



An
Bord
Pleanála

Inspector's Report PL06D.247083

Development

Demolition of existing building and construction of a 4 to 5 storey mixed use building with 46 residential units, 4 retail units, gym, café, restaurant, pub, parking and all associated site works at Former Kiely's Public house, Deerpark Road, Mount Merrion, Co. Dublin

Planning Authority

Dun Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

D16A/0370

Applicant(s)

Tomose Ltd

Type of Appeal

First party against refusal

Planning Authority Decision

Refusal of planning permission

Appellant(s)

Tomose Ltd.

Observer(s)

Various (see over page)

Date of Site Inspection

13th October 2016

Inspector

Mary Kennelly

1.0 Site Location and Description

- 1.1. The appeal relates to the site of the former Kiley's public house in Mount Merrion. The site is located on the corner of Deerpark Road and North Avenue, opposite Deer Park. The site is one of a number of commercial/neighbourhood uses which form a cluster at the eastern end of Deerpark Road. The site immediately to the west is the furniture store known as Flanagan's, (previously a cinema), which has recently been the subject of a planning permission for a mixed use development (mainly office/residential), granted by the Board in April 2016, (245755). There is a Motor Centre (car sales and repairs) immediately to the west of Flanagan's. There is a parade of shops, cafes, restaurants on the southern side of the road, directly opposite Flanagan's and the motor centre. This parade includes on small convenience shop and no supermarket.
- 1.2. Deerpark Road runs West to East between Mount Anneville Road (R112) and North Avenue. The latter two roads comprise main routes through the Mount Merrion area from north to south. To the west of the commercial units, Deerpark Road is residential in use with 2-storey semi-detached and terraced houses. It runs parallel to and south of Wilson Road, which is a residential road with mainly detached houses, many of which are single-storey bungalows. The park, which contains a playground, is located directly opposite the appeal site but the remainder of the park extends along the entire block behind (south of) the houses and shops on Deerpark Road. It includes tennis courts and wooded areas and has several protected views in the CDP. There is a large church and community centre located to the south-east of the junction of Deerpark and North Avenue and a school (San Treasa). These are accessed by means of a large car park form a roundabout at the junction. There is on-street parking on Deerpark Road with double yellow lines beyond the site entrance to the east. There is also a 3 tonne weight vehicle restriction in place on this street.
- 1.3. The site has a stated area of 0.44ha. It contains a pub, a shop and a café/restaurant, (1,539m²). Submissions on the file indicate that following the closure of Kiely's

pub/restaurant, the site has been bought by the applicant who has reopened the pub as Kennedy's and has also reopened the restaurant/café with a small retail element.

- 1.4. The detached building is 2-3 storeys in height and is set well back from the adjoining streets with surface parking surrounding the building to the north, east and south. Access is gained to the car park from both Deerpark Road and Wilson Road. The boundaries of the site are defined by low masonry walls with soft landscaping including several raised beds and a number of trees. The ground levels on the site fall away quite steeply to the north and to the east and the existing building takes advantage of the slope. It reaches 70.9m OD at its highest point. The northern boundary is sited behind a wide grass margin and footpath. The site on the opposite (northern) side of Wilson Road contains a Protected Structure (Stanstead), which is set in mature gardens. The site to the immediate west of this is undeveloped and somewhat overgrown.
- 1.5. I refer the Board to the appendices to this report which include maps and photos of the site.

2.0 Planning History

- 2.1 There is no recorded planning history associated with the appeal site. However, there are a number of recent planning decisions on the adjoining site, former Flanagan's Furniture Store, which were determined by the Board:-
 - 2.1.1 **PL06D.242455** – planning permission was refused for three reasons for demolition of vacant furniture store and construction of a convenience shop, 3,137sq.m gross with café, stock room, staff facilities and ancillary rooms and a basement car park for 89 cars. The proposal included a 16m high tower. The P.A. had decided to refuse permission (13D/0313) for 5 reasons. The Board's reasons for refusal were based on the following:-

- Retail impact – Board was not satisfied, in the absence of a Retail Impact Assessment, that the proposal would not lead to over provision of retail facilities sufficient to undermine viability of existing businesses in the area.
- Visual amenity – having regard to the prominent location and established pattern of development, the design of the proposed building was not of a sufficiently high quality, on this landmark site, and would relate poorly to the area’s built fabric in terms of bulk, visual connection, layout, animation and scale.
- Traffic and parking – insufficient capacity within the surrounding road network to accommodate the traffic generated by the proposed development. Inadequate parking provision which would be likely to lead to on-street parking, generate traffic turning movements and create serious traffic congestion and traffic hazard.

2.1.2 **PL06D.245755** – permission granted by Board on appeal against D15A/0121, (4th April 2016), for demolition of furniture store and construction of a mixed use building (5,214m²) of between three and six storeys with balconies and retractable awnings over a basement car park for 92 cars, 48 bicycles, 6 motorbikes, refuse/storage areas. The use comprised 4 no. office units totalling 282m² at GF level, with 48 no. residential dwelling units (10 no. 1-bed, 27 no. 2-bed, 11 no. 3-bed) overhead. Vehicular access from Deerpark Road and pedestrian access from Wilson Road. Development has not been implemented.

2.1.3 **D15A/0799** – permission granted for amendments to permission granted under PL06D.224068 for 4 no. semi-detached houses on site to north of Flanagan’s adjoining No. 54 Wilson Road.

3.0 **Proposed Development**

3.1 The proposed development seeks to demolish the existing building and to construct a mixed use development comprising 4 no. retail units (1,750m²), café (265m²),

restaurant (410m²), pub (200m²), gym (350m²) and 46 no. apartments (3 no. 1-bed, 34 no. 2-bed and 9 no. 3-bed). The existing commercial floor space would be increased from approx. 1,593m² to 2,975m². The design of the proposed building utilises the sloping ground by creating a level podium at the ground level of Deerpark Road at the western end of the site, which extends eastwards and northwards at this level. The proposed building extends above this floor level by four additional floors and below this level by three additional floors, albeit that not all floors extend across the entire footprint. The plot ratio is stated to be 3.8 to 1.0. There is a model of the development which accompanies the application.

3.2 The floors below ground level (Level 0) comprise two floors of predominantly car/cycle parking (Level -1, residential parking, and Level -3, commercial parking); and one floor (Level -2) which would accommodate a large retail unit (1,300m²), the café (fronting onto Wilson Road at street level) and a gym (accessed from/fronting North Avenue). However, Level -1 would also incorporate 3 no. shop units (150m² each) which would face the open space terrace at North Avenue, but would be elevated above street level (above the gym). The large retail unit is intended to be a “high end delicatessen”, such as Fallon and Byrne. It would be almost entirely underground, but would be accessed from the proposed public space at Level -2 on North Avenue, although it would not have a shop front.

3.3 The ground floor frontage to Deerpark would comprise the replacements for the existing pub and restaurant café on the site, (Kennedy’s Pub and the Union Café). The eastern end of this frontage would open onto the podium/open space terrace, which would wrap around the eastern end of the complex (above the shop units facing North Avenue). Stepped access would be provided to street level at Wilson Road from this terrace. Commercial parking is provided in the form of 113 parking spaces and 38 bicycle spaces. Access to the car parks is proposed from Deerpark Road and from North Avenue. Service delivery access for the delicatessen would be from Wilson Road.

3.4 The upper floors, (Floors 1-4 and part of Floor 0), comprise residential development in the form of 1-bed, 2-bed and 3-bed apartments and a number of areas of communal open space. The residential accommodation is laid out in a H shape with the two long blocks facing Deerpark Road and Wilson Road and the central spine would be flanked by communal open space, (at Level 0), to both the east and the west. This communal open space and play area has a combined area of 1,040m². In addition, the open space provision includes a roof garden at level +3 (200m²), the public terrace referred to above and balconies to the individual apartments. Residential parking is provided in the form of 72 car spaces and 46 bicycle spaces.

3.5 The application was accompanied by the following documents :-

- Planning Report by Manahan Planners
- Retail Impact Assessment by BMA Planning
- Architectural Design Statement by Edmondson Architects
- Landscape Design Statement
- Traffic and Transportation Assessment by Atkins
- Mobility Management Plan by Atkins
- Drainage Report by JJ Campbell & Associates
- Part V compliance document
- Schedule of apartment sizes and accommodations
- Schedule of parking arrangements.

4.0 Planning Authority Decision

4.1 The P.A. decided to refuse planning permission on 19th July 2016 for one reason as follows :-

Having regard to the subject site's prominent location and to its varying levels, coupled with the established pattern of development and sensitivities of the area, which include protected views and prospects as well as protected structures, it is considered that the proposed development by reason of scale, siting, layout, bulk and height, would not comprise an appropriate design response and would relate poorly to its receiving environment, seriously detracting from the area in terms of visual amenity. The proposed development would therefore seriously injure the amenity of the property in the vicinity and would be contrary to the proper planning and sustainable development of the area.

4.2 The decision letter included two notes as follows:-

Note 1: In addition to the reason for refusal set out above, the Planning Authority had other significant concerns with regard to the proposed development which are outlined in the Planner's Report and require further information.

Note 2: It should also be noted that not all of the site within the red line area has been fully demonstrated to be within the control of the applicant.

4.2 Planning Authority Reports

4.2.1 **The Area Planner** considered that the proposed development is acceptable in principle given that a mixed use development, comprising retail, restaurant, public house, café, sport facility and residential, is consistent with the zoning of Neighbourhood Centre. It is pointed out, however, that the site includes lands outside of the applicant's control with no letter of consent, i.e. footpath and green verge on Wilson Road. Furthermore, there is no objection in principle to the demolition of the building, which is not a protected structure and has no particular architectural merit.

4.2.2 It was noted that the density of the proposed residential element is 104.5 dwellings/ha, which is considerably greater than the minimum density requirement of 50dw/ha. As such, the proposed density was considered to be appropriate in policy

terms, although the point was made that this density figure does not reflect the overall density of the development as proposed, given the substantial commercial element on the site.

4.2.3 The Area Planner expressed serious concerns regarding the design and layout. It was considered that the approach to the Neighbourhood Centre was of critical importance given its prominent location within a suburban setting. Other elements of the receiving environment of importance included the suburban nature of the adjoining development, the protected views from the park, views from the church and the relationship with and impact upon Stansted, a Protected Structure opposite the site to the north. The sloping nature of the site was also considered to present significant challenges. It was pointed out that the gradient on North Avenue falls 7m from 60m to 53m OD. However, the adoption of the podium design approach was considered to be inappropriate, as this would result in a development which would relate very poorly to its receiving environment. The specific concerns included:-

- The height/scale and massing fails to respect the established sylvan/suburban character of the area and will have an overbearing impact on the setting of Stansted. The extensive podium and steps would constitute a very urban form in a suburban setting. It would be contrary to Policy RES3 and to guidance on Transitional Zonal Areas (8.3.20 of the current CDP).
- The Deerpark Road elevation has an unbroken length of 63m. Although it follows the setback on the permitted development at Flanagan's site, it has additional height and bulk which would result in a poor interface/relationship between the buildings. The overall result would be an excessive bulk and horizontal massing which would detract from the streetscape and the neighbourhood centre.
- The retail units on North Ave would be elevated above the street and would open onto a public space which is accessed by means of a flight of steps. Access to the main retail shop is proposed at Level -2, but is situated in between the café and the entrance to the commercial/customer car park.

- The setback from Wilson Road has been reduced from 18m (existing) to 3.6m (proposed), which would be 8m less than the permitted setback at Flanagan's. The proposed building would read as 7 storeys from Wilson Road (76.5m OD). The height of the elevation immediately adjoining the street would be 13.7m, which would be overbearing and obtrusive. The remainder of the Wilson Road frontage would be taken up by service delivery entry and exit.
- The proposal would contravene the Building Height Strategy in the CDP (App. 9). The maximum height for such developments is 3-4 storeys with provision made for exceptional circumstances. However, it is considered that the proposal would qualify for only one of these 'upward modifiers', which is the proximity to the N11 QBC. It would not, however, create urban design benefits, enhance the public realm or provide new facilities in culture, education, leisure or health. Neither would the built environment, or topography, permit higher development without damaging the appearance or character of the area and the site is not greater than 0.5ha. Furthermore, it is pointed out that the exceptional circumstances that applied to the Flanagan's site (topography and height of existing building), do not apply to the subject site.

4.2.4 Residential amenity/apartment standards - No concerns were raised in respect of the apartment schedule as all apartments exceed the minimum floor area, are dual aspect and generally comply with the requirements of the Urban Housing Design Standards for New Apartments 2015. Although it is considered that there is an under-provision of 1-bed units, which conflicts with the CDP requirements (8.2.3.3 (iii)), this was not considered to be a major concern. Whilst the proposal was considered to comply with public open space minimum standards, serious concerns were raised regarding the landscaping, particularly in respect of the podium design and stepped access. No concerns were raised regarding overlooking, but it was noted that no shadow studies had been provided.

4.2.5 Retail assessment – the retail hierarchy in the Retail Strategy promotes mixed use development in neighbourhood centres, with one convenience supermarket ranging

in size from 1000-2,500m². The other uses envisaged would include post offices, community centres, health clinics to meet the needs of a local community. The Area Planner noted that the Deerpark NC does not contain a supermarket at present, although there is a small supermarket (500m²) at the nearby NC at The Rise. It was also noted that the submitted RIA included possible errors (incorrect turnover figures and omission of 5 no. retail premises in the catchment area). It was considered that these issues would need to be addressed.

4.2.6 Access and Movement – reference is made to the issues raised in the Transport Dept. report which considered that additional information would be required in respect of a number of matters including road safety, control of car parking and construction management.

4.2.7 The proposals to comply with the Social and Affordable Housing obligations, (transfer of 5 no. units), was considered to be acceptable. It was noted that Irish Water had raised no objections in respect of water supply and foul drainage, but that the Drainage Section (L.A.) would require further information on the attenuation tank and the green roof run-off.

4.3 Other Technical Reports

Conservation Officer (14/06/16) – Fails to respect established character of area and would have overbearing impact on Stansted due to excessive scale, height and massing. Proposal does not comply with 8.2.11.2 (iii) or Policy RES3 of CDP. A Visual Impact Assessment (carried out by a Conservation Architect) is required in respect of impact on Stansted. Revised proposals also required to counter any adverse visual impact identified which may include repositioning of blocks, changes to elevation treatment/materials or reduction of heights.

Housing Report (24/06/16) – it was acknowledged that it is proposed to transfer 5 units and was confirmed that proposal is capable of complying with requirements of Part V/CDP/Housing Strategy subject to agreement being reached on land values and development costs. It was pointed out that this arrangement is subject to

planning permission, funding being made available and agreement on costs. Thus it was requested that should PP be granted, a condition be attached requiring developer to enter into an agreement under Part V.

Surface Water Drainage (13/6/16) – concerns raised regarding drainage of green roofs and the attenuation tank. FI was required in respect of these matters including submission of revised proposals for the green roof, which would comply with council policy, and details of servicing for the attenuation tank.

Irish Water (16/06/16) – FI required in respect of a number of items to be provided prior to construction.

Transport Section (13/07/16) – it was noted that proposal would increase parking demand in area and would reduce existing available parking. However, it was considered that adequate parking is proposed for both residential and commercial elements of the proposed development and that the proposal complies with 8.2.4.5 of CDP in respect of influencing modal shift to alternative modes of transport. Concerns were raised, however, regarding the likelihood of an adverse impact on the surrounding road network due to the increased parking provision. A series of FI items were requested, which are summarised in the Area Planner's report, (pg. 16-18). These related to matters such as a Quality Audit (Road Safety Audit, Access Audit, Walking Audit), detailed pedestrian crossings on Deerpark Rd and North Avenue and a Construction Traffic Management Plan. Clarification was also sought regarding whether the permitted development at Flanagan's had been included in the TTA (and if not, a revised TTA would be required).

Parks & Landscape Service Report (06/07/16) – concerns raised regarding the landscape design proposals in respect of both the design and the level of detail provided. The podiums and steps were considered to be overly urban, the views from Deer Park had not been assessed and no tree survey was included, despite the presence of a number of mature trees on the site. A FI request was recommended relating to the need for a detailed Tree Survey and an Arboricultural Impact

Assessment, a Tree Constraints Plan, a Tree Protection Plan and an Arboricultural Method Statement.

4.4 Third Party Observations

There were 336 no. observations from third party observers. The main points raised are summarised in the Area Planner's Report, (pg. 8-11), and are generally similar to those contained in the grounds of appeal which are summarised below. The main topics included the following:-

- Overdevelopment of the site. Excessive scale, height and plot ratio. Does not comply with height strategy.
- Unattractive design which does not relate to the area. Materials inappropriate to area.
- Inadequate traffic assessment. Impact on road network from additional traffic generation which is unsuited to this increase. Mobility Management Plan is aspirational. TTA did not take account of Flanagan's permission. Inadequate parking provision.
- Road safety issues relating to access points, pedestrian crossings, cycle facilities and service deliveries.
- Retail impact assessment inadequate. 5 premises excluded from analysis. Retail quantum is excessive. ABP reason for refusal of Flanagan's not overcome.
- Negative impact on views from Deer Park and on character of Mt Merrion. Public spaces not well considered. Tree planting unrealistic.
- Small apartments unsuited to 'empty-nesters' and will end up as student apartments.

- Inappropriate use mix for neighbourhood centre – no provision for medical centre, crèche etc.
- Construction impacts not adequately addressed.
- Water/drainage issues not adequately addressed.

5.0 Policy Context

5.1 Residential Density Guidelines 2009

These guidelines seek to provide for the development of sustainable neighbourhoods which have

- high quality, attractive and safe environments with a distinct sense of place and a quality public realm;
- a diverse range of household types and age groups, with a high degree of social integration;
- an efficient use of land which minimises transport demand, (particularly the need to use cars), the use of energy and the emission of greenhouse gases.

5.2 Sustainable Urban Housing Design Standards for New Apartments DoECLG 2015

These guidelines take precedence over the policies and objectives of the DLR Development Plan. They seek to ensure appropriate standards for apartment design to meet the accommodation needs of a variety of household types and sizes. They also seek to ensure the affordability of construction and that the supply will be forthcoming.

5.3 Retail Planning Guidelines for Planning Authorities (2012)

These guidelines seek to ensure that the planning system continues to play an important role in supporting competitiveness in the retail sector and in supporting the vitality and viability of town centres through a sequential approach. Further aims

include the contribution to a high standard of urban design, encouraging the increased use of public transport, cycling and walking and the promotion of sustainable development. The Retail Design Manual, which accompanies the RPGs, provides guidance on the design principles for new retail development which seek to create vibrant, quality places which are attractive, inclusive and durable places for people to live, work, shop or visit.

5.4 Retail Strategy for the Greater Dublin Area 2008-2016

The strategy provides a retail hierarchy, which includes Neighbourhood Centres between District Centres and Local shops. Neighbourhood Centres are described as providing for one supermarket or discount foodstore ranging in size from 1,000-2,500m² with a limited range of supporting shops (one or two low range clothes shops with grocery, chemist etc.) and retail services (hairdressers, dry cleaners, DVD rental) cafes and possibly other services such as post offices or community facilities or health clinics grouped together to create a focus for the local population.

5.5 Dept. of Transport Smarter Travel: A Sustainable Transport Future 2009-2020

This policy document sets out a range of policy measures designed to encourage smarter travel, deliver alternative ways of travelling, improve the efficiency of motorised transport and ensure integrated policy delivery. The central aim of the strategy is to support sustainable travel patterns, which necessitates the development of sustainable, compact urban and rural areas which discourage dispersed development and long commuting. It includes key goals and national targets for 2020 including the reduction in greenhouse gas emissions from the transport sector, a reduction in the share of journeys to work by car to 45% of total journeys to work and a 10% share of all journeys to be by cycling.

5.6 Design Manual for Urban Roads and Streets 2013

These statutory guidelines focus on the role and function of streets within urban areas where vehicular traffic interacts with pedestrians and cyclists. The manual generally seeks to achieve better street design in order to encourage more people to choose to walk, cycle and

use public transport by making the experience more pleasant and safer, and thereby promoting more healthy lifestyles. It outlines practical design measures to support and encourage more sustainable travel patterns in urban areas. These include guidance on materials and finishes, street planting, design and minimum width of footways (including minimum widths, verges and strips), design and location of pedestrian crossings, kerbs and corner radii and shared surfaces.

5.7 Dun Laoghaire Rathdown County Development Plan 2016-2022

The site is zoned 'Objective NC', the Zoning Objective for which is to Protect, Provide for and/or Improve mixed-use neighbourhood centre facilities. Extracts from the Development Plan 2016-2022 are attached.

5.7.1 Chapter 2, Sustainable Communities Strategy, includes policies which seek to increase housing supply, ensure an appropriate mix, type and range of housing and promoting the development of balanced sustainable communities. Relevant policies include **RES3** which promotes higher residential densities in the interests of promoting more sustainable development whilst ensuring a balance between this and ensuring the reasonable protection of residential amenities and established character of areas. **RES4** encourages the densification of existing housing stock to retain population levels **RES7** encourages the provision of a wide variety of housing and apartment types and **RES8** seeks to provision of social housing. Other policies which relate to sustainable land use and travel include **ST2** – Integration of Land Use and Transportation Policies, **ST19** - Travel Demand Management and **ST27** Traffic & Transport Assessment and Road Safety Audits.

5.7.2 Chapter 3, Enterprise & Employment – Section 3.2 addresses Retail planning and town centre issues. The policies generally reinforce the policy framework and retail hierarchy contained in the Retail Planning Guidelines (RET1), the Greater Dublin Area Retail Strategy (RET2, RET3). The Retail hierarchy is set out in Table 3.2.1. Policy RET6 encourages the provision of an appropriate mix, range and type of uses in areas

zoned Neighbourhood Centre subject to the protection of residential amenities of the surrounding area. Other retail policies of relevance include **RET7**, **RET11** and **RET12**.

5.7.3 Chapter 4 – Landscape and Heritage – policy **LHB 6** seeks to preserve views and prospects of special amenity value. Table 4.1.1 sets out 14 no. protected views, one of which is “Dublin City and Bay from Deerpark, Mount Merrion”. Chapter 8 contains the urban design policies and principles for development including public realm design, building heights strategy, car parking.

6.0 Grounds of Appeal

6.1 The first party appeal is against the decision to refuse permission. The grounds of appeal can be summarised as follows:

- 1. Community consultation** – The appellant pointed out that there was considerable community consultation, including a meeting with the Residents’ Association, followed by a public exhibition, which resulted in substantial feedback. It is stated that this was incorporated into the final design, with significant alterations. However, it is claimed that the Residents’ Association had emailed its consultation list prior to viewing the revised drawings.
- 2. Design and layout** – in response to the Area Planner’s concerns regarding the building line on Wilson Road, it is stated that the set back at Flanagan’s site was dictated by the fact that they did not own the grass area fronting Wilson Rd. It is stated that this constraint is not applicable in the current case. The AP’s concern regarding the ‘urban form’ of the design was not accepted. It is claimed that the design avails of the opportunities offered by the site and with landscaping, will integrate well into the area. The comments regarding the “unbroken length of 63m” on the Deerpark elevation was rejected as the indentation was introduced to break up the mass here. The comments regarding excessive bulk and massing are rejected. Reference is made to the Architect’s Report (submitted with grounds) which contains a more detailed response to the concerns raised by the P.A. reports.

3. **Building height** – reference is made to the Building Height Strategy, (Policy UD6 in CDP), and specifically to the need to comply with more than one ‘upward modifier’. It is claimed that the development would create

“urban design benefits, there would be significant enhancement of the public realm, it provides new facilities in culture education, leisure or health.

Moreover the built environment and topography would permit higher development without damaging the appearance and character of the area, the proposal contributes to promoting higher densities and it is within 500m walk band of the N11”.

It is submitted that the site, together with Flanagan’s site, constitutes “an island surrounded by open spaces and roadways on three sides” and as such, it can set its own context for development. The proposed heights, it is stated, are significantly below the taller elements of the Flanagan’s permitted scheme. The lower height on the southern elevation of Flanagan’s was in response to the residential interface to the west.

4. **Conservation issues** – in response to the concerns raised by the Conservation Officer, the appellant has submitted a report by a Conservation Professional which focuses on the relationship between the Protected Structure and the proposed development. It is stated that the proposal would not impact on the integrity or amenity of Stansted. Furthermore, the proposed development will not have any significant impact on the views from Deerpark.
5. **Public realm** – the proposal will vastly improve the public realm by removing on-street parking and creating more generous and better surfaced footpaths. The North Avenue interface would be much improved by moving the footpath away from traffic and providing a landscape buffer. It is further stated “By providing ground floor activation on all sides..... it will provide visual interest and variety to the pedestrian experience” and “the provision of balconies and windows at upper levels will allow for passive surveillance”.

6. **Housing policy and density** – It is noted that the P.A. did not raise concerns regarding the housing density or the compliance with the apartment standards, and it is stated that the development is capable of complying with Part V requirements. The strong objection from the local community regarding density is noted but it is considered that the proposed density is in line with the policy framework for the area which encourages best use of zoned and serviced lands to create a more compact urban form.
7. **Retail policy** – A response is submitted from BMA which generally rebuts the objections made by third parties. It is stated that the analysis of existing convenience floorspace included a comprehensive review of all existing stores and retail centres, and that turnover of existing stores was carried out through quantitative analysis. It was also stated that retail sales density forecasts were consistent with previous analysis for convenience floorspace in recent developments at Stillorgan and Glenageary.
8. **Traffic and transport issues** – Response submitted which addresses issues in the Transport Dept. Report. It is confirmed that the appellant is happy to comply with the suggested conditions. It is stated that adequate on-site parking is provided and that the proposal includes the removal of on-street parking and surface parking which is unsightly. It is pointed out that it is not intended to have heavy duty deliveries, but that the convenience store will be serviced by smaller vans and trucks which would arrive at set times.
9. **Parks/landscaping** – A further report is submitted from TTT which responds to issues raised. It details the design concept for each of the 6 no. public and semi-private spaces throughout the development. An Arborist's report is also included together with a tree survey of existing trees on site.
10. **Inadequate surface water drainage** – The surface water drainage issue is responded to by JJ Campbell consulting engineers. Following discussions with the local authority, it was accepted that in Irish conditions, characterised by

increasingly frequent high intensity and long duration storms, the green roof may become saturated. The interception storage and tank were therefore resized and it is now proposed that suction tankers will desilt the attenuation tank. The attenuation capacity for the communal recreation areas has also been increased.

11. **Legal issues** – in respect of the land ownership matters, a solicitor’s letter is enclosed together with title evidence indicating that the applicant/appellant is the registered owner of the lands on Wilson Road identified by the P.A.

6.2 Planning Authority Response

The P.A. responded to the grounds of appeal on 8th September 2016 by stating that the Board should have regard to the detailed assessment in the Planner’s Report. The decision to refuse permission was reaffirmed. The following additional points were made:

- CDP designates Prospects to be Preserved at Table 4.1.1, which includes ‘Dublin City and Bay from Deerpark, Mount Merrion’. This is in addition to the views shown on Map 2.
- Inadequate Visual Impact Assessment – Section 8.2.7.3 of CDP requires an assessment of the visual impacts of a development including photomontages. Thus it has not been demonstrated that the development will not have a negative impact on protected views and prospects.
- Correction re Para 5 of Grounds of Appeal regarding D13A/0313 – it should be noted that the Board did not overturn the P.A.’s decision, as both the P.A. and the Board refused permission for this development.
- Reference to Note 1 attached to P.A. decision – this was attached in order to be helpful to the developer in the event of a future application. However, as there was a fundamental concern with the proposed development, as

submitted, further information, which had been identified as being required in the Planner's Report, was not requested.

6.3 Third party observations on grounds of appeal

6.3.1 157 no. observations were received from third parties. Each of the observations was in the form of an objection to the proposed development on a variety of grounds. Given the volume of material and high level of repetition of themes and points raised, the submissions were summarised under generic headings and the points raised were amalgamated under these headings. Each observer was given an Observer Number and this number was assigned to the various points. The Summary of Issues raised together with the List of Observer Numbers is contained in Appendix 1 of this report. The objections were largely from individual residents of the surrounding neighbourhood.

6.3.2 There were a number of observations from public representatives, namely:-

Shane Ross TD Minister for Transport (Observer no. 157)

Joseph Madigan TD (Observer No. 37)

Councillor Barry Saul (Observer No. 109)

Councillor Deirdre Donnelly (Observer No. 149).

6.3.3 There were a number of groups or bodies representing specific interests including:-

Mount Merrion Residents Association (Observer No. 156) – see 6.3.4 below.

Rise Traders (Observer 04) – representing several retailers in the local area

RGDATA (Observer No. 94)

Donall King (Traffic Engineer) – included traffic survey commissioned by local community carried out by NDC (Observer No. 08)

T.A. McKenna (Engineer) – Traffic analysis (Observer No. 05)

6.3.4 Mount Merrion Residents Association, which it is stated has 850 members and was established in 1935, strongly disputed the appellant's claims that there was any meaningful consultation with the local community. It was further claimed that the applicant made minor alterations following the initial meeting, and claimed that no effort was made to resolve the concerns raised at the first meeting. This observer enclosed an independently commissioned architectural report/urban design study by Scott Tallon Walker and a Traffic Impact Assessment by Dr. Martin Rogers.

6.3.5 The following points from the observations are of note. However, I would refer the Board to Appendix 1 for a more comprehensive summary of the issues raised.

- **Overdevelopment of the site** – Objection raised to the physical scale of the proposed development in terms of plot ratio (3.8), height, bulk, mass and incorporation of 3 no. subterranean levels. It was submitted that the overwhelming size/scale of the development bears no relationship to the character or scale of the mature low density residential suburb and would be more suited to a city centre site.
- **Inappropriate mix of uses** – There was considerable opposition to the nature, scale and extent of the proposed uses, which was felt to be overly commercial. The nature of the uses is such that it would result in significant adverse impacts on the residential amenity and suburban character of the area and would destroy the unique sense of community which is centred on the area around the site.
- **Impact on visual amenities/character of area** – The design and scale of the development was generally considered to be an inappropriate response to the site conditions and failed to make a connection with its surroundings or to create a sense of place. It was considered that the proposed development would dominate and transform the nature and character of the neighbourhood centre and would exclude the local community.

- **Heritage/protected views** – it was considered that the proposed development would fail to preserve the protected views of Dublin City and Bay and many other cherished views/vistas within and around the neighbourhood. It would also adversely impact on the setting of the Protected Structure at Stansted. The proposal would also erode the highly valued architectural character of the planned Garden City suburb.
- **Housing provision** – It is acknowledged that there is a housing crisis and that there is demand within the area for apartments to facilitate down-sizing to free up family type homes. However, the apartment design, size, layout and location above noisy entertainment uses is considered to be inappropriate for these purposes and would be more attractive to short-term lets and student lets in particular. This would exacerbate the housing supply issue and add to the adverse impacts on residential amenity.
- **Retail impact – excessive retail provision** – there is overwhelming opposition to the introduction of a supermarket with a floor space of 1300m². It is considered that the area is very well catered for in terms of access to retail facilities both within Mount Merrion and in the adjoining suburbs of Stillorgan, Blackrock and Dundrum. The need to sustain the existing businesses in Mount Merrion was considered to be of great importance to the viability of the neighbourhood centre and associated community spirit, and it was felt that the additional retail space would undermine these objectives.
- **Traffic Impact**– Road network is considered to be wholly unsuitable to accommodate traffic associated with such a large commercial development combined with residential development on both this and adjoining site. Traffic congestion combined with speeding, as a result of rat-running, trips generated by the existing uses (Deer Park, Church, schools, UCD, Kiely's pub, Union Café etc.), have caused significant problems to date. As a result, traffic calming has been introduced which renders roads even more unsuitable.

- **Road safety** - Traffic generation would also pose serious concerns for road safety given high number of children and elderly walking in area and the need to maintain the community spirit of area. The high number of entrances to the development and their proximity to a busy junction were also a cause for concern.
- **Service Deliveries** - It is widely believed that service deliveries have not been adequately accounted for in the proposed development and the impact of same on the narrow residential streets and traffic calmed junctions would be profound.
- **Parking** – it is considered by many that inadequate parking provision has been provided or that it has been provided in a form that will not be used and hence will result in illegal parking and further traffic/parking congestion on the surrounding residential streets.
- **Inadequate water supply/surface water drainage** – The existing water and drainage infrastructure is considered to be deficient and problems would be exacerbated by the proposed development.
- **Construction impacts** – It is considered that the assessment of the impacts arising from construction involving 3 no. subterranean floors has not been adequately addressed in terms of volume of material to be excavated, volume of concrete to be imported, need for rock breaking/blasting, analysis of associate truck movements and ability of road network to cope with same.
- **Precedent and cumulative impacts** – The cumulative impact of the proposed development with the permitted development at Flanagan’s and other developments in the vicinity has not been adequately considered. Furthermore, it is feared that the proposed development, if granted would create an undesirable precedent for the site to the west of Flanagan’s, the combination of which would utterly transform the area into an urban centre with profound implications for residential amenity and maintenance of the character of the area.

- **Miscellaneous** – a substantial number of observers considered the level of consultation with the community to be inadequate and meaningless. Issues were also raised by some regarding the lack of legal title to the grass strip on Wilson Road and to the introduction of a crossing on North Avenue.

7.0 Assessment

7.1 The main issues arising from this appeal are considered to be as follows:

- Principle of development and zoning, including retail impact and housing provision
- Design and scale of development, including height and scale, visual impact, urban design and impact on designated views/protected structures
- Traffic impact, road safety and adequacy of parking
- Construction impacts
- Infrastructural capacity - water and drainage
- Other issues – precedent, cumulative impact, land ownership and consultation
- Appropriate assessment

7.2 Zoning and principle of development

7.2.1 Neighbourhood Centre Zone

7.2.1.1 The zoning objective for Neighbourhood Centre seeks to protect, provide for and/or improve mixed-use neighbourhood centre facilities. Uses that are permitted in principle include residential, restaurant, public house, sports facility and shop-neighbourhood. There are several retail policies which are relevant to the current proposal including RET6 which encourages an appropriate mix, range and type of uses including retail and retail services, subject to the protection of residential amenities of the surrounding area. RTE 2 and RET 12 each urge a cautionary

approach to new or additional retail provision in recognition of the dramatic slowdown in the economy, notwithstanding the “optimistic” position taken in the 2008 Retail Strategy for the GDA. The CDP points out that whilst the policies and strategy set out in the CDP have regard to this regional strategy, the latter was based on data which had been collected during a period of expected population growth, which has not materialised.

7.2.1.2 The Retail Hierarchy (CDP Table 3.2.1) designates two Level 2 Town Centres, Dun Laoghaire and Dundrum, within a 15-20 minute drive-time of the site and two Level 3 District Centres, Stillorgan and Blackrock, each within 1-1.5 kilometres of the site. Stillorgan Shopping Centre is directly adjacent and within walking distance of the southern part of Mount Merrion suburb. Blackrock Shopping Centre is on the far side of the N11, but is in close proximity to the site. These two District Centres are long established with a wide range of uses including large multiples (Tesco, M&S, Dunnes) and specialist food shops such as Donnybrook Fair. Closer to the site, there are a number of shops including a Spar within the neighbourhood centre at The Rise, approx. 500m to the North East. I would agree with the observers, therefore, that Mount Merrion is very well served by a number of substantial shopping centres and by a wide range of convenience foodstores. I would also accept that the convenience retail sector is under-represented in the neighbourhood centre itself, with less than 100sq.m. and that there is scope for a supermarket/convenience food store.

7.2.1.3 The Retail Planning Guidelines define a Neighbourhood Centre as

“Comprise a small group of shops, typically comprising newsagent, small supermarket/general grocery store, sub post office and other small shops of a local nature serving a small, localised catchment population”.

The Retail Strategy for the GDA 2008-2016 contains the following definition for Neighbourhood Centres –

“These centres generally provide for one supermarket or discount foodstore ranging in size from 1,000-2,500sq.m with a limited range of supporting shops (one or two low range clothes shops with grocery, chemist etc.) and retail services (hairdressers, dry cleaners, DVD rental) cafes and possibly other services such as post offices or community facilities or health clinics grouped together to create a focus for the local population.”

The Dun Laoghaire Rathdown CDP 2016-2022 describes the function of a Neighbourhood Centre as “to provide a range of convenient and easily accessible retail outlets and services within walking distance of a local catchment population.”

There is also a definition in the CDP (8.3) of a neighbourhood shop as follows:-

“one which primarily serves a local community and does not generally attract business from outside that community. They will primarily serve a “walk-in” population and will typically have limited car parking.”

7.2.1.4 The consistent advice in the policy guidance is, therefore, that neighbourhood centres are intended to provide a diverse range of small scale retail outlets/services which are aimed at serving the local community and should be convenient and easily accessible to that community. By extension, it would seem that the introduction of additional retail floor space, which would rely on or attract custom from outside the community, would be at odds with the fundamental notion of creating a community focus and providing a local convenient service. Thus it is considered that it is a fine balancing act to achieve the appropriate mix, nature, type and scale of uses. In an area such as Mount Merrion, which is within easy reach of so many shopping centres, this is further complicated by the need to ensure that any new retail floor space does not undermine the viability of the higher order shopping centres within the overall area. Thus it is considered that defining the catchment is key, as is the size and nature of the retail offering.

7.2.2 Retail policy

- 7.2.2.1 The applicant places much weight on the fact that the Retail Strategy allows for a supermarket with a floor area of 1,000-2,500m² in a Neighbourhood Centre. However, as stated in 7.2.1 above, the Retail Strategy was based on data collated during a period of record house building, and low levels of unemployment and high levels of in-migration. More recent policy guidance urges a more cautionary approach to additional retail floor space provision in recognition of the dramatic slowdown in the economy and the fact that the anticipated population growth did not occur. The recently adopted CDP also acknowledges that Neighbourhood Centres, in certain cases, could be promoted as “local mixed use nodes accommodating a range of uses beyond simply retailing”. In terms of the size of the catchment, Section 3.2.4 of the CDP ‘Retail Strategy and Sustainability’ stresses the importance of accessibility of the higher order centres by a variety of modes of transport. In respect of Neighbourhood Centres, it is stated that “these should be readily accessible from the local catchment by sustainable forms of transport – walking and cycling”.
- 7.2.2.2 I would agree with the Mount Merrion Residents Association that the catchment area relied upon in the RIA is too wide and hence distorts the figures. It is based on the proposal to offer a “particular range of artisan produce with deli and café area”. This factor, together with the proximity of a substantial retail offering in nearby higher order centres, casts doubt on the appropriateness of the size of the larger unit proposed. Reliance on a walkable catchment area, which has not increased to any significant degree in terms of population, seems unrealistic. The strong sense of community that exists in the area is strongly reflected in the considerable number of observations on the appeal received by the Board. This appears to be focused on the existing shops in the neighbourhood centre together with the wider range of uses including the church, the school, the community centre, the park, the pub, the café/restaurant as well as the shops and retail

services. Thus the nature, extent and mix of uses, particularly the level of retail floor space proposed, is not adequately justified.

7.2.2.3 In light of the foregoing, it is considered that the size (1,300m²) and nature of the large retail unit, together with the fact that it is underground and served by a large underground car park, is likely to draw much of its custom from outside the local community. Furthermore, a deli type of retail offer would attract shoppers from a much wider catchment than a more mainstream outlet. Notwithstanding this, it would be difficult to control the type of retailer that would operate from the centre, beyond stipulating convenience floorspace. Thus, notwithstanding the conclusions of the Retail Impact Assessment, it is considered that the proposed development is inconsistent with the role and function of a Neighbourhood Centre and would be likely to undermine the viability and vitality of neighbouring higher order centres in the adjoining suburbs. The proposed development would, therefore, be inconsistent with the Retail Planning Guidelines, the Retail Strategy for the GDA and with the policies contained in the Development Plan for the area.

7.2.3 Residential and non-retail uses

7.2.3.1 The proposal to incorporate residential use above the commercial floor space is considered to be consistent with the mixed use node concept for NC's in the CDP (3.2.2.6, RET6). Similarly, the proposal to include a café, restaurant and public house, which are already established on the site, would be consistent with this objective and the zoning objective. The applicant states that the housing mix, layout and size of the units is generous and exceed the standards for apartments. The P.A. is of the same view. It is understandable that the community would be concerned at the introduction of almost 100 apartments, (including the permitted development at Flanagan's), into an area that has been exclusively occupied by single family dwellings since the establishment of the suburb. There is an acknowledged and urgent need, however, for additional housing units in zoned and serviced areas, such as this.

7.2.3.2 The CDP seeks to maximise the use of serviced and zoned lands and to consolidate development in the form of sustainable higher densities which would more readily support integrated transport systems. The CDP accordingly places a minimum housing density of 50 units/ha. The application of this standard would result in 22 no. units on the appeal site. However, it is stated that this density standard may be constrained by factors such as infrastructural deficiencies and/or need to protect character and setting of Protected Structures. In this instance, it is clear that the capacity of the roads adjoining and leading to the site is restricted by sub-standard road widths and traffic calming measures. The proposed development is also directly adjacent to a Protected Structure, Stansted. It is noted, however, that the Board's decision on the Flanagan's site (245755) provided for a density of 143 units/ha. It is considered, therefore, that the proposed density of 105 units/ha, is generally acceptable in principle, subject to compliance with other policy objectives and good planning and urban design practice.

7.2.3.3 Many observers raised the issue of the appropriateness of the inclusion of a gym in the use mix, on the grounds of unsociable hours and noise and disturbance with some gyms operating 24 hours a day. It is noted, however, that a gym is included in the definition of Sports Facility in the CDP and that this use is permitted in principle in this zone. It is considered that should the Board be minded to grant permission, the issues of noise and hours of operation could be addressed by means of appropriate conditions.

7.3 Design and scale of development

7.3.1 Site context

7.3.1.1 Mount Merrion is a distinctive suburb as it was one of the first planned suburbs of its type and was based on the established Garden Suburb principles with an integral neighbourhood centre. It was planned around the Fitzwilliam Estate and incorporated the high quality mature landscaping of the original demesne

landscape. The architecture is generally consistent and intact throughout and the overall design/layout of the suburb is very leafy and well established. It has an attractive and pleasant ambience with a cohesive character which is largely based on a low density, low rise, ordered layout which is softened by copious amounts of mature vegetation. The site is situated at the heart of the neighbourhood, within the existing village centre. It is located at the junction of three reasonably straight roads, two of which are residential, and is effectively “cocooned” within the dense network of suburban streets.

7.3.1.2 The topography of the area is also a significant feature which results in views and vistas which form an important part of the overall character. The views of note include those from Deer Park, (particularly the play ground), across the low rise suburb towards Dublin City and Bay, with the Pigeon House towers and Howth forming the backdrop, and those along North Avenue towards the park and the Church, which occupy prominent locations within the area. The former view is designated for protection in the Development Plan. The gradient falls steeply from the ridge at the southern end of the park and the church towards the appeal site and beyond, and also falls from west to east towards the junction of Deerpark Rd and North Ave. The site layout also incorporates the changes of gradient within the site, with sharp falls both from west to east and from south to north.

7.3.1.3 As a result, the site occupies a very prominent position at the junction, but is also overlooked from important local landmarks. The Urban Design Study by Scott Tallon Walker, (submitted by Mount Merrion Residents Association), identified this junction as a “point of arrival”. The high level of visibility together with the sloping gradient and low density suburban character of the surrounding development are identified by STW as being among the many site constraints in urban design terms. I would generally agree with this analysis and consider that the development of the site should respect the scale and character of the established development in the vicinity. The applicant’s design statement makes a strong case for the redevelopment of the site due to the potential to create a sense of place

which would be a cohesive force within the community and to the poor quality of the existing development with an abundance of surface car parking. This is a reasonable point of view and objective, which is shared by most of the parties and observers. However, it is the density, scale, height and form of the development which has raised so many objections to the submitted proposal.

7.3.2 Urban design

7.3.2.1 The site's central location in the heart of the neighbourhood and its visual prominence provides an opportunity to create a sense of place, but this should be appropriate to the role and function of the Neighbourhood Centre. The design of the proposed building, given its height, scale and form, appears to seek landmark status. Section 6 of Appendix 9 of the CDP (Building Height Strategy) defines a landmark building as "a single outstanding building which is either taller or of a more notable design than its neighbours". However, it is also stated that the sites for such buildings will only be conducted through the LAP/SDZ/UDF process or by variation of the Development Plan. The site is not identified as one for which a landmark building is envisaged. The emphasis in the policy guidance within both the CDP and the Retail Planning Design Manual is, however, on the creation of attractive streets which integrate well with the surrounding area, enhancement of the public realm, the creation of a good sense of enclosure, the provision of active ground floor street frontages and a legible, permeable and sustainable layout. I would refer the Board to a 3D model and a set of photomontages (Manahan Planning Report) submitted with the application.

7.3.2.2 It is considered that the manner in which the proposed development addresses the adjoining streets and surrounding development results in a poor quality urban design. In spite of the considerable effort that appears to have been invested in designing high quality open spaces within the complex, these spaces do not integrate well with the adjoining streets. They are not readily accessible due to the differences in levels and visually, they are either at an elevated level or located deep within the development. Whilst the complex is permeable in theory, in

practice, the design is likely to deter people from walking through the development as they would need to traverse semi-private spaces and/or flights of stairs. This would also lead to confusion in terms of legibility.

7.3.2.3 It is considered that the provision of three separate access points to underground parking/servicing areas also detracts from the public realm, as pedestrians are likely to avoid the existing public footpaths around the perimeter of the site, which are critical to the cohesiveness of the neighbourhood centre. The diverse range of services/uses are located on both sides of North Avenue and of Deerpark Road, which necessitates ease and safety of pedestrian movement between these elements. It is considered, therefore, that the public realm is not sufficiently enhanced by the proposed development.

7.3.2.4 The relationship between the building and the surrounding development is also considered to be very poor as it fails to respect the difference in scale at the interface. Rather than utilising the falling ground levels by graduating the building height so that it is lower in close proximity to the residential properties, the developer uses the differential levels to maximise the building height. This factor, together with the extension of the footprint to the extremities of the boundaries and to the failure to provide appropriate active frontages at street level, combine to create an inward looking development which relates very poorly to its receiving environment.

7.3.2.5 The Deerpark Road frontage is reasonably successful at its western end, but is disrupted by the car park entrance and by the fact that the public space becomes elevated above the junction. The North Avenue frontage is considered to be problematic as the active frontage comprises windows to a gym, an entrance door to the underground supermarket and a further car park entrance, with the retail elements located at levels above or below street level. The corner with Wilson Road is more animated as the café, at street level, wraps around the corner. However, the continuation of the frontage on North Avenue is represented by the entrance to the car park, and on the Wilson Road frontage, by a 7m high masonry

wall, relieved only by the service access to the development. This dead frontage is considered to be inappropriate to a residential street, as is the introduction of a service entrance, which is likely to be in use over an extended period of the day. It is considered, therefore, that the proposed development fails to successfully integrate with the surrounding development and would not provide for attractive, animated streets or an enhanced public realm.

7.3.3 Scale of development

7.3.3.1 The appellant is of the view that the site is of a sufficient scale to differentiate it from the surrounding townscape, and as such it can set its own density/scale. Given that the site has road frontage on three sides and the remaining boundary is with a commercial site, which has permission for a development of considerable scale (5,214m²), this view has some merit. However, the site area is 0.44ha, which falls short of the 0.5ha threshold in the CDP. It should also be noted that the gross floor area of the proposed development (15,800m²) is approx. ten times the existing floor area on the Kiely's site and would be three times that permitted at Flanagan's. It is considered that given the poor quality of the existing development and the inefficient use of the site, with large areas of tarmac/surface parking, a substantial increase in the volume of building is acceptable in principle. The manner in which this volume is expressed is critical, however, to the ability of the development to integrate into the surrounding townscape.

7.3.3.2 The stated plot ratio is 3.8:1.0. Dun Laoghaire Rathdown CDP does not specify a plot ratio as a development standard, (apart from for Sandyford). It should be noted, however, that Dublin City Council's recently adopted Development Plan recommend a plot ratio of 0.5-2.0 for Neighbourhood Centres and residential zones, 2.0 for District Centres and 2.5-3.0 for the City Centre. Thus, it can be seen that the plot ratio of the proposed development is greater than that advocated for a City Centre site and is substantially greater than that for a District Centre or Neighbourhood Centre. The plot ratio of the proposed development on

the Flanagan's site was 1.55, with a site coverage of 46%. Given the prominent and highly visible location combined with the sensitive, low density development surrounding the site as described above, it is considered that this plot ratio seems excessive.

7.3.3.3 The site coverage also seeks to optimise the use of the site. Although stated as 60%, this excludes the communal open space areas within the complex. The design seeks to break up the bulk and mass of the building by creating a H-block form and by recessing the central section of the Deerpark Road elevation and the upper floors on the Wilson Road elevation. However, any benefits from the reduced footprint are largely confined to the upper floors, as the footprint at the lower levels extends to the extremities of the site, and in the case of Wilson Road and North Avenue, incorporate the existing setback from the road. It is considered that the site coverage and footprint of the building is inappropriate to the setting as it replaces a soft and open interface with a hard building line on the boundary, particularly on Wilson Road.

7.3.3.4 The proposal to introduce three subterranean floors, one of which is partially above ground, is likely to negate the efforts to reduce the mass and bulk, as this necessitates the use of a podium design. Rather than taper the height by graduating the building in line with the sloping gradient, it is considered that the podium design exacerbates the difference in scale between the proposed building and the surrounding low rise development. The height, mass and bulk of the building is largely unrelieved on Deerpark Road, notwithstanding the central recess, and would appear monolithic. At its eastern end, where it cantilevers over the open space, it is considered to be visually obtrusive and would dominate the townscape and views within the area. The designated views from Deerpark would be adversely affected, as would views to and from the church, a local landmark. It would also appear incongruous and visually jarring when viewed from the Protected Structure, Stansted, and is likely to adversely affect its setting.

7.3.3.5 I would agree with the Area Planner's assessment that the proposed development is unlikely to result in any significant loss of residential amenity by reason of overlooking or overshadowing, due to the distances from neighbouring residential properties and intervening screening.

7.3.4 Height strategy

7.3.4.1 The Height Strategy in Appendix 9 of the CDP sets out the circumstances in which tall buildings could be accommodated within the built environment. In general, taller buildings are directed towards Sandyford, Dun Laoghaire, the N11 corridor (i.e. directly adjacent) and suburban infill sites (generally prominent corner sites). Although a general height of 2 storeys applies to areas such as Mount Merrion, buildings up to 3-4 storeys could be considered in certain circumstances, such as prominent sites within 500m walkband of N11, provided that there is no detrimental effect on the existing character and residential amenity. However, as the maximum height cannot apply in every circumstance, 'Upward' and 'Downward Modifiers' are used to justify increased height. The proposed development would have to meet more than one upward modifier, such as the creation of urban design benefits, significant enhancement of public realm, provision of new facilities in culture, education, leisure or health, or where the existing built environment or topography would permit higher development without damaging the appearance or character of the area.

7.3.4.2 The Area Planner considered that the proposed development did not qualify for upward modifiers, (apart from proximity to the QBC), as, unlike Flanagan's, it does not have a higher building on the site currently and the topography is significantly different to Flanagan's. It was further considered that the development would not qualify for the other upward modifiers. I would agree with this view. As discussed above, the proposed development would not deliver urban design benefits or enhance the public realm in a way that would be contextually acceptable and would be out of scale with the surroundings.

7.4 Traffic, road safety and parking

7.4.1 Traffic impact

- 7.4.1.1 The TIA was based on a traffic survey which was carried out at four junctions on Thursday 19th November 2015. An Automatic Traffic Count and Speed Survey was also carried out on North Avenue for a period of a week. The Traffic Survey Locations are shown in Figure 5.1 of the TIA. It is stated (4.1), however, that the public house and restaurant were not trading on the date of the traffic surveys. This has been a source of considerable concern to local residents as it was considered that the traffic impact assessment is unreliable.
- 7.4.1.2 It was further submitted that the TIA focused on peak am and pm weekday traffic, but excluded high volume traffic periods such as traffic associated with mass on Sundays, funerals, visitors to the park and retail traffic at weekends. Criticism was also made of the TIA as it was considered that no account was taken of the Flanagan's development or of service vehicles visiting the site. The latter issue will be addressed in the following section. I note, however, that the Revised TIA submitted with the grounds of appeal (12/08/16) stated that traffic generation associated with this development has been accounted for within the assessment for 2017 and 2032 scenarios (7.17). However, the trip generation figures (6.5) refer to just 98 bedrooms, which is the number of bedrooms proposed in the current application/appeal.
- 7.4.1.3 The traffic impact analysis indicated that the main impacts from the development would be at Junctions 1 and 2, (North Ave/Deerpark Rd and North Ave/Greenfield Road, respectively). The analysis also showed that North Avenue is already almost at capacity in the morning peak with an RFC on the southern arm of 0.79 at J1 and 0.74 at J2. These figures would increase to 0.85 for J1 and 0.80 for J2 in the design year with the development. Although the other arms would appear to be less affected, it is considered that this would be a serious level of congestion for a small mini-roundabout junction in a residential suburban location such as

this. Given that the analysis is based on data which excluded key traffic generators within the area, this causes further concern regarding the impact on these junctions and on the road network in the area.

7.4.1.4 The traffic impact assessment provides information relating to traffic flows, potential delays and capacity of junctions. However, it does not take into account the nature of the road network serving and in the vicinity of the site. It is clear from the submissions and my site inspections that the road network, which was originally designed to serve a local residential population, is under severe pressure from traffic travelling to/from the area with strong generators such as the pub/restaurant, the park and the church, and is also suffering from very high levels of through traffic due to its proximity to the N11 and to a number of high generators such as primary and secondary schools and UCD. The extensive level of traffic calming which exists throughout the area is testament to these travel patterns.

7.4.1.5 The roads are generally narrow and tree lined and the traffic calming, which includes extensive use of chicanes, pedestrian islands, mini-roundabouts and ramps, creates significant pinch-points on the road network, often reducing carriageways to single lanes. It is considered that the introduction of significant additional traffic to this road network would result in an adverse impact on the carrying capacity and proper functioning of these residential roads, which would in turn, affect the residential amenity of the area and pedestrian safety. I would also agree that the cumulative impact of the additional traffic introduced to the area by reason of the recently granted permission for mixed use on the adjoining site at Flanagan's, as well as other developments which are ongoing in the wider area, would exacerbate the situation further.

7.4.2 Service and Deliveries

7.4.2.1 It is stated in the grounds of appeal (page 18 Manahan Planning Appeal Statement) that service deliveries would be made by means of small delivery

vans. It is further stated that “Press-Up Entertainment suppliers arrive in small vehicles at set times, they do not permit large trucks due to time restrictions. The applicant is happy for this to be obliged by way of condition should planning permission be granted.” It should be noted, however, that the applicant is not Press-Up Entertainment, but Tomose, and it is difficult to see how any such condition could be enforced. Furthermore, it is noted that no analysis appears to have been carried out of the number or timing of deliveries. Many of the submissions from observers expressed concern that the traffic impact assessment did not include the impact of service vehicles and that it is impossible to assess the likely impact on road users, traffic safety and on residential amenity without such information. I would agree that this issue has not been adequately addressed and casts further doubt on the veracity of the TIA conclusions.

- 7.4.2.2 There is no waste management plan. Several observers have raised the issue of bin collection from the residential bin store on Level -2 and on what impact the waste management of the commercial element will have on the surrounding road network. I would agree that this issue needs to be addressed.

7.4.3 Car parking

- 7.4.3.1 The Neighbourhood Centre is currently served by on-street parking and by two large off-street car parks, one serving the church/school/community centre and the other on the appeal site. Notwithstanding this, the streets, and Deerpark Road in particular, experience significant parking congestion and illegal parking, as can be seen from the photographs of my site inspection. This appears to be generated principally by customers visiting the local shops, as well as Flanagan’s Furniture Store, (which had re-opened at the time of my visit), the car dealership, the park and parts of the appeal site. Although there were empty spaces in Kennedy’s car park, it was very well used, as was the church car park.
- 7.4.3.2 The proposed parking provision for the residential element, is 72 spaces, to be contained in the upper section of the underground element (Level -1), and

accessed separately from Deerpark Road. This parking provision complies with the CDP policies and standards. The proposed commercial parking provision is 113 spaces, to be contained in the lower level (-3). The TIA states that this would result in an overprovision of 5 spaces (Section 8.5 of TIA). The retail parking would be accessed from North Avenue and would be accessible by the general public. It is noted that the parking standard applied to the retail element is that for a shopping centre (1:50m²) as opposed to Retail – Food (Supermarket) -1,300m² (1:20m²) and Retail Comparison (450m² at 1:50m²). Thus the TIA indicates a requirement of 35 parking spaces for the entire retail element as a composite, whereas my interpretation of the CDP standards (Table 8.2.4) is 65 spaces for the convenience store and 9 spaces for the smaller units combined. Thus there seems to be a shortfall of 34 spaces in terms of the CDP requirements (147 rather than 108 spaces).

7.4.3.3 It is noted that the Transport Dept. of the P.A. indicated an expectation that the convenience store would serve the local community, but still observed that the “proposed development is likely to increase demand for car parking in the area as well as resulting in a reduction of existing available car parking” and that “additional car parking may adversely impact on the surrounding road network by attracting more vehicular trips”. In light of the shortfall identified above, and to the likelihood that the proposed convenience store is likely to draw custom from a much wider catchment than a smaller and/or mainstream supermarket, it is considered that the proposed development is likely to result in increased pressure on on-street parking spaces, which is likely to have an adverse impact on the existing shop units in the neighbourhood centre.

7.4.3.4 The location of a loading bay on Deer Park Road would further reduce the available on-street parking spaces and would be hazardous in such close proximity to the roundabout junction, the proposed pedestrian crossing and to the residential car park entrance.

7.4.4 Road safety

7.4.4.1 I would agree with the P.A. Transport Dept. who identified a need for a 'Quality Audit', (comprising a Road Safety Audit, an Access Audit and a Walking audit), to demonstrate that the proposed development is in compliance with the Design Manual for Urban Roads and Streets and for the incorporation of pedestrian desire lines. The site of the proposed development is located at a point of both high pedestrian and vehicular movement. The site is directly adjacent to uses which generate a high level of pedestrian activity but is physically separated from the park, playground, school, church, community centre and shops by Deerpark Road and the roundabout junction with North Avenue. It is considered that a design and layout which would be in accordance with the guidance contained in DMURS would be of critical importance in this location, particularly given the role and function of the Neighbourhood Centre.

7.4.4.2 The proposed development introduces three new entrances, and a loading bay in place of two existing entrances. The proposed car park entrance on Deerpark Road is sited directly adjacent to the proposed pedestrian zebra crossing, linking the site to the playground, which would be hazardous for pedestrians. This entrance is also close to one of the main pedestrian entrances to the site and to the roundabout junction. The proposed entrance to the Retail carpark from North Avenue is wedged into a short length of frontage between the café on the corner and the main pedestrian entrance the large retail unit (and entrance to gym). It is difficult to see how vehicles entering and leaving this car park would interact with pedestrians without causing a hazard. The proposed service/delivery entrance is sited on a quiet residential street immediately to the west of the café with its active frontage.

7.4.4.3 Although the applicant states that the entrances will comply with the necessary sightlines, there are no drawings to demonstrate this. It is considered that the design and layout of the proposed development, as submitted, would not be in accordance with the principles in DMURS which seek to ensure the creation of

safe, attractive and vibrant streets. In the absence of a safety audit and sightline drawings at the entrance points, it would be difficult to be satisfied that the proposal would not give rise to a traffic hazard.

7.5 Construction impacts

7.5.1 A Construction Management Plan was submitted with the grounds of appeal in response to the concerns raised by local residents and to the comments made in the P.A. reports. It includes information on proposals regarding working hours, control of noise, mud and dust and on the site compound (Section 3). It also includes information on proposals for construction traffic management (Sections 4 and 5). The information is generally of a standard nature in line with best practice principles. However, it is noted that the location for the site compound and associated construction worker parking has not been identified. It is further noted that the haul routes identified are principally along North Avenue for the purpose of deliveries (4.12). It is stated that “access to the site from the N11 can be achieved from the south via Trees Road Lower and North Avenue or alternatively, from the north via The Rise, Greenfield Road and North Avenue. It is considered that North Avenue, although the principal route through the area, is unlikely to be suitable for heavy vehicles due to the traffic calming measures along its route, which reduces its width to single lane carriageway in parts. Should the Board be minded to grant permission, it is considered that further information on haul routes and car parking for construction workers should be requested. Furthermore, the cumulative impacts of construction working and traffic arising from the implementation of the previously permitted development on Flanagan’s site and the current proposal should also be addressed in construction management.

7.6 Infrastructural capacity

7.6.1 It is noted that the Engineering Report submitted with the grounds of appeal provides a response to the issues raised by the Drainage Section of the P.A. in respect of the proposed drainage proposals. It is noted that the applicants have

liaised with the Drainage Section and have revised their proposals accordingly. It is considered that should the Board be minded to grant planning permission, a condition requiring compliance with the planning authority's requirements should be attached to any such permission.

7.7 Other matters

7.7.1 Land ownership

7.7.1.1 The P.A. and the observers have raised concerns regarding land ownership issues. These principally relate to the grass strip on Wilson Road, which is proposed to be absorbed into the development, and to the proposal to create a vehicular crossing on North Avenue together with the relocation of the public footpath behind the proposed landscaping along the roadside edge. The appellant has provided some documentary evidence to show that there is adequate legal interest to pursue these proposals on Wilson Road. It is considered, however, that the onus is on the applicant to ensure that sufficient legal interest exists in order to be in a position to implement any planning permission. I would refer the Board to Section 34(13) of the Planning and Development Act 2000 (as amended) which states that "a person shall not be entitled solely by reason of a permission under this section to carry out any development".

7.7.2 Precedent

7.7.2.1 Several observers raised the issue of the creation of a precedent by granting permission for the development as proposed. It is considered, however, that each case must be considered on its merits in terms of how it relates to the site conditions and complies with the policy guidance in place. Notwithstanding this, it is normal practice to take into account permissions for recent developments in an area. Given the location of the site within a Neighbourhood Centre, of which there are several in the district, it is considered that a permission for a development such as that proposed could have implications for further developments in wider area in the future.

7.7.3 Cumulative impact

7.7.3.1 Many observers raised the issue of cumulative impact with, firstly, the permission on the Flanagan's site, and secondly, with other recent permissions for development in the overall area. The cumulative impacts raised related principally to matters such as traffic, noise and disturbance and construction impacts. It is considered that this matter has been addressed in the preceding sections.

7.7.4 Community consultation

7.7.4.1 The submissions from both the appellant and the observers have raised the issue of pre-application consultation with the local community. It is noted that there were in excess of 300 submissions made to the planning authority and that a further 157 submissions made as observations on the grounds of appeal. However, as this form of consultation is not a statutory requirement, it is considered that this is a matter between the applicant and the local community.

7.8 Appropriate Assessment

7.8.1 Having regard to the nature and scale of the proposed development and the nature of the receiving environment in a serviced and built-up area, (as described above), it is considered that no Appropriate Assessment issues arise. It is considered, therefore, that the proposed development would not be likely to have a significant effect, individually or in combination with other plans or projects, on a European site.

8.0 Recommendation

8.1 I recommend that planning permission should be refused for the reasons and considerations as set out below.

9.0 REASONS AND CONSIDERATIONS

1. Having regard to

- the Retail Planning Guidelines (2012), to the Retail Strategy for the Greater Dublin Area (2008) and to the policies contained in the current Dun Laoghaire Rathdown County Development Plan 2016-2022;
- the proximity of the site to the Level 2 Town Centres at Dun Laoghaire and Dundrum and to the Level 3 District Centres at Stillorgan and Blackrock, and to the extensive range of convenience retail floor space in the vicinity of the site;
- to the designation of the site as a Level 4 Neighbourhood Centre in the Retail Hierarchy, which is defined in the Retail Planning Guidelines as comprising a range of mixed use development incorporating small scale retail floor space serving a small, localised catchment by sustainable forms of transport; and
- to the scale of the convenience retail floor space proposed;

the Board is not satisfied on the basis of the submissions made in connection with the planning application and appeal that the proposed development would not lead to over-provision of retail facilities sufficient to undermine the viability of existing businesses in the area. The proposed development would, therefore, be inconsistent with the role and function of a Neighbourhood Centre, would be contrary to the retail policies contained in the current Development Plan for the area and to the proper planning and sustainable development of the area.

2. Having regard to

- the location of the site in a visually prominent position in the established Neighbourhood Centre, which is at the heart of a low density, low rise residential suburb with an attractive and cohesive character;
- the topography of the site and surrounding area with varying ground levels;
- the views available to, from and through the site of a Protected Structure and other prominent buildings and towards Dublin City and Bay, a view which is designated for protection in the current Dun Laoghaire Rathdown Development Plan,

it is considered that the proposed development, by reason of its scale, height, mass, bulk and form, its podium design and elevational treatment with an absence of animated frontages at street level, and the provision of three separate vehicular access points, fails to respect the scale and character of the established development in the vicinity or to create attractive streets which address the surrounding streets. The proposed development would, therefore, result in overdevelopment of the site, would relate poorly to its receiving environment which would seriously injure the visual amenities of the area and would be contrary to the proper planning and sustainable development of the area.

3. The Board is not satisfied, on the basis of the submissions made in connection with the planning application and appeal, that there is sufficient capacity within the surrounding road network to accommodate the additional traffic generated by the proposed development. Furthermore, it has not been sufficiently demonstrated that the proposed layout and access arrangements would ensure

the safety of all road users in the vicinity of the site or that adequate levels of car parking have been provided within the curtilage of the site. The proposed development would, therefore, result in on-street parking and generate traffic turning movements that would tend to create serious traffic congestion, and would endanger public safety by reason of traffic hazard.

Mary Kennelly
Senior Planning Inspector

25th November 2016