



An  
Bord  
Pleanála

## Inspector's Report PL06D.247915

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<b>Development</b>	Demolition of 6 dwelling houses and the construction of 34 dwelling houses and the construction of part of the Cherrywood SDZ Planning Scheme's Druid's Glen Road from the N11.
<b>Location</b>	Site at Beech Park, Bray Road, Cabinteely, Dublin 18.
<b>Planning Authority</b>	Dun Laoghaire-Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	DZ16A/0587
<b>Applicant(s)</b>	O'Flynn Capital Partners
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant, subject to 45 conditions
<b>Type of Appeal</b>	First Party -v- Conditions 2 & 40 – 43 Third Party -v- Decision
<b>Appellant(s)</b>	O'Flynn Capital Partners The Toal Family
<b>Observer(s)</b>	An Taisce South County Dublin Association

**Date of Site Inspection**

10<sup>th</sup> April 2017

**Inspector**

Hugh D. Morrison

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## 1.0 Site Location and Description

- 1.1. The site is located 0.6 km to the south of Cabinteely and 0.9 km to the north of the junction between the Bray Road (N11) and the Wyattville Road (R118), the junction which serves Cherrywood from the east. This site lies within an area that accompanies the Bray Road, a dual carriageway with bus lanes on either side of it. This area comprises individual dwelling houses set within their own grounds that front onto the Road, filling stations on either side of this Road, and Kilbogget Park on its eastern side. The site lies on the western side of the Road and it comprises six vacant house plots and lands to the rear that accompany the eastern bank to the Cabinteely Stream. These lands, and the lands to the west of this Stream, are undeveloped and the latter are in agricultural use. Further, to the north west, lie multi-storey apartment blocks which lie off Brennanstown Avenue.
- 1.2. The site extends over an area of 2.79 hectares. It is the subject of gentle/moderate gradients that slope in a westerly direction towards the aforementioned Stream. The side and rear boundaries of the house plots are lined with trees and hedgerows and the most northerly of these plots, Silver Slope, has been more extensively planted with trees. The adjoining house plot, Woodhaven, is excluded from the site and the remaining house plots, which form a row on a north/south axis, are named El Dorado, Greenhills, Capard, The Galliard, and Teely Lodge.
- 1.3. The site is of amorphous shape and it includes a strip of land that extends further to the south. This strip passes through the rear gardens of a further five house plots, which are named Dun Baoi, Corrente, Lynwood, Foinavan, and Woodbrook. The site is bound, to the north, principally by the Centenary Filling Station, to the east, by the N11, to the south, by the house plot Dun Baoi, and, to the west, by the Cabinteely Stream and open space.

## 2.0 Proposed Development

- 2.1. Demolition of 6 dwelling houses and ancillary structures and the construction of 34 dwelling houses comprising:

- Type A: 16 three storey, semi-detached, four-bed dwelling houses,
- Type A1: 4 two storey, semi-detached, four-bed dwelling houses,
- Type C & C2: 6 two storey, semi-detached, three-bed dwelling houses, and
- Type C1: 8 two storey, terraced, three-bed dwelling houses.

2.2. Construction of part of the Cherrywood SDZ Planning Scheme's Druid's Glen Road (also known as P to Q) from its connection with the western boundary of the subject site for a distance of c. 160m to its connection to the N11 and all associated development and infrastructural works including the part-provision of the Druid's Glen Road Bridge, with two options proposed:

- Option 1: Up to 27.6m of the bridge comprising 1 complete abutment and 1 partial bridge pier, to the western boundary of the subject site (the 3-span Druid's Glen Road Bridge will have an overall span of c. 46m, with 2 abutments and 2 piers, with the balance to be built as part of a subsequent permission yet to be secured on the lands to the west of the subject site), and
- Option 2: Up to 23.2m of the bridge comprising 1 partial abutment and 1 partial bridge pier, to the western boundary of the subject site (the 3-span Druid's Glen Road Bridge will have an overall span of 41.8m, with 2 abutments and 2 piers, with the balance to be built as part of a subsequent permission to be secured on the lands to the west of the subject site).

2.3. Works providing for the connection of the Druid's Glen (P to Q) Road to the N11 are also included in the development proposal.

2.4. Construction of waste storage facilities, associated car parking spaces and bicycle parking spaces, respectively, vehicular, pedestrian, and cycle access and egress, provision of electric vehicle charging points, provision of boundary treatments, including associated lighting, alterations to existing site services, changes in levels, including associated retaining features, associated hard and soft landscaping, including a playground, and all associated site excavation, and infrastructural and site development works above and below ground.

- 2.5. Works to the N11 (external to the site) to facilitate the construction of the junction with the Druid's Glen Road will be undertaken by Dun Laoghaire-Rathdown County Council in its capacity as Roads Authority for the area. It is proposed not to operate the road infrastructure, the subject of this application, until such time as the Council has permitted and constructed that element of the works on the N11 to facilitate development of the complementary junction.
- 2.6. Under a Part V agreement, the applicant proposes that 10% of the dwelling houses be allocated for social housing.

### 3.0 Planning Authority Decision

#### 3.1. Decision

Following receipt of further information, permission was granted, subject to 45 conditions. The following conditions are the subject of the applicant's appeal:

*2. With respect to the area outside the Planning Scheme: Houses Nos. 15 – 34 shall be omitted in addition to the roads and physical infrastructure required to serve these units. The playground shall also be omitted. The applicant shall provide revised drawings for the written agreement of the Planning Authority. If agreement cannot be reached between the developer of the land and the Planning Authority, the matter may be referred to the Board for determination.*

*Reason: To prevent piecemeal development and to provide for a comprehensive design of the overall holding that accords with the County Development Plan, 2016 – 2022, policy regarding density.*

40. Under the Supplementary Development Contribution Scheme for the Luas Line B1 (Sandyford Depot to Cherrywood), a levy of €555,802.92 (with respect to the area outside the Planning Scheme) + 5% compound interest added annually on 13<sup>th</sup> January.
41. Under the Development Contribution Scheme, a levy of €3,098.62 (with respect to the area outside the Planning Scheme) towards Surface Water Public Infrastructure and Facilities + annual update on 1<sup>st</sup> January in accordance with the SCSi Tender Price Index.

42. Under the Development Contribution Scheme, a levy of €70,959.70 (with respect to the area outside the Planning Scheme) towards Roads Public Infrastructure and Facilities + annual update on 1<sup>st</sup> January in accordance with the SCSi Tender Price Index.
43. Under the Development Contribution Scheme, a levy of €46,061.68 (with respect to the area outside the Planning Scheme) towards Community & Parks Public Infrastructure and Facilities + annual update on 1<sup>st</sup> January in accordance with the SCSi Tender Price Index.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

See the request for further information.

#### **3.2.2. Other Technical Reports**

- Housing: Condition concerning the completion of a Part V agreement requested.
- Drainage: Following receipt of further information, clarification of this information requested.
- Planning and Organisational Innovation: Engineering advice concerning taking-in-charge.
- Infrastructure and Climate Change: Advice on the legal status of Plot 201C.
- Transportation: Following receipt of further information, no objection, subject to conditions.
- Parks and Landscape Services: Following receipt of further information, clarification of this information requested.
- Public Lighting: No objection.

### **3.3. Prescribed Bodies**

- NTA: Pedestrian access off Beech Park adjacent to proposed plot 14 recommended and condition making final design of proposed link road

contingent on agreement of Planning Authority in conjunction with the NTA and the TII.

- TII: Recommendations of the TTA and RSA should be followed and phasing with the road identified as P – Q in the Cherrywood SDZ Planning Scheme to be secured.
- DoAHRRGA: No objection on archaeological grounds, subject to testing and monitoring, and mitigation measures in Ecological Impact Assessment to be implemented in full and tree felling to occur outside the bird nesting season, i.e. between 1<sup>st</sup> September and 28<sup>th</sup>/29<sup>th</sup> February.
- HSE: Environmental Health: Standard advice concerning the mitigation of noise and air pollution.
- Irish Water: Standard conditions requested plus one concerning the need for a permanent solution to the temporary one proposed for pipe run FMH 1.5 to FMH 1.1.
- An Taisce: Advises that, in view of a Medieval cemetery (DU026.119), archaeological monitoring be undertaken. Objection raised to the proposal on the grounds of inadequate housing mix, poor layout, which takes insufficient account of existing trees, and the need for a convenience shop.
- IFI: Observations with respect to site, which is within the regionally important Carrickmines/Shanganagh salmonid system.

#### 3.4. **Third Party Observations**

See grounds of the third party appeal.



## 4.0 Planning History

### **The site and lands to the south:**

#### **D15A/0385**

A residential scheme on a site comprising the lands of Woodbrook (8 Beech Park), Foinavan (7 Beech Park), Lynwood, Corrente, Dun Baoi (4 Beech Park), Teely Lodge, The Galliard, El Dorado, Capard, Greenhills and Silver Slope and the road area and associated open spaces at Beech Park, Bray Road, Cabinteely, Dublin 18/Loughlinstown, Co Dublin and its connection with the N11. The site includes some 0.7892 ha forming part of Development Area 5 (Druid's Glen) of the Cherrywood Strategic Development Zone Planning Scheme (April 2014). (The balance of the site is located within the lands designated by Government for the establishment of a Strategic Development Zone (SI No. 535 of 2010, but is outside the Planning Scheme area). The site is principally bounded by an ESSO petrol station to the north, the N11 to the east, Nos. 2-4 Sunnyhill Park, Loughlinstown to the south and partly by the Cabinteely Stream and open space to the west (the property identified as Wood Haven, Beech Park, Cabinteely, Dublin 18 between Silver Slope and El Dorado, does not form part of this development).

The development will consist of the demolition of 11 no. residential units and ancillary structures and the construction of a scheme comprising 164 no. residential units (comprising 60 no. 4-bed semi-detached houses (with the option to provide combinations of House Type A (3 no. storey) and/or House Type A1 (2 no. storey)); 2 no. 4-bed, 3 no. storey detached houses (House Type A2); 12 no. 4-bed, 3 no. storey plus study semi-detached houses (House Type B); 2 no. 3-bed, 2 no. storey semi-detached houses (House Type C); 12 no. 3-bed, 2 no. storey terrace houses (House Type C1) and 76 no. 2-bed and 3-bed, 2 and 3 no. storey duplex apartments (Blocks D, E, F & G).

The development will also consist of the construction of part of the Planning Scheme's Druid's Glen Road (also known as P to Q) to its connection with the western boundary of the subject site for a distance of approximately 158m from its

connection to the N11 (and all associated development and infrastructural works). This includes the provision of up to 30m of the Druid's Glen Road Bridge, comprising one complete and 2 no. partial bridge abutments to the western boundary of the subject site. This will also involve the diversion of approximately 40m of the Cabinteely Stream. (The overall 3-span Druid's Glen Road Bridge will measure 36m in length, with 4 no. bridge abutments with the balance to be built as part of a subsequent permission yet to be secured on the lands to the west of the subject site.)

The development will also include the construction of waste storage facilities, associated car parking spaces and bicycle parking spaces respectively, vehicular, pedestrian and cycle access and egress, provision of boundary treatments, associated lighting, alterations to existing site services, Sustainable Urban Drainage Systems, compensatory storage facilities, changes in levels, associated hard and soft landscaping including a playground and all other associated site excavation and infrastructural and site development works above and below ground. Works to the N11 (external to the application site) to facilitate the construction of the junction with the Druid's Glen Road will be undertaken by Dún Laoghaire-Rathdown County Council in its capacity as Roads Authority for the area. All proposed works affecting the public drainage system are subject to detailed agreement with the Water and Drainage Department of Dún Laoghaire-Rathdown County Council.

This application was refused on 31<sup>st</sup> July 2015 on the grounds of flood risk, inadequate design, adverse precedent/unsatisfactory traffic management, and inconsistency with the Cherrywood Planning Scheme with respect to sequencing and ecology. However, this decision to refuse was the subject of a Judicial Review [2015 No. 514 J.R.], which resulted in it being set aside by the High Court on 10<sup>th</sup> August 2016. The revived application is presently the subject of a request for additional information that was made on 16<sup>th</sup> December 2016.

**Pre-application consultation** occurred on 14<sup>th</sup> April 2014.

## **Adjoining site to the north:**

### **D15A/0716**

Development of site (c.1.26ha), which will consist of 51 no. dwellings comprising of 21 no. apartments in a building ranging in height from 3 to 5 storeys consisting of 5 no. 1 bed units, 14 no. 2 bed units and 2 no. 3 bed units, including balconies or terraces and solar panels on the roof; 30 no. terraced/detached houses ranging in height from 2 to 3 storeys consisting of 4 no. 2 bed houses, 9 no. 3 bed houses and 17 no. 4 bed houses, including private gardens and solar panels on the roof and all associated site development and landscaping works including public open space (c. 1,270 sq.m), communal open space (c. 195 sq.m) and boundary treatments, provision of a communal bin store and plant room within the apartment block, an ESB unit sub-station (c. 4 sq.m) and 95 no. surface car parking spaces and 59 no. bicycle spaces in a variety of locations across the site.

Vehicular access is provided via the existing 'Cartref' access to the Old Bray Road which is to be widened to provide two-way access and a footpath and the existing 'Ards' vehicular access to the Old Bray Road is to be retained to serve 1 no. proposed dwelling.

The proposed development involves the demolition of 2 no. existing dwellings 'Cartref' (c. 206.5 sq.m) and 'Ards' (c. 263 sq.m) and associated outbuildings and provides for a future pedestrian link to the existing public open space, alongside Cabinteely Stream, adjoining to the west.

Permission is also being sought for the laying of a new surface water sewer outfall to Cabinteely Stream and a new foul sewer connection to the existing public foul sewer also located to the west of the site.

This application relates to a proposed development within the Cherrywood Strategic Development Zone but is outside the boundary of the Cherrywood SDZ Planning Scheme.

This application was the subject of appeal PL06D.246159 and it was refused on the grounds of insufficient density and sub-standard layout, on 26<sup>th</sup> July 2016.

## **N11 adjoining the site to the east**

Part VIII proposal for the N11 Junction Q Scheme, which would comprise a signalised junction with additional traffic lanes, full pedestrian and cyclist crossing movements, a refurbished pedestrian entrance into Kolboggett Park, improved bus stop layouts, and landscaping. This junction would connect the proposed Druid's Glen Road to the N11. This Road would pass through the northern portion of the current appeal site and it would serve the Cherrywood SPZ to the south and west. A public consultation exercise on this proposal concluded on 28<sup>th</sup> February 2017.

## **5.0 Policy Context**

### **5.1. Development Plan and Planning Scheme**

Under the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022 (CDP), the site is shown as lying within the Cherrywood SDZ, although only the northern portion of this site, i.e. the house plot Silver Slope and the corresponding lands to the rear of this plot, is the subject of the Cherrywood Planning Scheme (CPS). Silver Slope and the said lands are shown in this Scheme as being the route for a new access road, Druid's Glen Road, to Cherrywood from the N11 (cf. Map 4.5 P3 – Q and Table 7.1). The said Table states that permission must have been granted for this Road before it is granted for any other proposals in Development Area 5 and, prior to the occupation of 40% of new dwelling houses, work on this Road must have commenced and, prior to the occupation of 70%, work must have been completed.

The said portion of the site also overlaps with the site of a Recorded Monument and Place (RMP), which extends further to the north, i.e. DU026-119.

The central and southern portions of the site are zoned Objective A, "To protect and improve residential amenity," and the most westerly portion of the site is zoned Objective F, "To preserve and provide for open space with ancillary active recreational uses."

### **5.2. Natural Heritage Designations**

n/a

## 6.0 The Appeal

### 6.1. First Party Grounds of Appeal

In relation to condition 2, the applicant cites the following grounds of appeal:

The Planning Authority takes exception to the 19 dwelling houses that would be omitted, as they would have a density of 32 units per hectare. Yet it is mistaken to do so in the light of the following considerations:

- The Cherrywood Planning Scheme (CPS) for lands to the west/south of the site envisages neighbourhoods wherein densities would be 35 – 50 units per hectare. These neighbourhoods would be close to a QBC and the Luas Line B1.
- The Supplementary Development Contribution Scheme (SDCS) for the Luas Line B1 refers to an overall density of 50 units per hectare. As some neighbourhoods would be well in excess of this figure, others must be below to achieve the stated average.
- Density was not cited as a reason for refusing application D15A/0385, a decision which was subsequently set aside by the High Court [2015 No. 514 JR].
- Policy RES 3 of the CDP “promotes” higher densities, rather than mandates them, i.e. the inherent characteristics of sites and the quality of emerging development are of relevance, too.
- Given the topography of the subject site for Phase 1 and the proximity of Woodhaven, the proposed density would be appropriate. Precedent for similar densities is provided by appeal decisions PL06D.243799 and PL06D.243193.

In relation to condition 40, the applicant cites the following ground of appeal:

Under Section 48(10)(b) of the Planning and Development Act, 2000 – 2015, this condition is appealed on the basis that the Planning Authority did not properly apply its SDCS for the Extension of the Luas Line B1 from Sandyford to Cherrywood. In this respect the following points are made:

- The levy of €555,802.92 relates to a portion of the site with an area of 1.58 hectares. The Planning Authority has indicated that this portion lies outside the CPS and it also excludes the proposed area of open space and the lands that form part of the N11, which are in the ownership of the County Council.
- The applicant has highlighted on a plan (Figure 5.4) the portion of the site, which they consider should be levied, i.e. an area of 0.68 hectares, which comprises the 14 permitted house plots and the accompanying cul-de-sac and access road from the proposed Druid's Glen Road in the CPS lands. (The applicant contends that, as proposed infrastructure would serve the overall development and not just the 14 permitted dwelling houses, its area of 0.37 hectares should not be included). As the present residential contribution rate is €351,774 per gross site hectare, the relevant levy would be €239,206.32.

In relation to conditions 41 – 43 (inclusive), the applicant cites the following grounds of appeal:

Under Section 48(10)(b) of the Planning and Development Act, 2000 – 2015, this condition is appealed on the basis that the Planning Authority did not properly apply its Development Contribution Scheme (DCS). In this respect the following points are made:

- If the levies cited in the subject conditions are aggregated, then a levy of €120,120 is obtained, i.e. €8,580 x 14. This levy fails to take account of the exemptions in the DCS for social housing units and the demolition/ replacement of existing dwelling houses (cf. Section 10 Items (f) and (g)). Thus, the applicant proposes that, under a Part V agreement, 3 dwelling houses would be social housing units and 6 existing dwelling houses would be demolished/replaced. Under the DCS, 50% of demolished dwelling houses can be allowed for, i.e. in this case 3. Thus, rather than 14, 8 dwelling houses should be levied, i.e. €68,640 would be the appropriate levy.

## 6.2. Third Party Grounds of Appeal

The appellant resides in the dwelling house known as Woodhaven, which would be retained and surrounded by the development site. The following grounds of appeal are cited:

- Despite being requested to do so, the applicant has not prepared a structural stability report on the southern boundary of Woodhaven, which would be affected by the proposal. Instead, the applicant submitted drawing no. D1792-FI-03 (revision A), which shows a retaining wall to the rear of house plots nos. 1 – 4 (inclusive) only. The absence of the said report means that the proposal could adversely impact upon the amenities of Woodhaven and lead to its devaluation.
- Exception is taken to the proposed siting of two spoil heaps, i.e. one would be sited adjacent to Woodhaven and one would be sited adjacent to Cabinteely Stream. These heaps should be re-sited to the entrance of Beech Park, to avoid air pollution that would impact upon residential amenity/public health.
- The Board is requested to address the following issues:
  - The allotted construction times would be insufficient to capture the arrival and departure of building site traffic at the beginning and ending of the working day, with adverse consequences for residential amenity.
  - Piling would risk damage to Woodhaven and it would adversely impact upon residential amenity/public health.
  - The proposed on-site access road from the proposed Druid's Glen Road would run to the rear of Woodhaven and thus risk the safety of local

residents. Instead the site should be accessed directly off the N11, as at present.

- The proposal would entail the closure of the existing front access to Woodhaven from the N11, an access that is used by carers and ambulances in attendance at the same. The land (Plot 201C) over which this closure would be undertaken is the subject of compensation, the amount of which has been contested, and so the appellant claims that it remains in their ownership.
- The proposed alternative rear access to Woodhaven from the proposed access road would be unsatisfactory as it would be too long and too steep. This access would thus not be comparable to the existing one and it would adversely impact upon residential amenity and the value of the property.
- Trees numbered 776 and 777C are considered to be boundary trees and so their felling and removal would necessitate trespassing onto the appellant's property. Their loss would erode the filtration role of trees at Woodhaven, which would mitigate the environmental pollution that would result from any construction phase.

### 6.3. Applicant Response

- A structural engineering report has been submitted, which provides a commentary on the interface between house plots nos. 1 – 14 (inclusive) and the southern boundary of Woodhaven. This commentary notes that the ground level rises from being below (western end) to being above (eastern end) that of the adjacent ground level within Woodhaven. Thus, retaining measures would only be necessary at the former end.

Trees and hedgerows within Woodhaven would be protected, as the rear fence line to house plots nos. 1 – 5 would be set back from the southern boundary and a protective fence would be erected to the rear of the remaining house plots.



- The siting of spoil heaps is shown indicatively only and it would be the subject of agreement with the Planning Authority at any construction phase. Works on-site would be monitored and managed to ensure that air pollution is limited by employing best practicable means.

The Cabinteely Stream would be protected by the erection of a silt fence, which would be retained insitu for the duration of any construction phase.

- The conditioned days and hours of construction works provide the framework within which the developer would be obliged to operate, thereby minimising the impact upon residential amenity.

Piling would be undertaken in accordance with relevant standards, i.e. BS 5228 Parts 1 & 2 1997.

Other relevant mitigation measures are set out in the EIS, which accompanies the current Part VIII proposal for Junction Q.

- The proposed Druid's Glen Road and the first 15m of the proposed site access road would be within the CPS and, as such, they cannot be the subject of an appeal. The next 50m is addressed. The proposed rear access to Woodhaven is shown at the instigation of the County Council, which wishes to see the front access closed, in line with the four other accesses from the N11 that would be closed.

The question as to the ownership of Plot 201C is addressed by a letter from the County Council, which consents to the inclusion of this Plot within the current application.

- The applicant undertakes to retain trees numbered 776 and 777C.

#### **6.4. Planning Authority Response to Applicant**

- In relation to condition 2, the applicant cites two appeal cases, which are at some remove from the site. Another such case (PL06D.246159) was for adjoining lands to the north. It was refused on the grounds of insufficient density.
- In relation to condition 40, the Planning Authority accepts the applicant's case.

- In relation to conditions 41 – 43 (inclusive), the demolition that would relate directly to the portion of the site in question would entail the loss of 3 dwelling houses only and so, under the 50% rule, a reduction of 1.5 dwelling houses is in order. Any allowance for the proposed 3 social housing units would be premature in advance of the completion of a Part V agreement. Thereafter, that portion of the levy attributable to the 3 social dwelling houses would be refunded. Thus, the levy should be €107,250.

## 6.5. Observations

An Taisce: See the comments made at the application stage.

## 6.6. Further Responses

n/a

## 7.0 Assessment

I have reviewed the proposal in the light of the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022 (CDP), the Cherrywood Planning Scheme (CPS), relevant planning history, and the submissions of the parties and the observer. Accordingly, I consider that this application/these appeals should be assessed under the following headings:

- (i) Land use,
- (ii) Density,
- (iii) Access,
- (iv) Amenity,
- (v) Site characteristics and development standards,
- (vi) Water,
- (vii) Levies, and
- (viii) AA.

## **(i) Land use**

- 1.1 The site lies within the Cherrywood SDZ. The northern portion of the site, i.e. Silver Slope and the corresponding lands to the rear of this house plot, lies within the Cherrywood Planning Scheme (CPS) and so is subject to the provisions of this Scheme. The remaining central and southern portions of this site lie outside the ambit of the CPS and so they are subject to the provisions of the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022 (CDP).
- 1.2 Under the CPS, the northern portion of the site is shown as providing the initial part of the route of the proposed Druid's Glen Road, which would provide a means of access from the N11 to the Cherrywood SDZ's Development Area 5 known as Druid's Glen. Map 4.5 of the CPS identifies this Road as a Level 2 one (50 km/h), which would run between points P (within the NE portion of the SDZ) and Q (the access point from the N11). Map 6.5 of the CPS shows green infrastructure accompanying either side of the said route, once it extends beyond a line<sup>1</sup> that is a continuation northwards of the rear boundary line of the house plot known as Woodhaven, and a walkway/cycleway traversing this route through the lands shown as green infrastructure. Unlike elsewhere in Development Area 5, this Map does not show an indicative access off Druid's Glen Road at this point and so I conclude that the new residential road now proposed was not envisaged by the CPS. Other Maps (5.1 & 5.2) in the chapter entitled "Green Infrastructure" show the strips of land on either side of the aforementioned route as natural greenspace, a designation that indicates soft landscaping only on either side of Druid's Glen Road.
- 1.3 Under the CDP, the existing five house plots in the central and southern portions of the site are subject to the zoning objective A, while the corresponding lands to the rear of the house plots known as El Dorado and Greenhills and the house plot known as Woodhaven (outside the site) are subject to the zoning objective F.
- 1.4 The proposal would entail the demolition of the dwelling house known as Silver Slope and the construction of the initial portion of the Druid's Glen Road and part

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<sup>1</sup> Prior to this line, under Specific Objective DA 35, the CPS envisages residential development on any remaining lands that there may be after the alignment of Druid's Glen Road has been agreed upon.

of a bridge across the Cabinteely Stream, in tandem with the County Council's construction of a new signalised junction on the N11, which is the subject of a proposed Part VIII scheme. This proposal would also entail the construction of a spur on the southern side of this Road, which would pass through a strip of land shown in the CPS as green infrastructure. This spur would serve a new road, which would initially be routed through lands to the rear of the house plots, Woodhaven, El Dorado and Greenhills, which are subject to zoning objective F, "To preserve and provide for open space with ancillary recreational amenities." The portion of these lands that would not be developed to provide this road would be laid out as publically accessible landscaped open space beside the Cabinteely Stream.

- 1.5 The proposal would also entail the demolition of five further dwelling houses and the construction of 34 dwelling houses and supporting roads and services on the house plots thus vacated. These dwelling houses would be sited within an area that is the subject of zoning objective A, "To protect and improve residential amenity."
- 1.6 Under Table 8.3.10 of the CDP, uses that are permitted in principle and uses that are open for consideration in zone F lands are identified. Under the proposal, the open space use would be permitted in principle. The proposed new road would primarily serve the proposed 34 dwelling houses and so it would essentially be a residential road. The Table does not cite residential under the two aforementioned headings and so under Section 8.3.5 of the CDP it is not permitted. This road would have a secondary role insofar as it would afford pedestrian access to the open space. (It would be at a higher level than this space and so the access would be by means of steps and ramps). I consider that such access could be afforded from the Druid's Glen Road and so its provision off this new road would not be critical to accessing the same. Table 8.3.10 does contemplate new build development within lands zoned F. However, this development would serve one of the uses identified in this Table, a pre-condition that is not fulfilled by the proposed residential road.
- 1.7 Under Table 8.3.2 of the CDP, residential is cited as a permitted in principle use and so the proposed 34 dwelling houses on the lands zoned A would be acceptable in principle.

- 1.8 Thus, under the proposal, the site's development to provide (a) the initial part of Druid's Glen Road would accord with the CPS, (b) dwelling houses on lands zoned objective A would be acceptable in principle, and (c) a new residential road to access these dwelling houses on lands variously identified as green infrastructure/natural greenspace under the CPS and zoned objective F under the CDP would go beyond that which was envisaged by the CPS and would contravene materially the CDP.
- 1.9 The Planning Authority permitted this proposal, albeit on the basis that 20 of the proposed 34 dwelling houses are omitted. Given item (c) of the proposal, the question of the material contravention of the CDP arises. Under Section 37(2)(a) of the Planning and Development Act, 2000 – 2015, the Board has the discretion to grant the current application even though this would entail a material contravention.
- 1.10 The applicant's planning and environmental report on the proposal states that it is of strategic importance as the proposed initial part of Druid's Glen Road that would be constructed in the northern portion of the site is critical to opening up Development Area 5 of the CPS. Much needed housing would be provided within this Area and so a contribution would be made to easing the national housing crisis.
- 1.11 I note that the First Growth Area of the CPS (cf. Map 7.2) includes this Area and that residential development within it is linked to the provision of Druid's Glen Road (cf. Table 7.1). I note, too, that under Table 7.10 there may be a reference to this Road under the item in the list of Phase 1 strategic infrastructure and services that reads "Provision of improved walking/cycling links between the N11 corridor and the Cherrywood SDZ area." The lead agencies for implementation and the lead agencies with primary funding responsibilities are cited as being, variously, the developer/County Council and the developer/NTA/County Council.
- 1.12 I accept that, under the CPS, the proposed Druid's Glen Road is critical to the progression of housing in Development Area 5. Specific Objective DA 35 anticipates that the northern portion of the current application site would have some potential for residential development alongside this Road. This would not,

however, appear to be realistic, in practise. In these circumstances, it is unclear how someone who owns the northern portion of the site alone would be in a position to contribute to the funding of the said Road. Clearly, the current applicant, as owner of the entire application site and adjoining lands further to the south, is not in this position. However, while all of the applicant's lands lie within the Cherrywood SDZ, only the northern portion lies within the CPS. The CPS, therefore, does not anticipate a scenario wherein reliance for developer funding of infrastructure within it would be linked to residential development out with it. Rather I consider that it is reasonable to assume that the CPS anticipates that such reliance would be linked to development occurring within the CPS.

1.13 Essentially, the current application requires that the CPS's green infrastructure/ natural greenspace designation be interrupted and the CDP's zoning objective F be contravened materially by residential development outside the CPS that would rely upon/partially fund the provision of new infrastructure within it. Notwithstanding the importance of the provision of Druid's Glen Road, I do not consider that, in all of the aforementioned circumstances, the envisaged departure from the proper planning and sustainable development of the area that would arise from the proposed new residential road would be justified.

1.14 I conclude that, as the new road to the proposed 34 dwelling houses would pass through lands that are shown as either green infrastructure/ natural greenspace in the CPS or zoned F for open space in the CDP, it would go beyond what is envisaged by the former document and it would contravene materially the latter document. I have considered whether, under Section 37(2)(a) of the Planning and Development Act, 2000 – 2015, a material contravention of the CDP would be justified and I concluded that, in all the circumstances pertaining to this application, it would not be so justified.

## **(ii) Density**

2.1 Under condition 2 of the draft permission, the Planning Authority omitted 20 of the proposed 34 dwelling houses on the basis that the applicant should provide a comprehensive design for their overall landholding that accords with the CDP's density policy. In this respect Policy RES 3 is of particular relevance, as this

Policy states that “It is Council policy to promote higher residential densities provided that proposals ensure a balance between the reasonable protection of existing residential amenities and the established character of areas, with the need to provide for sustainable residential development.” The Policy goes on to cite a number of documents, which the Planning Authority will have regard to. One of these is the Sustainable Residential Development in Urban Areas (SRDUA) Guidelines.

2.2 The SRDUA Guidelines address appropriate locations for increased densities.

One such location is that of public transport corridors, wherein minimum net densities of 50 dwellings per hectare should be exhibited, subject to appropriate design and amenity standards, on sites that are within either 500m walking distance of a bus stop or within 1 km of a light rail stop. The appeal site is adjacent to a north bound bus stop<sup>2</sup> on the N11, a QBC, and it lies c. 0.7 km “as the crow flies” from the Laughanstown Luas stop<sup>3</sup>. Given these distances and the ones set out in the notes below, I consider that the site lies on a public transport corridor as envisaged by the SRDUA Guidelines and so a minimum net density of 50 dwellings per hectare is appropriate.

2.3 Appendix A of the SRDUA Guidelines outlines how net residential density is to be calculated. In the light of this advice, I consider that the footprints of (a) the proposed 34 house plots and (b) the accompanying new road network, excluding Druid’s Glen Road are the relevant areas for aggregation. The applicant has calculated the footprints of the 14 house plots and adjoining new roads and the area of the publically accessible landscaped open space to be 0.68 hectares. For the purpose of calculating net residential density, the area of the said open space, which is stated to be 0.2175 hectares on drawing no. P2-S-R-501 revision A, should be deducted and the footprints of the remaining 20 house plots and adjoining new roads should be added in. I calculate the latter to be c. 0.63 hectares and so the relevant area for the calculation of net residential

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<sup>2</sup> The nearest pedestrian crossing of the N11 is to the north of the site and so I estimate that, if its use is allowed for, then the nearest south bound bus stop is c. 300m away. If a proposed footbridge were to be installed beside the proposed new junction at Q on the N11, the south bound bus stop opposite the site would become accessible and it would effectively be adjacent to the site.

<sup>3</sup> At present, for pedestrians and cyclists, the site is c. 1.7 km away from the Laughanstown Luas stop. Under the CPS, the proposed road network for Cherrywood would connect the site to this stop along alignments that would approximate to the stated distance of c. 0.7 km.

density would be 1.0925 hectares. The construction of 34 dwelling houses over this area would thus be equivalent to 31 dwellings per hectare, a figure significantly below the minimum of 50 dwellings per hectare.

2.4 The applicant<sup>4</sup> has appealed condition 2 of the draft permission. In their grounds of appeal, they draw attention to the following precedents for the density exhibited by their proposal:

- The CPS for lands to the west/south of the site envisages neighbourhoods wherein densities would be 35 – 50 units per hectare. These neighbourhoods would be close to a QBC and the Luas Line B1.
- The SDCS for the Luas Line B1 refers to an overall density of 50 units per hectare. As some neighbourhoods would be well in excess of this figure, others must be below to achieve the stated average.
- Density was not cited as a reason for refusing application D15A/0385, a decision which was subsequently set aside by the High Court [2015 No. 514 JR].
- Policy RES 3 of the CDP “promotes” higher densities, rather than mandates them, i.e. the inherent characteristics of sites and the quality of emerging development are of relevance, too.
- Given the topography of the subject site for Phase 1 and the proximity of Woodhaven, the proposed density would be appropriate. Precedent for similar densities is provided by appeal decisions PL06D.243799 and PL06D.243193.

2.5 The Planning Authority has responded by drawing attention to a further appeal decision, PL06D.246159, for the adjoining site to the north, which was refused by the Board partly on the grounds of inadequate density. This decision is considered to be of more immediate relevance than those cited by the applicant for more distant sites.

2.6 I would comment on the above grounds and response as follows:

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<sup>4</sup> They state that the “19” dwelling houses that would be omitted thereby would exhibit a density of 32 dwellings per hectare. I am unable to account for the reference to 19 dwelling houses, as the omission of dwelling houses numbered 15 – 34 (inclusive) would be 20. Consequently, the density exhibited by these dwelling houses would be somewhat less than the 32 stated.



- The CPS and the SDCS cited by the applicant are documents that address extensive areas of land and so I consider that they do not provide a satisfactory point of comparison with the current proposal, which is for a specific site.
- The Planning Authority's previous decision, which was set aside by the High Court, is not as relevant as the draft one that is now under review by the Board.
- While Policy RES 3 speaks of promoting rather than mandating, it does have regard to the SRDUA Guidelines, which cite net densities of 50 dwellings as a minimum in public transport corridors.
- During my site visit, I observed the topography of the site, which slopes downwards appreciably towards Cabinteely Stream. This topography is clearly a key factor in preparing layout and design options. As such, it poses both constraints and opportunities and so I remain to be persuaded that the topography *per se* should be accepted as a factor that necessarily limits the densities that could be achieved. While I accept that the presence of Woodhaven and the need to safeguard its amenities is a constraint upon those portions of the site within the vicinity of this residential property, I do not consider that the approach adopted by the current proposal in this respect is the only one available. Furthermore, I am concerned that the Planning Authority's decision, in effectively splitting this proposal in two by permitting the 14 dwelling houses within the vicinity of Woodhaven and omitting the remaining 20 dwelling houses further to the south would have the effect of limiting the available options for the future development of the remainder of the site. Thus, *prima facie* the densities that could be achieved on the site as a whole would be greater than those which could be achieved by the two stage approach that is the corollary of the Planning Authority's decision.
- The parties have drawn attention to Board decisions. The two cited by the applicant relate to residential developments in Goatstown and Foxrock. I have reviewed these cases and I consider that they are not directly comparable to the current proposal insofar as the former site does not lie on a public transport corridor and the latter site lies within an ACA. The one cited by the

Planning Authority adjoins the appeal site to the north. While this site is effectively a backland one, it is in other respects comparable to the current appeal site. The density proposed for the site was the equivalent of 46 dwellings per hectare and yet the Board considered this density to be inadequate.

2.7 I conclude that, in view especially of the recent planning history of the adjoining site to the north, the density of the proposal, at 31 dwellings per hectare, would fall significantly below the threshold of 50 dwellings per hectare sought by the SRDUA Guidelines and so it would fail to realise sufficiently the potential of the site's location within bus and Luas corridors.

### **(iii) Access**

3.1 The proposal would entail the construction of the initial part of the Druid's Glen Road, which would connect the N11 to Development Area 5 in the CPS. As such, this Road is envisaged by the CPS and so, under Section 170(2) of the Planning and Development Act, 2000 – 2015, provided what is proposed is consistent with what the CPS envisages, permission must be forthcoming.

3.2 Application D15A/0385 pertained to the current appeal site and the applicant's adjoining lands to the south. This application proposed, amongst other things, the construction of the initial part of the Druid's Glen Road. It was refused by the Planning Authority and this refusal was subsequently the subject of a Judicial Review [2015 No. 514 J.R.], which resulted in the Planning Authority's decision being quashed. The application has thus been revived and it remains to be determined a second time by the Planning Authority.

3.3 The aforementioned High Court Judgement established a number of matters with respect to Druid's Glen Road, which would run between a new junction on the N11, denoted as Q, and a point P3 within Development Area 5. These matters included the right of individual landowners to apply for permission to construct sections of this Road over their land and the right to do so in advance of permission being in place for the said new Junction Q. Furthermore, Paragraph 158 of this Judgement specifies the following matters that can properly be the subject of conditions:

- The design and construction of the Druid's Glen Road and its interface with Junction Q,
- Compliance with the guidelines and manuals or particular provisions within them set out in Chapter 4.2.7 of the CPS,
- The time within which the Druid's Glen Road should be constructed,
- The sequencing of its construction in the context of and relative to the construction of Junction Q, and
- Requiring that the detail of the road design and construction at the interface between the Druid's Glen Road and Junction Q be agreed between the County Council's Roads Department and the developer.

3.4 The proposed initial part of the Druid's Glen Road would connect, at its eastern end, to Junction Q, which is the subject of a current Part VIII proposal, and at its western end with a bridge over the Cabinteely Stream. The submitted plans depict this Junction and two options for the said bridge, i.e. option 1, which would have a span of 46m, and option 2, which would have a span of 41.3m. The County Council's Transportation consultee expressed a preference for the former option on the basis that its abutments would clear the flood plain for the Cabinteely Stream. I concur with this selection.

3.5 The Druid's Glen Road would combine multiple carriageways with cycle and pedestrian ways on either side. Junction Q would be signalised. This Road would slope downwards from east to west, e.g. spot heights show that at this Junction the N11 is 36.40m OD and at the proposed junction with the new residential road Druid's Glen Road would be 32.44m OD. At the further information stage, the applicant submitted plans (drawing nos. D1792-FI-01 & 02 revision B), which depict the interim arrangements that would allow the Road to be used solely as a means of access to the main body of the site wherein the proposed dwelling houses would be constructed. These plans also indicate that, whereas the greater portion of Druid's Glen Road in the northern portion of the site would be constructed under Phase 1, a latter Phase 2 would address the proposed bridge within the lifetime of the permission once the adjoining landowner to the west obtains permission for the remainder of the bridge.

- 3.6 I consider that the proposed initial part of Druid's Glen Road would be consistent with the provisions of the CPS in this respect. I consider, too, that this Road should be conditioned in a manner that reflects the above cited advice of the High Court. Thus, detailed plans of it, in accordance with Section 4.2.7 of the CPS, should be submitted to the Planning Authority, and construction of the Phase 1 Road and should be undertaken in conjunction with the construction of Junction Q. (The construction of the Phase 2 Bridge would need to be a combined project with the adjoining landowner and so, as a third party would be involved, I do not consider that this Phase can be the subject of a condition).
- 3.7 Beyond Druid's Glen Road, the initial part of the proposed new residential road is one that I have expressed reservations over/raised objection to, under the first heading of my assessment, on land use grounds, and, under the fifth heading, on visual amenity grounds. Nevertheless, this part and the remainder of the new residential road network falls to be assessed from an access only perspective.
- 3.8 The applicant has submitted plans that depict the gradients to which the residential road network would be subject to. They have also submitted plans that demonstrate that this network, including formal turning heads, would facilitate the satisfactory manoeuvres of vehicles, including refuse vehicles. Under further information, an additional pedestrian link between the N11 and the main body of the site was added, thereby improving the accessibility/permeability of the proposal. Each of the proposed dwelling houses would be provided with two off-street car parking spaces and an additional row of four visitor parking spaces would be sited in a position adjacent to the proposed children's playground.
- 3.9 I have reviewed the proposed residential road network and I consider that it would accord with relevant CDP standards and the advice of the Design Manual for Urban Roads and Streets.
- 3.9 I conclude that the proposed Druid's Glen Road would be consistent with the CPS and that from an access only perspective the proposed new residential road network would be satisfactory.

#### **(iv) Amenity**

4.1 The site is bound to the east by the N11 and to the west by the Cabinteely Stream and open space. To the north lies the Centenary Filling Station and to the south further house plots that are in the applicant's ownership. Thus, questions of amenity arise predominantly as a result of the island house plot, Woodhaven, within the site. To the north and west of this plot, the site would be laid out to provide roads, and to the south it would be laid out to provide a row of 14 dwelling houses, the rear gardens to which would abut the southern boundary of the said plot.

4.2 The third party appellant resides in Woodhaven. They have raised a cluster of issues that relate either directly or indirectly to the amenity of their residential property. These issues pertain to the stability of the southern boundary, the siting of two spoil heaps, construction phase concerns with respect to hours of operation and piling, permanent access arrangements, and the retention of two trees.

4.3 The applicant has responded to the issues thus raised as follows.

- They have submitted a structural engineering report that comments on the southern boundary. The existing and proposed falls in the site from east to west along this boundary is depicted and the need for retaining measures at the western end alone is established. Existing planting in Woodhaven would be protected by means of either protective fencing or again at the western end the setting back of such fencing from the same.
- The siting of the spoil heaps is shown indicatively. The actual siting of these heaps would be subject to agreement with the Planning Authority. The heaps would be managed in accordance with good practice and the Cabinteely Stream would be protected by means of a silt fence.
- The conditioned hours of operation are the standard ones for construction sites. The applicant undertakes to abide by the same.
- Piling would be undertaken in accordance with the relevant British Standards.
- The Druid's Glen Road would accord with the CPS and so it cannot be the subject of an appeal. The impetus for the alternative access for Woodhaven,

from the rear, arises from the County Council's proposal to close the existing front access. The County Council has stated that the strip of land highlighted in yellow on drawing no. D1792-C-20 revision B is within the N11 and so the Council has consented to its inclusion within the site. Access from the N11 to Woodhaven is across this strip. In the event such closure occurs, the indicative access to the rear illustrates how, in principle, this residential property could continue to be accessed.

- The applicant undertakes to retain the two trees in question.

4.4 I have reviewed the above exchanges between the appellant and the applicant. I consider that the issues raised by the appellant have been adequately addressed by the applicant. However, as the new access road from the proposed Druid's Glen Road is not shown in the CPS, it is not immune from being the subject of appeal. Additionally, I consider that the closure of the existing front access to Woodhaven is a matter for the appellant and the County Council, as Roads Authority, to address.

4.5 More generally, I note that the rear gardens of the proposed 14 dwelling houses, which would be sited in a row beyond the southern boundary to Woodhaven, would vary in depth between c. 11 and 12m. I note, too, that this boundary, which is denoted by hedgerows and trees, would be retained. Accordingly, these dwelling houses would not lead to any undue overlooking or overshadowing of this residential property.

4.6 I conclude that the proposal would be compatible with the amenities of the area.

#### **(v) Site characteristics and development standards**

5.1 The site at present comprises 6 house plots, which front onto the N11. To the rear of these plots is an area of open space that accompanies the Cabinteely Stream. The plots slope downwards to this space.

5.2 The applicant has undertaken a series of surveys of the site as follows.

- An archaeological assessment identifies a medieval cemetery (DU026-119) on adjoining lands to the north of the site. The zone of archaeological potential that surrounds this cemetery includes the northern portion of the site, i.e. the house plot Silver Slope and corresponding open space to the rear of

this plot. Archaeological monitoring is recommended for this portion of the site. The open space by the Cabinteely Stream is identified, too, as an area of archaeological potential and testing of this area is recommended.

- A comprehensive tree survey identifies the species and condition of each tree upon the site and allocates a grade to each one, too. An appreciable number of these trees are graded either A, ones of a high quality and value in such condition as to be able to make a substantial contribution, and B, ones of a moderate quality and value in such condition as to be able to make a significant contribution. The survey acknowledges that of the 5 grade A trees, 4 would be removed, and of the 63 grade B trees, 49 would be removed.
- An ecological impact assessment discusses flora and fauna. This assessment advises on the importance of ensuring that passage along the Cabinteely Stream is maintained, along with water quality, at all times. It also advises on the need to respect the bird nesting season and to ensure that the invasive species, Giant Hogweed, is treated and its spread avoided.
- A landscape design report, which presents a rationale for the proposed landscaping works within the context of existing and proposed landscaped open spaces in the surrounding area.

5.3 I note that the loss of trees in the northern portion of the site has been accepted implicitly by the CPS in the designation through this portion of the route of the proposed Druid's Glen Road. I note, too, that in the remainder of the site 3 grade A trees and 7 grade B trees would be removed. I am concerned that the layout of the proposal has not factored in the need for greater tree retention in the central and southern portions of the site.

5.4 As submitted the proposal would incorporate an area of publically accessible landscaped open space (0.2175 hectares) within the north western portion of the site and a children's play area (0.043 hectares) on the eastern side of the central portion.

- Quantitatively, Section 8.2.8.2 of the CDP requires that a minimum of 10% of the overall site area for residential development be reserved for public and/or communal open space. I consider that it is reasonable to exclude the northern portion of the site, which would be laid out to provide the initial part of the

proposed Druid's Glen Road. Accordingly, the aforementioned two areas of open space would exceed this stated minimum of 10%.

- Qualitatively, the former area of open space would be enclosed along its eastern side by gabion or crib wall, which would retain the proposed new residential road off Druid's Glen Road. Cross section D-D (drawing no. 308 revision 01) shows this wall as being 4.65m high with 1.2m high railings on top. It would thus be a dominant man-made feature within the said open space. This height would also necessitate the installation of extensive flights of steps and ramps to facilitate access to the open space. These items would add to the physical presence of the gabion or crib wall and its overall visual impact.
- Qualitatively, the latter area of open space would be sited adjacent to the N11 but at a lower level to the same, i.e. 3.37m. Cross section C-C (drawing no. 305 revision 01) shows the resulting change in levels being handled by means of grass terraces. It also shows the retention of an existing boundary wall alongside the N11. While the applicant has prepared an assessment of potential traffic noise impact with respect to the proposed dwelling houses, this assessment does not address the said impact upon the proposed children's playground. It should be extended to include this area of open space, too, so that the amenity value of the same can be more fully gauged. (The aforementioned assessment makes a series of recommendations with respect to the glazing that should be fitted to the proposed dwelling houses. These recommendations would ensure that the impact of traffic noise within dwelling houses is reduced to an acceptable level).

5.5 The applicant's architect has submitted a design statement that outlines the rationale for the layout of the proposal. He draws attention to the fall across the site, which averages a 1 in 10 slope downwards from east to west. He also draws attention to attractive westerly views of the Cabinteely Stream in the near distance and the Dublin Mountains in the far distance. Consequently, the majority of the dwelling houses would be laid out in two parallel rows at higher and lower levels and with east/west orientations. This layout would facilitate access to the said westerly views for almost all these dwelling houses.



5.6 The aforementioned design statement does not address the 14 dwelling houses that would be sited in a row to the south of Woodhaven. Their siting would appear to be a function of the retention insitu of this residential property. They would rise in their finished site levels from west to east and their principal elevations would face south. These dwelling houses would “read” as being overly regimented and an imposition upon the site, which would run against the grain of its topography.

5.7 A comparison of the proposal as depicted in the proposed site layout drawing no. P2-S-R-501 and revision A of the same, submitted under further information, shows some variation in house types. Thus, originally the two rows orientated on a north/south axis would have comprised the following house types:

- A (16, three storey, semi-detached, four-bed, 152 sqm dwelling houses), and
- A1 (4, two storey, semi-detached, four-bed, 136 sqm dwelling houses).

And the remaining row orientated on an east/west axis would have comprised the following house types:

- C (2, two storey, semi-detached, three-bed, 108 – 113.4 sqm dwelling houses),
- C1 (8, two storey, terraced, three-bed, 108 sqm dwelling houses), and
- C2 (4, two storey, semi-detached, three-bed, 108 sqm dwelling houses).

5.8 Under the revised plans, the latter row would comprise the following house types:

- A (6, two storey, semi-detached, two-bed, 84 sqm dwelling houses), and
- C2 (8, two storey, semi-detached, three-bed, 108 sqm dwelling houses).

Thus, under the revised plans a greater mix of dwelling size would be achieved.

5.9 The applicant’s architect has submitted a schedule of accommodation, which compares the specifications inherent to each of the proposed house types with recognised national and CDP residential standards. Compliance would be achieved consistently, except with respect to internal storage. In this respect, I note that each house type would appear to come with a generous array of built in cupboards and so I do not consider that, in practise, there would be a deficiency of internal storage space.

5.10 The applicant's architect has also submitted an outline specification of finishing materials. This specification shows that principal elevations would be finished in brick. Design-wise these elevations would incorporate front gable features and the three storey house types would have front dormers.

5.11 I conclude that, while the proposal would meet relevant residential standards, the site layout would fail to factor in sufficiently the retention of grade A and B trees, the proposed gabion or crib wall to the new residential access road would dominate the main area of proposed publically accessible landscaped open space, and the row of 14 dwelling houses orientated on an east/west axis would "read" as being overly regimented and an imposition upon the site. Accordingly, I conclude that the quality of the resulting proposal would fail to realise the potential afforded by the site's topography and sylvan character.

#### **(vi) Water**

6.1 The proposal would be served by the public water mains and the public sewerage system. A temporary sewer line is proposed that would connect the main body of the site to the existing Carrickmines Valley Sewer at a point at some remove to the south (cf. drawing no. D1792-C-08 revision B). Irish Water has enquired as to the envisaged permanent arrangements in this respect. The applicant advises that these would be entirely dependent upon the layout of future development.

6.2 The proposed surface water drainage system for the site would adopt SuDS methodologies. Thus, permeable paving and infiltration/filtration trenches would be installed. The site would be sub-divided into 5 areas, which would be served by underground modular storage tanks that would discharge, via petrol interceptors and hydro valves, into the Cabinteely Stream. The rate of discharge would vary between 1 litre per second upstream and 3.1 litres per second downstream.

6.3 Following receipt of further information, the County Council's Drainage Engineer advised of some outstanding detailed concerns over the proposed surface water drainage system for the site. The fine tuning that these concerns would entail could, if the Board is minded to grant, be the subject of a drainage condition.

- 6.4 Cabinteely Stream flows into Shanganagh River. These water courses are discussed in Appendix 13 of the CDP, which undertakes a Strategic Flood Risk Assessment (SFRA) of them and other water courses in Dun Laoghaire-Rathdown (cf. Section 5.3.3).
- 6.5 The applicant has undertaken a flood risk assessment of the proposal. They have transcribed the predicted 1% and 0.1% AEP flood plains onto the site (cf. drawing no. D1792-C-03 revision B). These plains would coincide with the eastern bank of the Cabinteely Stream and so they would overlap with the proposed publically accessible landscaped open space but not the proposed dwelling houses or their accompanying roads. (These dwelling houses would be sited and designed to have a minimum freeboard for a 1% AEP of 629 mm, which would be in excess of the minimum of 500 mm in this respect).
- 6.6 At the further information stage the applicant addressed the bridging of the Cabinteely Stream by the proposed Druid's Glen Road and the impact of the two bridge options upon flood risk. The height of the bridge, under these options, would ensure a clearance of 4.6m above the 1% AEP level of this Stream and its supporting columns would have a slight footprint, thereby removing a minimal area of the flood plain beneath. Thus, no appreciable additional flood risk would arise.
- 6.7 I conclude that the proposed water supply and drainage systems for the site would, subject to minor amendment of the proposed surface water drainage system, be satisfactory and that the proposal would not lead to any appreciable increase in the flood risk attendant upon the site.

**(vii) Levies**

- 7.1 The applicant has appealed conditions 40 – 43 (inclusive) of the draft permission. The first of these conditions relates to the Planning Authority's Supplementary Development Contribution Scheme (SDCS) for the Luas Line B1 (Sandyford Depot to Cherrywood). The appeal site lies within the lands affected by this SDCS and so the proposal for this site is subject to this Scheme.
- 7.2 The applicant contends that the Planning Authority did not properly apply the SDCS in levying the proposal under condition 40. Specifically, the area of the site used comprises the footprints of all the proposed house plots and the

accompanying residential roads. The applicant draws attention to the omission, under condition 2, of 20 of the 34 proposed house plots and so they insist that the appropriate area should exclude these 20 house plots and their accompanying residential roads.

7.3 The Planning Authority concurs with the applicant's contention in this respect. I do, too. Accordingly, the appropriate area is 0.68 hectares and, as the present levy under the SDGS is €351,774 per gross site hectare, the relevant levy would be €239,206.32.

7.4 The second, third, and fourth of the above cited conditions relate to the Planning Authority's Development Contribution Scheme 2016 – 2020 (DCS). The levies cited in these conditions specify the levies required under Classes 1 – 3 (inclusive) of the DCS, i.e. community and parks facilities and amenities, roads infrastructure and facilities, and surface water infrastructure.

7.5 The applicant contends that the Planning Authority did not properly apply the DCS in levying the proposal under the said conditions. Specifically, they contend that the exemption items denoted as (f) and (g) have not been allowed for. The former exemption relates to social housing. As the applicant proposes that 3 of the 34 dwelling houses would be for social housing, these 3 dwelling houses should not be levied. The latter exemption relates to replacement dwelling houses and it states that levies are to be charged on a 50% like for like basis. Thus, as 6 existing dwelling houses would be demolished, a further 3 dwelling houses should not be levied. Under the draft permission, only 14 dwelling houses were permitted and so, in the light of the above considerations, only 8 dwelling houses should have been levied.

7.6 The Planning Authority has responded to the applicant's case by insisting that, in advance of the completion of the proposed Part V agreement, it would be premature to allow for social housing. If this agreement is completed, then the developer could be refunded. The Planning Authority draws attention to the extent of the site that would be developed under the draft permission. Thus, rather than the demolition of 6 dwelling houses, only 3 would need to be demolished and thus under the 50% exemption an allowance of 1.5 dwelling houses would be appropriate.

7.7 I note that the 3 dwelling houses proposed by the applicant as social housing was based on the submitted proposal for 34 dwelling houses. Whether, under the draft permission for only 14 dwelling houses, they would still propose 3 dwelling houses as social housing appears unlikely. I note, too, that the wording of item (f) of the DCS implies that the Part V agreement has already been made. I, therefore, consider that the Planning Authority's approach to this item represents a proper application of the DCS.

7.8 Under the draft permission, 3 of the 6 existing dwelling houses on the site would be demolished. While I note that the grounds of a further dwelling house, Capard, would be encroached upon from the north, this dwelling house could be retained, albeit with a reduced curtilage. I thus consider that the Planning Authority's approach to item (g) represents a proper application of the DCS.

7.9 I conclude that the Planning Authority mis-applied the SDCS insofar as 0.68 hectares, rather than 1.58 hectares, is the appropriate area for levying. I also conclude that the Planning Authority mis-applied the DCS insofar as the replacement of 50% of 3 existing dwelling house was not allowed for. Consequently, the relevant number of permitted dwelling houses for the purposes of levying is 12.5.

**(viii) AA**

8.1 The applicant has submitted a Stage 1 Screening for AA document, which I will draw upon in carrying out such a screening for the proposal.

8.2 There are a considerable number of Natura 2000 sites within a 15 km radius of the site. Of these, the sites that would be of relevance to this screening exercise are the ones that would be potential receptors under any source/pathway/receptor routes. I have been able to identify two such routes from the site: one is that of the Cabinteely Stream/Shanganagh River and the other is the Carrickmines Valley Sewer, which is connected to the Shanganagh Wastewater Treatment Works. Both this Stream/River and these Works discharge to Killiney Bay. The northern portion of this Bay is the subject of two Natura 2000 designations, i.e. Rockabill to Dalkey Island SAC (site code 003000) and Dalkey Islands SPA (site code 004172). The conservation objectives that pertain to these sites relate, in the former case, to the maintenance of the favourable

conservation condition of reefs and Harbour porpoise, and, in the latter case, to the maintenance/restoration of the favourable conservation condition of Roseate, Common, and Artic Tern species.

- 8.3 During any construction phase, there is a risk that Cabinteely Stream/ Shanganagh River could be polluted and that pollutants could be conveyed thereby into Killiney Bay. However, good construction management practice would mitigate this risk. During any operational phase, the surface water drainage system would likewise discharge to this Stream/River. However, the installation of infiltration/filtration trenches and petrol interceptors within this system would likewise mitigate the risk of pollution. In both cases, any residual pollution risk would, as a result of the quantities of water in the Stream/River/ Bay, be the subject of a significant dilution factor.
- 8.4 During any operational phase, foul water would drain from the proposal to the Carrickmines Valley Sewer. This Sewer in turn is connected to the Shanganagh Wastewater Treatment Works, which discharges to Killiney Bay. There is sufficient capacity in these Works to process the said foul water and so they would not thereby be the subject of any heighten pollution risk.
- 8.5 It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Sites Nos. 003000 and 004172, or any other European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

## 8.0 Conclusion

In the light of my assessment, I conclude that the proposal, insofar as it relates to the construction of the initial part of Druid's Glen Road, should be permitted, as it would be consistent with the relevant provisions of the CPS in this respect. I also conclude that the remainder of the proposal should be refused, as the initial part of the proposed new residential road would be inconsistent with the green infrastructure/ natural greenspace designation of the CPS and it would contravene materially the

zoning objective F of the CDP. Furthermore, the retaining measures necessitated by this part of the road would be seriously injurious to visual amenity. The density of the proposed residential development would be insufficient for a site that lies within a public transport corridor and the quality of this development would be jeopardised by both the proposed layout, which would entail a row of 14 dwelling houses that would appear as overly regimented and an imposition upon the topography, and the failure to allow for greater tree retention.

## 9.0 Recommendation

That this application be the subject of a split decision: Thus, (i) the construction of part of the Cherrywood SDZ Planning Scheme's Druid's Glen Road from the N11 should be permitted, and (ii) the demolition of 6 dwelling houses and the construction of 34 dwelling houses should be refused.

## 10.0 (i) Reasons and Considerations

Having regard to the Cherrywood Planning Scheme and the planning and legal history of the northern portion of the site, the Board is satisfied that the construction of the initial part of the proposed Druid's Glen Road would be consistent with the provisions of this Planning Scheme and thus, under Section 170(2) of the Planning and Development Act, 2000 – 2015, and permission, subject to conditions, is in order in the interest of the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 25<sup>th</sup> day of November 2016 and by the further plans and particulars received by An Bord Pleanála on the 6<sup>th</sup> day of February 2017, 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. (a) The development hereby permitted comprises only the construction of Phase 1 Druid's Glen Road and all associated works and Phase 2 the Druid's Glen Bridge Option 1 and all associated works.

(b) Phase 1 of this development shall not open and become operational prior to the construction of Junction Q on the N11.

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

3. Prior to the commencement of development, the developer shall submit to the Planning Authority detailed drawings of Druid's Glen Road and Druid's Glen Road Bridge Option 1 and all associated works. These drawings shall reflect the provisions of Section 4.2.7 of the Cherrywood Planning Scheme. They shall include surface water infrastructure and landscaping proposals, which shall be fully consistent with one another. The working drawings shall be agreed in writing with the Planning Authority.

**Reason:** In order to ensure a satisfactory standard of road and bridge construction and in the interest of sustainability and visual amenity.

4. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the Planning Authority for such works and services.

**Reason:** In the interest of public health.

5. (a) The developer shall implement the mitigation measures recommended by the Ecological Impact Assessment submitted to the Planning Authority on 25<sup>th</sup> November 2016. In particular, the mitigation measures with respect to the Cabinteely Stream and the eradication of Giant Hogweed shall be fully implemented.

(b) All tree removal indicated on the drawing no. 300 revision 01 submitted to the Planning Authority on 25<sup>th</sup> November 2016 shall only be undertaken between 1<sup>st</sup> September and 28<sup>th</sup>/29<sup>th</sup> February.



**Reason:** In the interest of safeguarding and promoting indigenous flora and fauna and in order to avoid the bird nesting season, in the interest of nature conservation.

6. 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.

7. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

8. 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:

- (a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
- (b) Location of areas for construction site offices and staff facilities;
- (c) Details of site security fencing and hoardings;
- (d) Details of on-site car parking facilities for site workers during the course of construction;
- (e) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
- (f) Measures to obviate queuing of construction traffic on the adjoining road network;
- (g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- (h) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- (i) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (j) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- (k) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (l) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

**Reason:** In the interest of amenities, public health and safety.

9. (a) Prior to commencement of development, all trees, groups of trees, hedging and shrubs which are to be retained shall be enclosed within stout fences not less than 1.5 metres in height. This protective fencing shall enclose an area covered by the crown spread of the branches, or at minimum a radius of two metres from the trunk of the tree or the centre of the shrub, and to a distance of two metres on each side of the hedge for its full length, and shall be maintained until the development has been completed.

(b) No construction equipment, machinery or materials shall be brought onto the site for the purpose of the development until all the trees which are to be retained have been protected by this fencing. No work is shall be carried out within the area enclosed by the fencing and, in particular, there shall be no parking of vehicles, placing of site huts, storage compounds or topsoil heaps, storage of oil, chemicals or other substances, and no lighting of fires, over the root spread of any tree to be retained.

**Reason:** To protect trees and planting during the construction period in the interest of visual amenity.

10. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company or such other security as may be accepted in writing by the planning authority, to secure the protection of the trees on site and to make good any damage caused during the construction period, coupled with an agreement empowering the planning authority to apply such security, or part thereof, to the satisfactory protection of any tree or trees on the site or the replacement of any such trees which die, are removed or become seriously damaged or diseased within a period of [three] years from the substantial completion of the development with others of similar size and species. 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 secure the protection of the trees on the site.

11. Prior to the 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, landscaping and other services comprised in 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.

## 12.0 (ii) Reasons and considerations

1. The proposal would entail the construction of a new road within lands that are the subject of Zoning Objective F in the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022. This road would afford access to a proposed area of housing and so it would be ancillary to this area. As such it would constitute a residential use of these lands, a use which is neither permitted in principle or open for consideration under the said Zoning Objective. Accordingly, this use would contravene materially this Objective and so to grant permission for this road would be contrary to the proper planning and sustainable development of the area.
2. By virtue of its proximity to the N11 QBC and the Laughanstown Luas Stop, the site lies within a public transport corridor. Under the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, the net residential density of new housing schemes within such corridors should be a minimum of 50 dwellings per hectare. The proposal would entail the construction of 34 dwelling houses that would exhibit a net density of 31 dwellings per hectare and so it would be contrary to the aforementioned

Guidelines and, as such, contrary to the proper planning and sustainable development of the area.

3. The construction of the proposed new road to the housing area would be elevated above a proposed area of public open space and associated restraining measures would dominate this space. The construction of the proposed housing area would entail an excessive loss of specimen trees and the resulting layout along its northern side would be overly regimented and at variance with the grain of the site's topography. Consequently, the proposal would fail to afford a satisfactory standard of amenity to future users and occupiers of the site and so it would be contrary to the proper planning and sustainable development of the area.

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Hugh D. Morrison  
Planning Inspector

21<sup>st</sup> April 2017