



An
Bord
Pleanála

Inspector's Report PL15.247927

Development	Mixed use development comprising offices, research and development/science and technology use and student accommodation and ancillary services
Location	Inner Relief Road (R215), Dundalk, Co. Louth
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	16/803
Applicant	Jan C. Van Dijk
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3 rd Party v. Grant
Appellants	<ol style="list-style-type: none">1. Niall Carroll2. David Sheridan & others3. Carmel Martin
Observer(s)	None

Date of Site Inspection

27/04/17

Inspector

Pauline Fitzpatrick

1.0 Site Location and Description

- 1.1. The site, which has a stated area of 5.06 hectares, is c. 2km to the south of Dundalk town centre, located along the Inner Relief Road (R215 formerly the N52) within the 50 kph speed limit zone. The Inner Relief Road (IRR) which forms the northern boundary of the appeal site is a two way single carriageway road. There are footpaths along both sides and a cycle path on the southern side which stops short of the appeal site frontage. There are bus stops on either side also.
- 1.2. The Xerox Technology Park is to the west of the junction of the R215 and Dublin Road (R132). A substation and unsurfaced track bound the site immediately to the east with the Finnabair Business Park and IDA offices further east again. Dundalk Institute of Technology (DKIT) campus and Crowne Plaza hotel are located to the north on the opposite side of the IRR. The lands to the south and south-west are undeveloped and are in agricultural use.
- 1.3. Dwellings of varying single and dormer designs that front onto the Dublin Road back onto the site to the west with varying treatments along the shared boundary ranging from high hedging to low timber fencing.
- 1.4. The site, which slopes gently down from east/south-east to west, is comprised of two sections. The first being a large field in agricultural use with its boundaries delineated by hedgerows. Access to same is from the Dublin Road. The 2nd is a relatively narrow overgrown piece of ground adjacent to the IRR. Its boundary to the R215 is delineated by a dense hedge with a masonry wall along the western most section close to the junction with the Dublin Road.

2.0 Proposed Development

- 2.1. The application was lodged with the planning authority (PA) on the 08/11/16. A 10 year permission is being sought for a mixed use development. The proposal comprises of 11 blocks entailing:
 1. Block A – 3 /4 storey L-shaped office building with a stated floor area of 2,880 sq.m. and overall height of 20.3 metres.
 2. Block B - 2 storey office/research and development/science and technology with a stated floor area of 960 sq.m. and overall height of 10.7 metres.

3. Block C – 2 storey office/research and development/science and technology with a stated floor area of 960 sq.m. and overall height of 10.7 metres.
 4. Blocks D, E, F, G, H - 12 R&D, Science & Technology units each with stated floor areas of 240 sq.m. (total 2,880 sq.m.) and overall heights of 7.7 metres.
 5. Blocks J, K and L – 2 and 4 storey student accommodation blocks comprising of 300 units with overall heights varying between 10.4 and 13.55 metres.
 6. 3 sub-stations
- 2.2. Vehicular access will be via a new entrance off the IRR(R215) and is to be constructed in the same position as the entrance permitted under ref. PL15.237838 with minor alterations to cycle lane and crossing provisions. The road layout is such as to facilitate extension into the lands to the south.
- 2.3. 328 parking spaces to be provided
- 2.4. 2 wayleaves are to be maintained; the 1st along the western site boundary and the 2nd along the right of way adjacent to the entrance.
- 2.5. Office One (Block A) is to have external finishes comprising of a render finish. The external finishes of the other office/technology units are to be either composite metal cladding or pigmented render or terracotta clay rainscreen cladding with extensive glazing. The student accommodation blocks are to have a render finish with band detailing and feature treatment to 2 storey elements.
- 2.6. The application is accompanied by:
- Urban Design Project Assessment Report which contends that the proposed development complies with the 12 criteria contained in the Urban Design Manual Best Practice Guide issued by the Department of Environment, Community and Local Government in 2009.
 - Planning Statement which sets out the site location context, planning history, compliance with planning policy including objectives of the Mullagharin Framework Plan.
 - Landscape Statement
 - The Civil Engineering Works Planning Statement provides details in relation to foul drainage, surface water drainage and water supply.

- Compliance Report on Part L & HC 12 Building Energy Rating Assignment and Compliance with TGD Part L of the Building Regulations.
- Transport Impact Assessment Report (including a Stage 1 /2 Road Safety Audit) takes into consideration extant approvals in the immediate vicinity of the site including the development to the north on the DKIT campus. The analysis undertaken as part of the Traffic Impact Assessment using approved traffic modelling software indicates that the existing highway network can accommodate additional traffic generated by the proposed development and that the proposed development will not have an adverse impact on the existing network.
- AA- Screening Report which concludes that the proposed development is unlikely to have a significant negative effect on Natura 2000 sites in the vicinity namely Dundalk Bay cSAC and Dundalk Bay SPA. As such there is no necessity to carry out a Stage 2 assessment.

A letter of consent from the Local Authority to inclusion of land in its ownership in the application accompanies the application.

3.0 Planning Authority Decision

3.1. Decision

Grant subject to 20 conditions. Of note:

Condition 2: 10 year permission

Condition 3: Blocks J, K & L to be used as 3rd level student accommodation only.

Condition 4 (i) on future completion of the secondary spine road to the south the applicant shall make alternative access arrangements to serve the development via the R132 as the principle means of serving the development permitted.

(ii) entrance to be strictly for use of development permitted. Any subsequent development or change of use to be subject of a separate application and new traffic assessment.

(iii) extension of proposed roadways at carpark B and carpark E up to the common boundary.

(xiii) surface water discharge to be to 600mm diameter pipe located 330m further to the east.

Condition 13: Archaeological requirements

3.2. Planning Authority Reports

3.2.1. Planning Reports

The *Executive Planner's* report (countersigned) considers that the student accommodation is a distinct class use which is separate from residential accommodation with reference made to the planning application fee required and distinction made in the guidelines on Design Standards for New Apartments. On the basis that the student housing is not considered to be 'housing' it is considered that the provision of 300 student bedrooms does not materially contravene the EB Zoning Objective. While reference is not specifically made to student accommodation in the objective it is considered that such an absence does not preclude the class of development. Having regard to the MFP which specifically references student accommodation in Section 5.6 for this location and having regard to Policy EC4 of the Dundalk & Environs Development Plan 2009-2015 to implement the objectives and policies contained in the MFP, it is considered that the classes of development proposed would not be inconsistent with the zoning objectives for the area. Compliance with the core strategy is not applicable on the grounds that student accommodation is seen as a distinctly different class of use to residential development. The MFP envisages two access points to the lands to the east. The extension of the cul-de-sacs at carpark B and carpark E to the common boundary should be required. In terms of residential amenities the separation distances to the common boundaries are satisfactory and would not give rise to any unreasonable overlooking or overshadowing. The buildings will not be unduly prominent and are similar to the buildings on the other side of the R132. It is considered that the request for an Archaeological Impact Assessment can be conditioned. A grant of permission subject to conditions is recommended.

3.2.2. Other Technical Reports

Senior Engineer Infrastructure has no objection to the proposed access subject to a condition restricting its use and a condition requiring that as and when the lands to

the south become developed in the future that an alternative access arrangement to serve the development via the R132/former N1 Dublin Road is put in place. The issues arising in the Road Safety Audit can be addressed by condition. Internal roads to extend to the site boundaries. The proposal to discharge to an existing 225mm surface water pipe on the R215 is not acceptable. Discharge should be to a 600mm diameter pipe located 330 metres further to the east. Conditions are detailed.

3.3. **Prescribed Bodies**

Irish Water has no objection subject to conditions. It notes that significant upgrade works to the foul water network is awaiting final approval but is expected to go ahead in the near future. The works will result in the laying of a new 525mm diameter public foul drainage pipeline through the site towards an existing 525mm foul pipeline that runs along the north side of the IRR/R215. It may not be in place when the proposed development commences. Should this be the case the new section of foul pipeline to be constructed by the applicant with the cost of the works and who is responsible for same to be subject to agreement of all parties. A 10 metre wayleave will be required.

The *Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs* notes that the development is large scale in extent, located in an area of high archaeological potential. It recommends that an Archaeological Impact Assessment should be prepared. It is aware that a geophysical archaeological survey has already been carried out. It recommends that a final decision should not be made until the Department and the PA have had an opportunity to evaluate the assessment. In terms of nature conservation all hedgerows should be retained.

3.4. **Third Party Observations**

Objections to the proposal received by the planning authority have been forwarded to the Board for its information. The issues raised are comparable to those set out in the grounds of appeal summarised in section 6 below.

4.0 Planning History

06/1624 – permission granted for 2800 sq.m. 4 storey office building with basement parking. The duration of the permission was extended under ref. 12/59 until 16/09/17.

PL15.237838 (10/09) – permission granted for new entrance onto the Inner Relief Road. The duration of the permission was extended under ref. 15/344 until 06/09/17.

PL15.245454 (15/285) - permission granted on appeal for 4 blocks of student accommodation incorporating a total of 189 rooms, 127 bedroom nursing home, training and research centre, parking and ancillary site works on a site on the opposite side of the Inner Relief Road on the DKIT Campus.

5.0 Policy Context

5.1. Development Plan

5.1.1. Dundalk and Environs Development Plan 2009 (extended).

Section 2.2 notes that a number of framework/master plans have already been prepared and the provisions of these plans including the Mullagharlin Framework Plan, are incorporated as guidelines into the overall development strategy for the plan area. If any conflict arises between the provisions of any of the existing plans the development plan will, at all times, take precedence.

The site is within an area zoned Employment Business (EB) the objective being to provide for employment and supporting residential. Table 2.4 sets out the uses permitted, open for consideration and not permitted within each of the zones.

There is a differentiation made in residential in the matrix with 'Residential (6)' and 'Residential (Ancillary) 3' detailed as open for consideration. In terms of the former it is stated that any residential proposal within the Employment & Business use shall comply with the Mullagharlin Framework plan and shall be considered only as part of a mix with economic/employment use. In terms of the latter it is related to limited residential development ancillary to the permitted development.

A small portion of the site to the north-east (location of proposed access) is zoned for Employment and Mixed Use Development.

Policy EC4 – Implement the objectives and policies contained within the Mullagharlin Framework Plan 2008 in order to create a business park of international quality and global appeal that will enable Dundalk to compete in the global market for business investment.

In terms of carparking the site is within Area 3.

5.1.2. **Mullagharlin Framework Plan 2008**

The plan was adopted as a variation to the 2003 Dundalk and Environs Development Plan. The purpose is to bring forward an international standard business and technology park that also allows for a mixture of other uses that enhance the vibrancy of this core land on the outskirts of the town. The ultimate aim is to create a place with a unique identity that has the potential to attract high end investors from Ireland and abroad.

The said plan covers c. 450 hectares extending eastwards from the M1 towards the R172 encompassing the Xerox technology Park, Finnabair Business Park and Dundalk DIT. There are a number of character areas in the plan,

The site is within the Finnabair South Character Area (c.47 hectare in area) which is designated for mixed use development. Section 5.6 states that it provides for a mixed use area south of the DKIT comprising of employment, commercial development, health care, student and residential accommodation.

Objective S20 – the area shall accommodate a mixture of higher order business uses supported by cafes/restaurants, community facilities, offices, health care, residential, business units etc.

Residential use should be in the order of 40% of the overall site.

S21 – the area shall accommodate residential development at a medium to high density as part of a mix with commercial/employment uses.

5.2. **Natural Heritage Designations**

None within or in the immediate vicinity of the site

6.0 The Appeal

6.1. Grounds of Appeal

3 no. 3rd Party appeals have been received:

1. Niall Carroll
2. David Sheridan & Others
3. Carmel Martin

The issues raised can be summarised as follows:

6.1.1. Proposed Uses and Compliance with Development Plan Provisions

- The planner has erred in accepting the assertion that student accommodation should not be considered residential.
- Whilst the Dundalk Environs Development Plan does not consider student accommodation for this site, some level is provided for in the Framework Plan. When read together they cannot be considered as providing for this dominant land use. The large scale provision would contravene the zoning objective for the lands as it cannot be considered ancillary.
- Student accommodation does not provide support for employment as envisaged in the zoning objective.
- The Dundalk and Environs Development Plan states that should a conflict arise the development plan, at all times, will take precedence.
- Whilst linkages are made to DKIT no direct written support has been provided by the educational institution.
- The Revenue Commissioners guidelines for Student Accommodation Tax Incentives are useful in providing accepted guidance. The proposal does not comply with same.
- There are concerns for the future use of the residential units.
- The proposal does not comply with the Core Strategy for the area.

- Concentrated student residences should be restricted to the area north of the R215 which supports the planning objective of that area (research, education and innovation).
- The seven units for research and development is considered excessive in view of its proximity to the well resourced Institute of Technology.
- There is an absence of a masterplan for the area. The proposal is therefore premature.

6.1.2. Amenities of Adjoining Property

- Noise and anti-social behaviour are often associated with large student units. It will have an adverse impact on the established community. The layout incorporates open space areas and tracks to the rear of the dwellings. The public wayleave zone should be removed. It reduces the effectiveness of the buffer zone between the site and existing residences.
- The finished floor levels and height of the student accommodation blocks would be visually obtrusive to the adjoining dwellings, would have an overbearing impact, would give to overlooking and would block light.
- The four storey buildings, although comprising a 2 storey element, are still adjacent to residential properties. The Framework Plan allows for a maximum of three storeys at this point. Should permission be granted the distance between proposed buildings and existing residences should be maximised. The residential units should be limited to 2 storeys to prevent overshadowing and overlooking.
- The proposal would result in devaluation of adjoining property.
- The proposal will result in a small enclave of residential properties between two large commercial areas.
- Policy DS3 of the Dundalk and Environs Development Plan which requires a design statement and brief as to how the proposal will provide for connectivity and integration with existing and proposed communities should be required due to the size of the accommodation and the potential that the units could be used by workers should student demand wane.

- The layout shows no synergy with the surrounding single storey domestic dwellings. The proposal is too intensive.
- The design and external finishes do not make a positive contribution to the locality.
- The area has unspoiled views of the Cooley Mountains.
- No management proposals have been made.
- Should permission be granted the student accommodation should be relocated to the eastern side of the site and the R & D buildings to the west.
- Phasing should have been considered as part of the application.

6.1.3. Access and Traffic

- It was not envisaged by the Framework Plan that full development of the site would take place before the construction of the secondary spine road to the south of the applicant's lands. If permission is granted it should be conditional on this spine road being operational before commencement.
- The R132/R215 junction cannot support the increase in traffic volumes from the site. An independent assessment should be commissioned.
- In the absence of a masterplan for the overall development area the actual levels of traffic generation and consequent impact have not been fully assessed. The conditions attached demonstrate the difficulty of addressing the situation notably condition 4(i).
- There is insufficient vehicular and infrastructural connectivity between the application site and the eastern lands.
- There are insufficient detailed drawings of the main vehicular entrance.
- Condition 4 (iii) of the PA's grant of permission requiring vehicular linkage to lands to the east would result in access to ESB lands and not Mr. Carroll's lands. A rewording of the condition is required so that the two approved vehicular linkages could tie into his lands (carparks C and E on drawing no 1611-PA-003).

- As the lands to the east are larger than the application site they have potential for a greater degree of development than the current proposal. This is more than sufficient justification to require the two connector roads to be to a specification and design similar to the application site's north/south distributor road. The two connector roads will form part of the Finnabair South area's overall distribution network providing the principal east-west vehicular, pedestrian and cyclist linkage between sites. Condition 4 (iii) in its current format would relegate such critical site integration and vehicular connectivity to subservient circulation roads servicing car parks C, D & E. It should be reworded to require the roads to be redesigned to provide full and proper vehicular access to the common eastern site boundary.
- The new entrance will dissect Bothar Maol obstructing Mr. Carroll's existing right of access. The eastern and western points of contact where the new entrance intersects with Bothar Maol should remain open. Minor adaptation of the drawing will also facilitate the future provision of the Dundalk & Environs Development Plan objective of adapting Bothar Maol as a new pedestrian and cyclist route. Revised plans should be sought by condition.
- Car usage by students has increased. Normal parking requirements should be applied.

6.1.4. **Miscellaneous Matters**

- The grant of permission makes no reference to the necessity of extending infrastructural services to the common eastern boundary. A condition should address same. This may require changes or amendments to the information required under condition 4 (xi), (xii) & (xiii).
- Issues of safety during construction arise. Traffic, noise and dust will have a negative impact. No abatement measures to be employed have been provided.
- Landscaping should be enhanced along the western boundary entailing a 3 metre raised grass embankment with hedging and mature trees. An example of this exists on the Dublin Road side of the Xerox site. The timber fence should be replaced with a wall

6.2. Applicant Response

The submission from Stephen Ward Town Planning & Development Consultants Ltd., which is accompanied by supporting detail on behalf of the applicant, can be summarised as follows:

6.2.1. Proposed Uses and Compliance with Development Plan Provisions

- Student accommodation is a sui generis use. Planning and Development (Housing) and Residential Tenancies Act 2016 defines same. The legislation specifically states that student accommodation is not residential. This is further confirmed by the fact that a planning application fee for such accommodation is calculated differently. Part V requirements do not apply to purpose built student accommodation qualifying under Section 50 of the Finance Act 1999 and the Supplementary Review Document 1999.
- The Sustainable Urban Housing: Design Standards for New Apartments do not apply to student accommodation.
- There is a shortage of student accommodation. It is an objective of the Rebuilding Ireland Action Plan for Homelessness and Housing to ensure deficiencies in the student accommodation market are met by promoting and facilitating suitably designed and located purpose built student accommodation.
- The current unmet demand for student bedspaces, coupled with the projected growth in student numbers over the next decade in conjunction with the planning expansion of DKIT, means that there is an urgent need to ensure adequate accommodation is available.
- The provisions of the Core Strategy do not apply.
- Whilst student accommodation is not identified as a permitted use in the zoning matrix neither is it identified as a non-permissible use. The zoning matrix is not an exhaustive list. The development must be assessed on its merits.

- The site is within the Finnabair South Character Area in the Mullagharlin Framework Plan. The uses envisaged include student housing. The plan distinguishes between student and residential housing.
- It is an objective of the development plan to implement the objectives and policies of the Framework Plan. There is no conflict between the plans.
- Any proposal to convert the buildings to residential use would need to demonstrate adherence to the relevant development management requirements.
- The proposal adheres to the requirements of Policy S20. It consists predominately of buildings for office, research and development, science and technology (80% of the site).
- The site located in the north-western corner of the Finnabair South Character Area has the benefit of a direct and permitted access. The site is self-contained and capable of functioning independently but linked to the remainder of the character area. In essence it constitutes a 'development cell' within the wider character area.
- Within the character area the site is sequentially optimal, allowing development to progress north to south next to the existing built up area.
- The location of the student accommodation is considered sequentially preferable with the furthest (building J) being only 220 metres from the entrance to the DKIT.
- The proposal complies with the relevant development management standards.
- The MFP is effectively a master plan for the area.

6.2.2. Amenities of Adjoining Property

- An average setback of 30 metres is achieved between the student buildings and the western boundary. Overlooking and loss of sunlight will not arise.
- The buildings have a T-shaped plan. The 2 storey element has a narrow plan form and is orientated along the east west axis with the long side extending to 4 storeys and incorporating the main entrances fronting the new

access road at some 80 metres from the western boundary. These design features mean the western gables for each of the 3 buildings will be 2 storeys in height with a building width ranging between 16-19m.

- A 2 metre high masonry wall along the boundary is now proposed. There would also be a substantial landscape buffer zone commensurate with the drainage wayleave in this part of the site.
- The applicant is amenable to a condition pertaining to a management scheme.

6.2.3. Access and Traffic

- The location of the proposed entrance will be constructed in the same position as the entrance permitted under ref. PL55.237838.
- The existing signal sequence at the R215/R132 junction is not optimal for the junction. The TIA recommends a revised sequence.
- The TIA concludes that the proposed site access junction onto the IRR (R215) and the R215/R32 junction can both operate within capacity in the 2018 opening year and design year of 2033.
- It has been established by PL55.237838 that the granting of permission for an entrance to serve a permitted office development on the appeal site under under ref. 06/1624 would not prevent the securing of a future road access point to serve the Finnabair South Character Area from the R132 Dublin Road in the future.
- The wording of condition 4 (iii) is clear with regard to the extension of the internal access roads and footpaths to the eastern side boundary. The extended roads will provide interim and subservient access to adjoining lands.
- The internal road layout is DMURS compliant.
- The north-south access road is not intended to be the main access to the Finnabair South lands as confirmed by condition 4(i).
- No evidence has been provided to support the assertion that the access traversing Bothar Maol would obstruct an existing right of access. The

applicant has demonstrated sufficient legal interest to lodge the application. Section 34(13) would apply.

- In order to facilitate occasional vehicular, pedestrian and cycle traffic it is proposed to provide dropped kerbs at either side of the proposed access where it traverses Bothar Maol.

6.2.4. **Miscellaneous Matters**

- Archaeological testing was undertaken under licence. No finds or features were uncovered but archaeological monitoring is recommended.
- The applicant does not object to a condition requiring infrastructural services being provided to the eastern boundary.

6.3. **Planning Authority Response**

All planning, environmental and infrastructural observations, assessment and recommendations stand.

6.4. **Observations**

None

6.5. **Further Responses**

The applicant's response to the grounds of appeal was circulated for comment. Responses were received from David Sheridan & Others and Carmel Martin. In addition to reiterating a number of points made in their appeal submissions the following are noted:

6.5.1. **Proposed Uses and Compliance with Development Plan Provisions**

- The definition of student accommodation in the Planning and Development (Housing) and Residential Tenancies Act 2016 is temporary in nature and will only be in effect up to 30/10/19. Consequently, student accommodation is a residential use but that having regard to the current circumstances an exception is being made on specific grounds.

- Residential must be construed in the vernacular as ‘a place designed for people to live in’.
- The measures as facilitated by the Act should not be a justification for overriding the proper planning and sustainable development of an area where no need has been fully justified.
- The view that student accommodation has no impact on the total housing demand in an area is neither logical or sensible. The proposal should be subject to the provisions of the core strategy.
- No justification has been made for the predominant level of residential use over higher order uses in the application.
- The document Student Accommodation Demand and Supply – HEA states that outside of Dublin, Cork, Galway and Limerick such accommodation along with the private rented accommodation is generally adequate to meet demand.
- The application exaggerates the proximity of the site to DKIT. The dominant entrance to DKIT is 1km north of the site at Hoeys Lane. The entrance off the IRR (R215) is a recent addition. The said IRR is the dividing line between Dundalk Town and Louth County. Student population has traditionally resided north of the IRR.
- The zoning objective allows for residential that supports and is ancillary to employment and business. Student accommodation does not support employment and business. The primary planning consideration for the site is employment and business. There is a clear conflict between the Dundalk and Environs Development Plan and the MFP.

6.5.2. Amenities of Adjoining Property

- The proposal to construct a 2 metre high wall is welcomed. It should be of natural stone similar to the wall at the Xerox site.
- Ongoing management of the development would be the minimum that would be required to attempt to ameliorate potential impacts and a management company would be required. A management scheme should form part of the application.

- The inclusion of 2 storey apartments at the western side does not negate the adverse visual impact of the 4 storey element.

7.0 Assessment

I consider that the issues arising in the case can be assessed under the following headings:

1. Compliance with zoning and development plan provisions
2. Impact on Amenities of Adjoining Property
3. Access and Traffic
4. Miscellaneous Matters
5. AA- Screening

7.1. Compliance with Zoning and Development Plan Provisions

- 7.1.1. The Board is advised that the period of duration of the Dundalk and Environs Development Plan 2009 - 2015 (DEDP) has been extended and thus remains in force. In addition, it is noteworthy that the Mullagharlin Framework Plan (MFP) was formulated and adopted as a variation to the previous DEDP in 2008 and is, in effect, 9 years old. It is reasonable to assume that the current plan, in detailing the zoning objectives for the overall lands, had due regard to the provisions of the said framework plan.
- 7.1.2. At the outset the case made by both the applicant, and effectively accepted by the planning authority, is that student accommodation is a distinct use which is separate from residential accommodation with reference made to the different applicable planning application fees and the distinction made in the guidelines on Design Standards for New Apartments. I would not subscribe to this view. Notwithstanding the definition as provided in the Planning and Development (Housing) and Residential Tenancies Act 2016 I would concur with the appellants that the differentiation is in terms of tenancy and, whilst different standards may apply, this does not mean that there is an actual distinction in land use planning terms. I also note that the MFP in providing for student and residential housing in the character area does not discern between same in objective S21 and that the subsequent DEDP, which would have been informed by the framework plan, also

does not make a differentiation. I therefore consider that student accommodation constitutes a form of residential development and should be assessed in that context.

- 7.1.3. In terms of policy provisions the site is within an area zoned EB (Employment and Business) in the DEDP, the objective for which is to provide for employment and supporting residential. Open for consideration is defined as a use that, by reason of its nature and scale, would not be in conflict with the primary zoning objective. As noted there are two caveats in terms of residential which are open for consideration within the said zone, namely *Residential Ancillary (3)* which relates to limited residential development ancillary to the permitted development and *Residential (6)* which states that any residential proposal within the EB zone shall comply with the Mullagharlin Framework Plan (MFP) and shall be considered only as part of a mix with economic/employment uses.
- 7.1.4. In terms of the MFP the site is within the Finnabair South character area which is approx. 47 hectares in area. The site, with a stated site area of 5.06 hectares, equates to approx. 11% of the character area. The MFP vision for the area is for mixed uses comprising of employment, commercial development, health care, student and residential housing. The plan states that residential use should be in the order of 40% of the overall site at a medium to high density as part of a mix with commercial/employment uses.
- 7.1.5. As I am of the view that student accommodation constitutes a form of residential development I consider that the core strategy, adopted as a variation to the development plan in 2011, is relevant in terms of the policy considerations. In same the application site and, indeed almost the entirety of the Mullagharlin Framework Plan area (save for the DKIT campus to the north of the site and IDA lands to the east), are not demarcated within the detailed phasing of lands as set out in Map B. I note that policy CS2 sets out exceptions to the phasing programme, namely residential proposals in infill, brownfield or part of mixed use development. In terms of the latter it is reasonable to surmise that the residential component envisaged would be ancillary to other uses permitted in the zone.
- 7.1.6. It is my opinion that the policies and objectives of the two policy documents as detailed above are conflicting. The MFP allowance for up to 40% residential within

the character area, were it to be realised, could not be considered as ancillary to the main employment zoning objective as set out in the development plan. In addition the core strategy, whilst allowing for exemptions in terms of residential in mixed use zones, could not reasonably have intended to allow for such a substantial provision. On this basis, therefore, I submit that the lands cannot be considered to be covered by the exemption provisions of the core strategy. The development plan is quite explicit that should conflict arise between the provisions of any of the existing plans the development plan will, at all times, take precedence.

- 7.1.7. On balance, therefore, I submit that the development plan provisions and zoning objectives for the lands, although allowing for residential development, is on the basis of it being ancillary to the main land use provisions. In its own right three blocks of student accommodation providing for 88 no units comprising of 300 bedspaces cannot be considered a use ancillary to the other uses to be provided within the development.
- 7.1.8. Whilst it is argued that the location of student accommodation presents the optimum position in proximity to the DKIT campus to the north this is without regard to the future development of the lands in the wider character area. The site, itself, only forms a small area of the overall character area and whilst the applicant contends that the framework plan is the masterplan for the area I submit that in view of the time that has lapsed since its preparation and adoption and the apparent conflict between the MFP provisions in terms of allowing for 40% housing in the character area, the land use zoning provisions for the lands in the DEDP and the provisions of the core strategy, that a review of the plan would be appropriate. Until such a review is completed I recommend that the student accommodation should be omitted.
- 7.1.9. The remainder of the proposed development including 2880 sq.m. of office space, 1,920 sq.m. of office/research and development/science and technology and 2880 sq.m. of science and technology units is considered acceptable in principle and would advance the objectives of the development plan and MFP.
- 7.1.10. I would accept the view that the site forming the north-western corner of the character area with direct access, could be seen to be self-contained and capable of functioning independently but linked to the remainder of the character area. It also

could be seen to be sequentially optimal, with development extending southwards from the existing built up area. Due regard is also had to the existing commercial land uses to the east and west of the site. I therefore submit that the site development would not prejudice the future realisation of the MFP. However, a review of the MFP would afford an opportunity to re-evaluate the policies and objectives for the lands and to address the apparent conflicts that exist with the development plan provisions and core strategy. It would also afford an opportunity to advance a more holistic approach to the development of the lands within the character area including the advancement of the preferred access arrangements.

7.1.11. In view of the above considerations and the size of the development, exclusive of the student accommodation, I cannot identify any overriding reason or exceptional consideration to justify a 10 year permission and recommend that the standard 5 year duration be applied.

7.2. Impact on Amenities of Adjoining Property

7.2.1. Whilst I recommend that the student accommodation blocks be omitted I propose to address the issues arising under this heading for completeness.

7.2.2. Dwellings of varying single and dormer designs that front onto the Dublin Road back onto the site to the west with the shared boundaries varying from high, dense evergreen trees to panel walls, low hedging and timber fencing. A number of dwellings have unobstructed views of and across the site although no views or prospects in the vicinity are listed for protection in the DEDP. As noted the site generally slopes up from west to east/south-east.

7.2.3. The three student accommodation buildings are proposed along the western boundary with setbacks of between 24.727 and 36.790 metres to be maintained. It is estimated that the biggest differential in site levels between the appeal site and adjoining lands would be in the vicinity of Block J at approx. 2.41 metres. This block backs onto undeveloped ground within the applicant's ownership. The differential in levels in the vicinity of the other two residential blocks would be less than 1 metre.

7.2.4. The blocks are designed so that they step up from two storeys away from the shared boundary to 4 storeys that will provide frontage onto the main north-south axis road. The four storey elements in the three blocks would maintain a setback from the shared boundary of in the region of 55 – 60 metres. As such I consider that the

MFP requirements in terms of height limits adjoining the said boundary (no greater than 3 storeys) has not been breached. In response to the grounds of appeal the applicant is amenable to the construction of a 2 metre high boundary wall along this boundary which is to be backed by planting which corresponds, in the main, with the wayleave to be maintained along same.

- 7.2.5. Therefore, I submit that due consideration has been given to the existing properties along the western boundary and the layout and design will ensure that the amenities would not be adversely impacted upon in terms of overlooking, loss of privacy or overshadowing. The concerns in terms of potential for anti-social behaviour are noted but are a matter for the relevant authorities to address. The requirement for a management company to be put in place can be required by way of condition.
- 7.2.6. The design and layout of the other elements of the proposal are acceptable with the four storey office building at the entrance from the IRR of a design suitable to its gateway position. The stipulated controls set out in the MFP pertaining to plot ratio, site coverage and building height are also complied with.

7.3. **Access and Traffic**

- 7.3.1. The proposal is to be served by a new access from the IRR (R215) to the north of the site immediately opposite the signal controlled junction to the DKIT lands and Crowne Plaza hotel (known as Carroll's junction) and is largely comparable to that granted by the Board under ref. PL55.237838 in 2011 save for minor amendments in terms of cycle lane provision and road markings. The duration of the said permission has been extended until September 2017.
- 7.3.2. Whilst I note that the MFP delineates the main access to the Finnabair South character area being from the Dublin Road (R132) to the west I would concur with the Inspector's assessment on the said previous file that the current proposal would not prevent the securing of the road access point onto same to serve the area at a future time. I note that a condition attached to the said permission required that on completion of the secondary spine road to the south alternative access arrangements are to be made to serve the development via the R132 as its principle means of access. Should the Board be disposed to a favourable decision a comparable condition could be attached.

- 7.3.3. A Traffic Impact Assessment accompanies the application with sufficient detail provided to support the view that the proposed access arrangement off Carroll's junction can accommodate the proposed development in terms of both the opening year and design year. The material concern pertains to the R215/R132 junction to the west which is noted to be operating near capacity. The assessment concludes that the existing signal sequence is not optimal for the junction and that a revised sequencing demonstrated that the junction can operate with approx. 30% capacity on its busiest approach and that it can operate within capacity for both the opening year and design year. The changing of the sequencing is within the remit of the local authority.
- 7.3.4. The analysis of both junctions in tandem show that both will operate within capacity. The critical constraint for the proposed linked junction system is to be ensure adequate conveyance of eastbound traffic from the Inner Relief Road west (M1 direction) and R132 south through Carroll's junction. As such the linked junction system has been configured to maintain throughput on the Inner Relief Road – R215 through the Carroll's junction while these movements are flowing through the R132 junction. The recommended signal timings required to ensure sufficient capacity in the road network up to year 2033 are detailed in Appendix G of the TIA.
- 7.3.5. Certainly the quantum of development to be served by the access is materially greater than that previously permitted on the lands (2800 sq.m. office block under ref. 06/1624) but the TIA demonstrates that the access arrangements can accommodate same. Should the Board be disposed to a favourable decision a condition restricting the use of the access to that as proposed, only, comparable to that attached to PL55.237838 is recommended.
- 7.3.6. The issue of ensuring that the internal cul-de-sac roads and services are constructed right up to the shared boundary can be satisfactorily addressed by way of condition. As noted above the access arrangements should serve the proposed development, only. It is the realisation of the secondary spine road to the south which would facilitate development of other lands within the character area. In that context therefore I would not concur with the owner of the adjoining lands to the east (Mr. Carroll, 3rd Party appellant) that the said internal roads require to be upgraded to a specification and design similar to the application site's north/south distributor road.

- 7.3.7. There is no evidence to suggest that the proposed access arrangement would hinder the right of way on Bothar Maol to the north. In order to facilitate vehicular, pedestrian and cycle traffic it is proposed to provide dropped kerbs at either side of the proposed access where it traverses the right of way. As noted above the access arrangement is largely comparable to that granted permission on appeal under ref. PL55.237838. Notwithstanding should permission be granted the applicant should be advised of Section 34 (13) of the Planning and Development Act, 2000, as amended that a person is not entitled solely by reason of a permission to carry out a development.
- 7.3.8. The site is within Area 3 delineated for car parking in the DEDP. The relevant parking standards can be provided on the site. Neither the DEDP or the County Development Plan 2015 provides standards for research and development/science and technology. Therefore, 1 space per 50 sq.m is proposed. This is the same as that applied in development PL24.245454 (15/285). This is considered acceptable. The Board is advised that there are no standards stipulated for student accommodation and thus the Dublin City Council Development Plan 2016-2022 requirement of 1 space per 10 rooms has been applied.

7.4. **Miscellaneous Issues**

- 7.4.1. As with the internal road network the extension of infrastructural services to the common eastern boundary can be ensured by way of condition.
- 7.4.2. Construction stage impacts in terms of traffic, noise and dust, whilst having the potential to impact on amenities of adjoining property are, by their nature, temporary in duration. I recommend that a construction management plan be sought by way of condition.
- 7.4.3. Archaeological testing was undertaken under licence. No finds or features were uncovered. A condition requiring archaeological monitoring is recommended.

7.5. **AA – Screening**

The application is accompanied by an Appropriate Assessment Screening Report.

Project Description and Site Characteristics

The proposed development is as described in sections 1 and 2 above.

Relevant Natura 2000 Sites, Qualifying Interests and Conservation Objectives

The site is located c.1.6km to the west of Dundalk Bay SAC (site code 000455) and Dundalk Bay SPA (site code 004026). The qualifying interests of the former include salt water habitats with the qualifying interests of the latter including wintering migratory birds and waterbirds. Detailed conservation objectives have been drawn up for the sites. The overall aim of the objectives is to maintain or restore the favourable conservation status of habitats and species of community interest.

Assessment of likely effects

The site is not within a designated site thus there would be no direct impacts from the proposed development.

There are no surface water features in the vicinity of the site which would provide for a hydrological connection between the sites.

In terms of indirect effects at operational stage the proposal within the town of Dundalk will be of a design and height comparable to that developed on lands in the vicinity and will be fully serviced. Increases in noise and traffic generated by the development would be considered to be minimal taken in the context of the separation between the site and the designated sites and the location of the site.

During construction phase, whilst there is the potential for increased noise and dust, the impact will be localised and it is envisaged that the normal measures to mitigate against such impacts would be invoked as a matter of common practice. Such practices would also address the potential for spills and as such protection of groundwater should be ensured. Thus no indirect impacts are envisaged

In terms of cumulative Impacts the site is located on appropriately zoned lands and, taken in the context with existing development, is not considered to result in cumulative effects.

Screening Statement and Conclusions

In conclusion having regard to the foregoing and on the basis of the information available, 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 and in combination with other plans or projects

would not be likely to have a significant effect on any European Site and in particular site codes 000455 and 004026 in view of the sites' Conservation Objectives and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.0 Recommendation

Having regard to the documentation on file, the grounds of appeal, the responses thereto, a site inspection and my assessment above I recommend that permission for the above described development be granted for the following reasons and considerations, subject to conditions.

9.0 Reasons and Considerations

Having regard to the provisions of the current Dundalk and Environs Development Plan and policy EC4 which seeks to the implement the objectives and policies contained within the Mullagharlin Framework Plan 2008, to the nature, extent and design of the proposed development and to the pattern of development in the vicinity it is considered that, subject to compliance with the conditions set out below, the proposed development generally accords with the policy requirements of the development plan, would not seriously injure the residential amenities of property in the vicinity and would not give rise to a traffic hazard or obstruction of road uses. The proposed development would therefore be in accordance with proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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. Blocks J, K and L as delineated on the proposed site plan, drawing number 1611-PA-003, lodged with the application shall be omitted.

Reason: In the interests of ensuring compliance with the development zoning objectives for the site as set out in the Dundalk and Environs Development Plan.

3. The period during which the development hereby permitted may be carried out shall be five years from the date of this order.

Reason: Having regard to the nature and extent of the proposed development, the Board considered it appropriate to specify a period of validity of this permission of five years.

5. The entrance herein permitted shall be strictly for the use of the development as permitted by this order. Any further subsequent development or change of use of permitted development shall be subject of a separate grant of permission and a new traffic assessment.

Reason: In the interest of pedestrian and traffic safety and to comply with the zoning provisions of the current development plan for the area.

6.
 - a) The internal road layout and network serving the proposed development including turning bays, junctions, parking area, footpaths and kerbs and access road to the service area shall be in accordance with the detailed standards of the planning authority for such works.
 - b) A revised road layout delineating the necessary extension of the internal roads and footpath layout up to the site boundaries shall be submitted to the planning authority for its written agreement prior to

commencement of development.

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

7. 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. Revised plans delineating the revised proposals for disposal of surface water and infrastructure provision up to the site boundaries shall be submitted to the planning authority for its written agreement prior to commencement of development.

Reason: In the interest of public health.

8. Details of the following shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development:
 - I. Programme of measures to address the issues raised in the Road Safety Audit submitted with the application.
 - II. Detailed design of public lighting associated with the proposed junction to be undertaken by a specialist public lighting consultant.
 - III. Pedestrian crossings, road markings and signage
 - IV. Traffic signal settings
 - V. Works programme

Reason: In the interest of pedestrian and traffic safety

9. Details of the materials, colour and textures of all the external finishes to the proposed buildings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

10. A comprehensive boundary treatment and landscaping scheme shall be

submitted to and agreed in writing with the planning authority, prior to the commencement of development. This scheme shall include the following:-

- I. details of all proposed hard surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development;
- II. proposed locations of trees and other landscape planting in the development, including details of proposed species and settings;
- III. details of proposed street furniture, including bollards, lighting fixtures and seating;
- IV. details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes.
- V. The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.

Reason: In the interest of visual amenity.

11. Proposals for a street name/unit name for each of the proposed buildings together with associated signage shall be submitted to, and agreed with, the planning authority prior to the commencement of development. Thereafter all estate and street signs shall be provided in accordance with the agreed scheme. No advertisement/marketing signage relating to the names of the development shall be erected until the developer has obtained the planning authority's written agreement for the proposed names.

Reason: In the interest of urban legibility.

12. No advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, shall be displayed or erected on the buildings/within the curtilage of the site unless authorised by a further grant

of planning permission.

Reason: In the interest of visual amenity

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

Reason: In the interests of visual and residential amenity.

14. Car parking and cycling spaces shall be provided within the site in accordance with the requirements of the planning authority. The locations and layout of these spaces and how they are assigned to the buildings shall be submitted to the planning authority for its written agreement prior to commencement of development.

Reason: To ensure adequate car parking provision is available to serve the development.

15. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which 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, and

(b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

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 area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

16. The management and maintenance of the proposed development, following completion, shall be the responsibility of a legally constituted management company, which shall be established by the developer. A management scheme, providing adequate measures for the future maintenance of the development; including the external fabric of the buildings, landscaping, roads, paths, parking areas, lighting, waste storage facilities and sanitary services, shall be submitted to and agreed in writing with the planning authority, before any of the units are made available for occupation.

Reason: To provide for the future maintenance of this private development in the interest of visual amenity.

17. 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;
- (k) 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;
- (m) 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.

18. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of the development

19. The developer shall pay to the planning authority a financial contribution in

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

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

Pauline Fitzpatrick
Senior Planning Inspector

May 2017