), Rogerstown Estuary SPA (004015) 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 and the zoning of the site and the proposed reuse of a vacant protected structure 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 the integrity of the protected structure 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 [as amended by the further plans and particulars submitted on the 27th day of April 2016 and by the further plans and particulars received by An Bord Pleanála on the 15th day of July, 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. Prior to the commencement of development, details of the boundary treatment along the western and eastern boundaries of the open space to the south of the proposed development including the proposed gates shall be submitted for the written agreement of the planning authority. In default of such agreement, the matter shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity and orderly development

3. The vehicular use of the pathway proposed directly to the south of the proposed development shall be limited solely to hearses accessing the graveyard from the Nursing Home to the west of the development site.

Reason: In the interests of residential amenity.

4. Development described in Classes 1 or 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, shall not be carried out within the curtilage of any of the proposed dwellinghouses without a prior grant of planning permission.

Reason: In the interest of residential amenity and orderly development.

5. 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.

6. 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.

7. 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.

8. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interest of visual and residential amenity.

9. 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.

10. The developer shall adhere to the requirements of the Conservation Officer in respect of the stained glass and the openings within the Protected Structure, details in relation to service runs, external pipes, ducts and extent of wall chases and the roofing material, details of which shall be submitted for the written agreement of the Planning Authority prior to the commencement of development.

Reason: to protect the character of the protected structure.

11. 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.

12. 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.

13. 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.

14. 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.

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

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

16. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion 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.

17. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to 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.

18. 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 lieu of open space provision towards the cost of amenity works in the area of the proposed development in accordance with the requirements of the requirements of the Fingal Development Plan based on a shortfall of 665sq.m of open space. 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