



An  
Bord  
Pleanála

## Inspector's Report PL06D.249248

### Development

Provision of 139 residential units by means of a change of use of St. Joseph's House (a protected structure) to provide 11 units and the demolition of 3 dwelling houses to facilitate the construction of 3 apartment blocks to provide 122 units and a row of townhouses to provide 6 units.

### Location

"Annaghkeen" & "Dalwhinnie", Leopardstown Road (R113), Dublin 18 and "St. Joseph's House for the Adult Deaf and Deaf Blind" and adjoining lands including "Marian Villa", Brewery Road (N31), Stillorgan, Co. Dublin.

### Planning Authority

Dun Laoghaire-Rathdown County Council

### Planning Authority Reg. Ref.

D17A/0337

### Applicant(s)

Homeland Silverpines Ltd

### Type of Application

Permission

### Planning Authority Decision

Grant, subject to 43 conditions

<b>Type of Appeal</b>	First Party -v- Condition 2 Third Parties -v- Decision
<b>Appellant(s)</b>	First Party: Homeland Silverpines Ltd Third Parties: Tudor Lawns Residents Association Eamon C Kerney Leopardstown Brewery Road Residents Association Helena M Daly & Others Thomas C Toner Leopardstown Action Group
<b>Observer(s)</b>	Cllr. Deirdre Donnelly Elaine Byrne & Paul Cunningham
<b>Date of Site Inspection</b>	1 <sup>st</sup> December 2017 & 13 <sup>th</sup> February 2018
<b>Inspector</b>	Hugh D. Morrison

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## 1.0 Site Location and Description

- 1.1. The site is located 1.6km to the east of Junction 14 of the M50 and 0.3km to the east of the former Sandyford Industrial Estate. This site lies between Brewery Road (N31), to the west, and Leopardstown Road (R113), to the south. It is presently accessed from the former Road via a small housing estate known as Silver Pines and from the latter Road, at three separate points. The Luas Sandyford and Central Park Stops also lie short distances to the west and south, respectively.
- 1.2. The site is situated within an area of housing. Thus, in addition to Silver Pines, the housing estates known as The Chase and one centred on Leopardstown Avenue, lie to the south west and north east, respectively. The Leopardstown Avenue estate is accompanied by a playing pitch, the southern side of which is continuous with a greenway that follows a roughly east/west axis and which provides a pedestrian and cycleway route between Leopardstown Road and the Sandyford Luas Stop. The south-eastern corners of the site abut the residential property known as “The Crossing”, which lies within the former grounds of St. Joseph’s House. Further housing estates lie on the western side of Brewery Road and the southern side of Leopardstown Road, i.e. Woodford and Tudor Lawns. Also, on the southern side of Leopardstown Road lies the Laura Lynn Children’s Hospice and the Children’s Sunshine Home and the entrance to Leopardstown Race Course and Oakhill Junior School.
- 1.3. The site is of regular shape and it extends over an area of c. 1.65 hectares. This site presently accommodates St. Joseph’s House for the Adult Deaf and Deaf Blind and three residential properties, i.e. “Marian Villa”, “Annaghkeen”, and “Dalwhinnie”. St. Joseph’s House lies in the western portion of the site. It is a two storey institutional building, which is linked to a single storey building that lies outside the site and which forms part of the Anne Sullivan Centre. The functioning access to this House is off Brewery Road and there is an unused access from Leopardstown Road. “Marian Villa” and “Annaghkeen” lie within what would formerly have been the grounds to St. Joseph’s House. The former property is accessed off Brewery Road and the latter one is accessed from Leopardstown Road. The remaining property, “Dalwhinnie”, is one of seven detached two storey dwelling houses that form a row, which is staggered in its alignment with respect to Leopardstown Road. “Dalwhinnie” is at the

north eastern end of this row and it is accessed from Leopardstown Road, too. The existing and former grounds of St. Joseph's House are wooded with mature trees, outstanding amongst which are rows and clusters of tall Austrian Pines.

## 2.0 Proposed Development

- 2.1. The proposal would entail the provision of 139 residential units by means of a change of use of St. Joseph's House (a protected structure) to provide 11 units and the demolition of 3 dwelling houses, i.e. "Marian Villa", "Annaghkeen", and "Dalwhinnie", to facilitate the construction of 3 apartment blocks to provide 122 units and a row of townhouses to provide 6 units.
- 2.2. In terms of floorspace, this proposal would entail an increase in the overall floorspace on the site of 15,000 sqm, i.e. from the existing total of c. 2,139.32 sqm to the proposed total of c. 17,140 sqm. Of the existing total, c. 835.02 sqm would be demolished and c. 1,304 sqm would be retained, and, of the proposed total, c. 16,096 sqm would be new build.
- 2.3. Following receipt of further information, the provision of residential units was revised downwards by 8, to 131. Thus, 3 units were omitted from St. Joseph's in favour of the introduction of a crèche and residents' clubhouse, leaving 8 units, 4 units were omitted from the apartment blocks, leaving 118 units, and 1 unit was omitted from the row of townhouses, leaving 5 units.
- 2.4. Under the original proposal, the new residential scheme would be composed of Blocks A – E, as follows:
  - (a) The construction of Blocks A – C (three-five storeys) over dual access basement level (c. 4,311 sqm) comprising 122 apartment units;
  - (b) The construction of 6 townhouses in the form of Block D; andThe refurbishment and separation of St. Joseph's House (two storeys) into 11 residential units to form Block E, which shall include the demolition of a single storey extension and associated outbuildings (demolition total c. 172.82 sqm GFA), the removal of gates, modifications to elevations including new windows, doors, and glazed balcony; new external steps and ramps,

modifications to the internal layout including the removal of walls and partitions and the addition of new dividing walls and part new roof.

2.5. Under the original proposal, the residential content of the scheme would be as follows:

- Block A (five storeys) shall provide for 53 apartment units (13 one-bed, 37 two-bed, and 3 three-bed);
- Block B (five storeys) shall provide for 58 apartment units (7 one-bed, 49 two-bed, and 2 three-bed);
- Block C (three storeys) shall provide for 11 apartment units (7 one-bed, 3 two-bed, and 1 three-bed);
- Block D (two – three storeys) shall provide for 6 townhouses (5 three-bed terrace houses – Type T1, and 1 four-bed detached house – Type T2); and
- Block E (two storeys) shall provide for 11 apartment units (8 two-bed and 3 three-bed) in the St. Joseph's House, all with associated balcony/terrace/private garden areas.

Of the 139 residential units, 27 would be one-bed, 97 two-bed, 14 three-bed, and 1 four-bed.

2.6. Under the revised proposal, 4 residential units were omitted from the fourth floor of Block A. The composition of this contracted floor was redesigned and so the originally proposed complement of 6 two-bed and 2 three-bed apartments was replaced with 2 two-bed and 2 four-bed apartments. Also, under the revised proposal, the residential units at either end of the fourth floor of Block B were re-specified as 2 two-bed apartments rather than 2 three-bed ones.

2.7. Under the revised proposal, 1 two-bed residential unit would be omitted from Block D and 1 two-bed duplex, 1 three-bed apartment and 1 three-bed duplex would be omitted from St. Joseph's House (Block E).

2.8. Consequently, of the 131 residential units in the revised proposal, 27 would be one-bed, 93 two-bed, 8 three-bed, and 3 four-bed.

2.9. The proposal would entail the amalgamation of 3 existing access points along Leopardstown Road (R113) to provide for 1 vehicular and pedestrian access point.

The existing access point from Brewery Road (N31) to St. Joseph's House via Silver Pines would be maintained and the existing access serving the Anne Sullivan Centre for the Deaf Blind would be maintained with minor revisions to the point of access.

- 2.10. The proposal would also entail the provision of 166 car parking spaces (139 at basement level and 27 at surface level); 200 bicycle parking spaces; bike stores (at basement and surface levels); bin storage (at basement and surface levels); plant areas; c. 5,960 sqm of public open space (including new tree walk, courtyard spaces, and new play area); new boundary treatment; green roofs associated with Blocks A – C; provision for pedestrian connections to the adjoining park; site services; and all associated site development, service connections, and landscape works.
- 2.11. Under the revised proposal, an additional 11 surface car parking spaces would be provided and so the new total would be 177 (139 at basement level and 38 at surface level). Eight motorcycle parking spaces are also introduced to the basement car park.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Following receipt of further information, draft permission was granted, subject to 43 conditions, including the following one, which the applicant has appealed:

*2. Proposed Block D (House Types T1 and T2) which comprises 5 houses in total shall be omitted. Any future application on this portion of the site shall ensure adequate protection of the residential amenities of the existing dwelling to the south west at Alhambra on Leopardstown Road and shall provide for further visitor car parking on the site.*

*Reason: In the interests of residential amenity.*

Other interventionist conditions are summarised below:

- Condition 3 requires that both accesses to the site and both ramps to the basement car park be provided. The Leopardstown Road access is to be a left in/left out one only and the said ramps are to be made available for use prior to occupation of the apartment blocks.

- Condition 4 requires that the works to St. Joseph's House be completed prior to occupation of the apartment blocks.

The applicant's request for a 7-year permission was not acceded to.

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

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

See draft permission granted.

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

- Housing: Part V condition requested.
- Conservation Officer: Requests that works to St. Joseph's House be supervised by a conservation architect, such works be carried out in tandem with the proposed new build, and Block A be reduced in height to sit more sensitively within the curtilage to the protected structure. Following receipt of further information, no objection raised.
- TII: Section 49 Luas Line B1 Levy condition requested.
- Parks & Landscape Services: Following receipt of further information, no objection raised subject to conditions.
- Irish Water: No objection, standard notes requested.
- Transportation Planning: Following receipt of further information, no objection raised provided the proposal does not rely solely on being accessed from Leopardstown Road. Thus, one of the requested conditions states that "Ramp access A to the basement car park (via Silver Pines) shall be operational and available for use prior to occupation of any of the proposed Blocks (A – D)."

### **3.3. Prescribed Bodies**

- An Taisce: Requests that works to St. Joseph's House be supervised by a conservation architect and welcomes tree retention on the site's boundaries.
- DoAHRRGA: Standard archaeological monitoring condition requested and conditions pertaining to the protection of bats requested.



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

See appellants' and observers' grounds of appeal.

## 4.0 **Planning History**

- D98A/0349: Proposed new entrance off Leopardstown Road to serve "Annaghkeen" and the sub-division of this house plot: Refused on the grounds that a piece of land with no use or access would be created and the proposed access would reduce the capacity and safety characteristics of Leopardstown Road.
- PC/02/11: Part 8 pedestrian and cycleway between Brewery Road and Leopardstown Road.
- PAC/487/16 occurred on 18<sup>th</sup> October 2016, 17<sup>th</sup> November 2016, and 15<sup>th</sup> February 2017.

## 5.0 **Policy Context**

### 5.1. **Development Plan**

Under the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022 (CDP), the site is shown as lying in an area that is the subject of Zoning Objective "A", "To protect and/or improve residential amenity." It is also the subject of an objective "To protect and preserve trees and woodlands." St. Joseph's House is designated a protected structure (RPS ref. no. 1548) and the R113 is identified as a proposed bus priority route. Leopardstown Road to the south west of the site is the subject of a road widening objective, which has been fulfilled.

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

None

## 6.0 The Appeal

### 6.1. Grounds of Appeal

#### First Party

The applicant has appealed condition 2 attached to the Planning Authority's draft permission, which relates to the modified scheme submitted as further information.

- Attention is drawn to the attributes of the proposed townhouses. Thus, proposed house type T2, the gate lodge, would at three storeys complement Block C as frontage development to Leopardstown Road and the terrace of house type T1 dwellings would provide a homezone, an active streetscape within the overall development, and an enclosed vista to St. Joseph's House beyond. The said terrace would enable the scale of the development to transition from Blocks B & C to the dwelling house known as "Alhambra".
- Attention is also drawn to the modified scheme for the site, which met all of the concerns of the Planning Authority with respect to the terraced townhouses, e.g. garden depths, height, scale, and mass.
  - With respect to house type T1, the modifications included the removal of first floor roof terraces and the deepening of rear gardens, thereby obviating any sense of overbearing and the opportunity for overlooking.
  - With respect to house type T2, this dwelling was not the subject of the further information request. The applicant is not persuaded by the Planning Authority's subsequent critique that there is any need to revise the same.

#### Third Parties

##### (a) Tudor Lawns Residents Association

- Height: Blocks A and B would be five storeys high within a context of two storey high dwelling houses. They would contravene the CDP's Building Height Strategy (BHS) and adversely affect the amenities of surrounding dwelling houses. Other developments in the area would be three storeys high,

e.g. Kelston on Leopardstown Road and Clay Farm in Ballyogan. These Blocks should be this high, too.

- Housing mix: The omission of townhouses would restrict the mix of residential units with the removal of residential units that would facilitate “downsizing” amongst existing local residents.
- Traffic: Due to traffic levels on Leopardstown Road, no vehicular access to the site should be allowed, e.g. the Planning Authority refused the redevelopment of a house plot at “Lissadell” for 7 residential units with access off Leopardstown Road.
- Parking: The proposal would fall short of CDP car parking standards. The proximity of the Luas would not justify such a shortfall, as residents would need cars for non-work related activities. Existing residential streets suffer from overspill parking generated by commuters.
- Construction stage parking: The permitted proposal does not address the issue of parking during any construction stage.
- Amenities: The area lacks amenities at present and so the envisaged increase in population would exacerbate this situation.
- Environment: Trees to be retained should be the subject of a condition that oversees their well-being into the future. Concern is expressed that the proposal would, due to light and noise, adversely affect the Children’s Sunshine Home and the Laura Lynn Hospice on the opposite side of Leopardstown Road.
- Conservation: The proposal would entail fundamental changes to St. Joseph’s House, a protected structure, which should not be allowed.

**(b) Eamon C Kerney** of “Alhambra”, Leopardstown Road

- Scale and form: The proposal would be an exercise in maximising the number of residential units realisable: thus, its scale and density would be appropriate to an urban, as distinct from a suburban, location. Likewise, the form of the proposed blocks would be monolithic. Further information modifications introduced additional windows that would increase overlooking of the appellant’s residential property and the stepping back of fifth storeys would do

little to relieve relationships with St. Joseph's House and adjacent dwelling houses.

- **Amenity:** The proposal would be overbearing and it would lead to overlooking of the appellant's residential property and the one to the south east known as "The Crossing". If the Board is minded to grant, then a condition is requested to reduce the height of Blocks A and B by two or at least one storey.
- **Trees:** Attention is drawn to two groups of mature trees that would be felled, due to the siting of Blocks A, B and Block C, respectively. The proposal would thus constitute over-development. If the Board is minded to grant, then a condition is requested that would require Blocks A and B to be set further back from the south western boundary of the site to enable the first of these groups to be retained.
- **Building line:** The siting of Block C and the townhouses is justified by the applicant on the basis that the existing front building line onto Leopardstown Road is "ad hoc". By contrast, the appellant refers to this line as "stepped" in a pleasing manner. The said siting would override this pattern and the townhouses would entail the siting of rear gardens next to his front garden.
- **Condition 2:** The Planning Authority's draft condition 2 omits the proposed townhouses. The appellant supports this condition as the 4 terraced townhouses and 1 detached townhouse would be sited on a single house plot in close proximity to his own residential property. The terrace townhouses would be of a hybrid design that would give them a shed-like appearance and the detached one would have a third storey window that would lead to overlooking. Any suggestion that these townhouses would mediate the change in scale between Blocks A and B and the appellant's dwelling house simply illustrates that these Blocks would be too high. If the Board is minded to grant, then the retention of this condition is requested
- **Traffic and parking:** Access to and egress from the appellant's residential property is already difficult at peak times, due to traffic on Leopardstown Road. A reduction in the number of residential units would facilitate the provision of adequate parking, thereby reducing the risk of overspill on-street parking that would otherwise occur.

- Basement excavation: Rock is thought to lie close to the surface. Thus, excavation works needed to form the basement would adversely affect the amenities of the area and imperil the structural stability of surrounding dwelling houses.
- St. Joseph's House: Block A would have an overbearing relationship with this protected structure and the visibility and aspect of this structure would be obscured.

**(c) Leopardstown Brewery Road Residents Association**

An oral hearing is requested.

- Local concerns:
  - The proposal would be overbearing and it would lead to overlooking of surrounding two storey dwelling houses. Night-time noise from balconies is also anticipated.
  - The natural local skyline of trees would be replaced by unsympathetic buildings and wildlife would be displaced.
  - Traffic generation at peak times would exacerbate existing congestion.
  - Insufficient off-street parking is proposed and so the high incidence of existing overspill on-street parking would be exacerbated.
  - Excessive demands on local infrastructure would ensue.
  - The prospect of rock blasting would result in dis-amenity and possible structural damage, not least to St. Joseph's House, a protected structure.
  - The devaluation of existing dwelling houses would be likely to ensue.
- BHS: Attention is drawn to the site's location in an area where the generally recommended height is two storeys and adjoining a playing field that is zoned "F", wherein residential development is not permitted, thus rendering the site a transitional area. This playing field, two ACAs, and the mature low density make-up of the existing residential development contribute to the character of the area. Any redevelopment of the site should reflect this character along with the proximity of St. Joseph's House and the sylvan nature of this site.

Accordingly, the Planning Authority's approach to the current proposal materially contravenes the CDP.

- **Taller Blocks:** Concern is expressed over the relationship that would exist between Block A and St. Joseph's House: the change in scale and design would jar. Why the Planning Authority acceded to the retention of a modified fifth storey, rather than its entire removal is unclear. The appellant considers that the whole Block would be inappropriate.
- **Inappropriate layout:** Attention is drawn to the historic and existing curtilages of St. Joseph's House and a triangular piece of ground beside Leopardstown Road, which is said to be in the Council's ownership. Thus, 50% of the site is unavailable for development and so the calculation of density based on the resulting lower site area yields a radically different figure.
- **Terraced townhouses:** The gardens to these dwellings would fall short of the conventional depth of 11m and their design, which would fail to incorporate a double pitched roof, would add to their profile. Cited references for the proposal are drawn from non-comparable locations to that of the application site.
- **Tree survey and open space:** In the light of this survey, only c. 50% of the site area is available for development. Given that the site is the subject of an objective to protect its trees, the proposed extent of felling would contravene the same. The applicant's estimate of the area of public open space and the Council's Parks estimate differ widely, as the latter only includes useable space. Thus, a shortfall is identified. Draft conditions 12 and 14, variously set a tree bond and require sheet piling to protect trees. In practise, deep excavation and disordered drainage would adversely affect trees identified for retention.
- **Legal estate and interest:** The triangular piece of land, referred to above, was not the subject of a letter of consent from the Council with respect to the making of the current application. The Board has previously refused proposals on the basis that the applicant has failed to demonstrate sufficient legal estate or interest in an application site.

**(d) Helena M Daly & Others of Silver Pines**

An oral hearing is requested.

- St. Joseph's House: The conservation view that access through the curtilage to St. Joseph's House should be very much a secondary one has been disregarded in the Planning Authority's draft permission.
- Trees: Within the submitted documentation there is a tension between the view that the dual access option would minimise tree removal and the consultant arborist's view that the construction of ramp A in front of St. Joseph's House would lead to the loss of an additional 8 trees. The tree bond set in condition 12 would be insufficient to deter damage to trees identified for retention. Replacement planting would not be commensurate with that which would be lost, both aesthetically and in terms of wildlife habitat.
- Wildlife:
  - A Bat Activity Survey is needed. Condition 32 requires that the applicant seek a derogation licence from the NPWS and yet there is an alternative to the disturbance of roosts, i.e. the retention of trees on the site.
  - The submitted ecological report states that tree retention would ensure that nesting opportunities for birds would be maintained. However, it omits to mention that noise generated by construction works would drive birds away. While condition 33 requires that vegetation clearance take place outside the nesting season, this would not address the wider habitat loss that would arise. The 11 bird species identified by the said report can be augmented by a further 10 that the appellant can testify to.
- Silver Pines entrance:
  - Access: Attention is drawn to the narrow entrance to St. Joseph's and to the portion of Silver Pines in question, which is a residential road that passes through five 90-degree bends between its junction with Brewery Road (N31) and the said entrance. This road is the subject of on-street parking and a children's play area accompanies one side of it towards its extremity. Accordingly, to permit traffic to the proposed new build apartment blocks, as distinct from St. Joseph's House, to pass along the

road would be to create a traffic hazard. Instead, access to these apartments should be from Leopardstown Road only (R113).

- Traffic: Attention is drawn to the congestion that occurs at present on Brewery Road and Leopardstown Road during peak times (07.00 – 09.30 and 16.00 – 19.30). Under further information, a revised TIA was submitted, which concluded that reliance upon the two access points for the new build apartment blocks would raise no new issues. This conclusion is challenged on the basis that the underlying analysis is for the junction between Brewery Road and Silver Pines and The Chase and it does not address the aforementioned portion of Silver Pines that would, in practise, be used. The TIAs predictions of exiting traffic are unrecognisable and the data informing the accompanying analysis is questioned as to its relevance to conditions in Dublin.
- Mobility management: The efficacy of a mobility manager, in practise, is questioned and the absence of any tangible means of car ownership reduction, beyond limiting the supply of car parking spaces, is noted.
- Road safety: Whereas a left in and left out only regime is proposed for the Leopardstown Road access, no traffic control measures are proposed for the Silver Pines access. The RSA should address this access route, too. Condition 21 is understood to entail the introduction of a shared footway/ cycleway to Silver Pines. Such introduction would be ill advised, as the footway is used by, amongst others, the deaf and/or visually impaired. Instead cyclists should be directed to the Greenway.
- Car parking: CDP standards would not be met by the proposed 177 car parking spaces, i.e. a shortfall of 20. Neighbouring residential streets are not the subject of parking controls and so overspill parking would ensue, which would add to the existing incidence of congestion on these streets caused by on-street parking. Condition 20, which relates to the detailed designation of car parking spaces, should be made available for public scrutiny.
- Construction activities: Week day hours should be limited to 17.00 rather than 19.00 and compressors/generators should not operate outside the



allotted working hours. Likewise, work should not take place under floodlights.

All construction traffic should use the Leopardstown Road access and parking provision for such traffic should be made available to allay the risk of overspill parking on surrounding residential streets. If works to St. Joseph's House precedes that of new build construction, then access arrangements would need to be clarified.

- Height: The height of the proposed apartment blocks would have an adverse impact upon the amenities of surrounding dwelling houses, in terms of being over-bearing leading to overshadowing and overlooking. They would thus contravene the first principle of the CDP's Building Height Strategy (BHS), which is to protect residential amenity. They would also adversely affect the setting of St. Joseph's House, a protected structure.

The upward modifier relied upon by the applicant is misconstrued, as the walking distances between the site and the nearest Luas stops and the N11 QBC are further than those cited.

The applicant did not accede to the omission of the fifth floor of proposed Block A. Omission of this floor should be required, rather than simply its setback. Indeed, the redevelopment of the site should be confined to two storey buildings.

- Size and density: The proposal would be out of proportion with its built context. Light pollution from external lights and glass facades would adversely affect existing residential amenities and wildlife.

Beyond the Part V contribution, the role the proposal would fulfil in relieving the housing crisis is questioned.

Condition 2 is welcomed. The portion of the site vacated thereby should be developed for 1 or 2 dwellings only, as stated in the request for further information.

Open space: The extent and nature of the proposed public space would be insufficient to meet the needs of future residents. Any resort to a financial

contribution in this respect would be unsatisfactory, as local opportunities to enhance public open space nearby do not exist.

- **Flooding/ponding:** The applicant has not demonstrated that the proposal would not create a flood risk, e.g. flooding occurs at the nearby Leopardstown Inn, due to surcharging of the stormwater sewer. Ponding is likewise anticipated, due to the loss of grassy areas.
- **Crèche:** The proposed crèche would be on two floors, whereas a single floor is preferable for such a use. The proposed outdoor play area would only be large enough for 12 of the 35 children to play in it at any one time. The applicant has not demonstrated that the internal floorspace would accord with the latest childcare facility guidelines.
- **Conditions precedent:** Sixteen of these conditions are attached to the draft permission. Given the level of public interest in the proposal, submissions pursuant to these conditions should be made available for public scrutiny.

**(e) Thomas C Toner** of “The Crossing”, Leopardstown Road

An oral hearing is requested.

- **Impact of Blocks B and C upon the amenities of “The Crossing”:** The design, scale, and massing of these two Blocks would have an adverse impact upon the appellant’s amenities, in terms of being over-bearing leading to overshadowing and overlooking. In this respect, particular attention is drawn to the high incidence of balconies and the discrepancy in height between Block B, especially, and “The Crossing”.
- **Overshadowing:** The submitted analysis fails to properly depict “The Crossing”. Nevertheless, it can be deduced that significant overshadowing would arise from 15.00 on during the Spring Equinox.
- **Density:** The use of gross density measurements for the proposal is challenged on the basis that the curtilage to St. Joseph’s House and, under condition 2, the curtilage of “Dalwhinnie” should be excluded. The resulting net density is 120 dwellings per hectare, an excessive density even for a site within walking distance of the Luas. In this respect the Planning Authority erred in only taking into account the proximity of public transport, when its

own CDP requires a more rounded assessment. Furthermore, the advice of the Sustainable Residential Development in Urban Areas (SRDUA) Guidelines indicates that a maximum density of 50 dwellings per hectare would be appropriate.

- St Joseph's House: Block A would dominate the setting of St. Joseph's in an unsympathetic manner and it would entail the loss of trees from within this setting. This Block would fail to address the protected structure in a manner that would respect its design and layout. It should therefore be omitted.

Internal alterations to St. Joseph's House would detract from its character.

- Height: The Planning Authority has misapplied the CDP's BHS to the proposal. Thus, while two storey buildings are to be the norm in Leopardstown, the upward modifier of within 500m of a Luas stop has been applied, whereas the nearest Block would be 600m away, and, while the site would be greater than 0.5 hectares, other downward modifiers such as St. Joseph's House, protected trees, and the two storey character of surrounding housing all need to be taken into account.

- Trees and open space: Tree loss has already occurred from within the curtilage of "Annaghkeen". Under the proposal, considerably more tree loss would occur and, during the construction phase, still further tree loss may occur, including to trees within the curtilage of "The Crossing". Given that trees on the site are the subject of an objective to protect them, the extent of tree loss would be inordinate and the tree bond required under condition 12 would be an inadequate amount to deter damage during the construction phase.

- Traffic and parking: As the Leopardstown Road access would be restricted to left in and left out movements only, the majority of turning movements would be via the Silver Pines access. City centre commuting would be likely to use the former access during the am peak and the latter one during the pm peak. The suitability of Silver Pines as a means of access to the site is questioned, due to its alignment, width, and incidence of on-street parking, in the presence of which only single directional movements can occur. Given crèche traffic, this scenario would be particularly problematic.

Under CDP car parking standards, there would be a shortfall of 18 spaces to serve the new build apartment blocks. Overspill on-street parking would thus be likely to ensue. Given that the nearest Luas stop would be 600m away and the nearest QBC stop would be 960m, public transport accessibility would not be exceptional and so a relaxation in standards would not be justified.

- Housing mix: The CDP limits one-bed apartments to 20% of the number comprised in a scheme, whereas the proposal would exhibit 23%, with only 5% of apartments three-bed.

Under further information, the proportion of dual aspect apartments was increased by the addition of side windows to bedrooms. Such measures fail to reflect the imperative of improved lighting to living spaces, where residents could be anticipated to spend most of their waking hours.

- Design: The proposal is critiqued on the basis that it would appear as an imposition on the site, which fails to reflect the character of the area and address site boundaries satisfactorily.
- Devaluation: In the light of the foregoing grounds of appeal, the appellant's residential property would be devalued. Nevertheless, if the Board is minded to grant, then a pre-development structural survey of his dwelling house is requested.
- Precedent: If the Board grants the proposal, then an undesirable precedent would be established thereby.

#### **(f) Leopardstown Action Group**

- The proposal would, due to its size and density, be out of character with the area, which it would dominate, thereby impacting upon residential amenity, in terms of lighting, and property values.
- The excavation of the site, which is composed of granite, would jeopardise the stability of existing dwelling houses nearby and the environmental impact of any construction phase upon the area would be considerable, e.g. light and noise pollution.
- It is alleged that, prior to the application, the applicant fell trees during the nesting season, trees that were within the curtilage of St. Joseph's House.

- The proposal would materially contravene the CDP's BHS, which restricts buildings to three storeys in the area in question.
- The density of the proposal, at 80 dwellings to the hectare, would exceed the maximum for the suburbs cited in the SRDUA Guidelines. The Zoning Objective for the site would be contravened.
- As Leopardstown Road and Brewery Road are at capacity during peak periods, traffic generated by the proposal could not be handled satisfactorily by either of these two roads. Data in the submitted TIA is queried.
- The population profile of the area is more elderly than the norm with implications for any RSA.
- The applicant's estimate as to the shortfall in car parking spaces, at 20, underestimates this figure, which should be 50. Public transport cannot be relied upon to make up for this shortfall and so overspill parking is anticipated.
- The proposal should, due to its environmental impact, e.g. excavation works, be the subject of an EIS.
- Proposed balconies would lead to overlooking.
- Concern is expressed over deficiencies in local infrastructure, e.g. existing problems in Leopardstown Lawn would be exacerbated.

## 6.2. Applicant Response

The applicant begins by requesting, against the backdrop of the housing crisis and the imperative of increased housing supply at appropriate locations, that a decision on their application be expedited. They proceed to respond to the grounds of appeal cited by the appellants on a thematic basis.

### Height and the CDP's BHS

- The site is a suburban infill one. The height of the proposal would taper from five storeys in the centre to two and three storeys at the margins.
- Under the BHS, upward modifiers are cited. The Planning Authority considers that two would be applicable in this case, i.e. higher density in conjunction with exceptional public transport and a site in excess of 0.5 hectares.

Additionally, the applicant cites connectivity with an adjoining park, a new vista of St. Joseph's House, and the residential amenity that would be afforded to future residents.

- Under the BHS downward modifiers are cited. The visual impact of Block A on St. Joseph's House was revisited under further information and the top storey setback along its presenting elevation. The said impact would thus be relieved, sufficiently in the view of both the applicant's and the Planning Authority's conservationists.
- The visual impact of the four and five storey blocks on nearby dwelling houses would be mitigated by the siting of these blocks adjacent to a park, the clearance distances that would separate them from these dwelling houses, and the presence of mature trees that would be retained on the inside of site boundaries.
- In the light of the above, the Board is invited to accept that the downward modifiers would not apply.
- Furthermore, in the light of Section 2.1.1 of the BHS, the proposal would not comprise "tall buildings" but rather higher ones that would be capable of being assimilated into their context.

#### Heritage and impact on protected structure

- In the light of the above mentioned modification, Block A would not impact negatively upon the character of St. Joseph's House.
- Originally St. Joseph's House would have been sited in a parkland setting. With the expansion of the city this has changed to the point that this protected structure is quite concealed. Under the proposal, a significant curtilage would be retained, along with existing trees to the south east, which would be augmented.
- Internal alterations to facilitate the new uses of St. Joseph's House would entail limited loss of character, historic fabric, and architectural detail.

## Residential density

- The density of the proposal would be 79 dwellings to the hectare. Section 2.1.3.3 of the CDP states that 35 dwellings per hectare is the minimum density that should be achieved on urban sites. Furthermore, where sites are within 1km of a Luas stop or Priority 1 QBC, higher densities should be achieved: the site would be variously 600 and 620m from the nearest Luas stops and within 1 km of the N11 QBC. Thus, the proposed higher density would be justified.

## Scale and form

- Concerns in this respect are set aside on the basis of the siting, orientation, transition in scale, and separation distances that would be achieved between the proposed blocks and nearby dwelling houses.

## Amenity of adjoining residences

- “Alhambra”
  - The terraced townhouses, which would be sited adjacent to this residential property, were modified under further information, i.e. their massing when viewed from the SW was eased, their visually important two storey street side presence is retained, their first floor windows in rear elevations and roof terraces have been removed, and rear gardens have been lengthened.
  - The detached townhouse would serve visually as “a gate lodge” and it would complement the adjacent three storey Block C. These buildings would contribute to the streetscape of both Leopardstown Road and the enclosure of the on-site vista of St. Joseph’s House.
  - Blocks A and B would be sited between 35 – 45m to the north. Any impact upon residential amenity would be mitigated thereby.
- “The Crossing”
  - Four storey Block B and three storey Block C would be, variously, c. 27 – 28m and c. 19m away. Direct overlooking over less than 22m would not

arise and a combination of tree retention and tree planting would mitigate the same.

#### Building line along Leopardstown Road

- Attention is drawn to existing development on the site, which departs from the pattern of the streetscape to the south west, i.e. an avenue to St. Joseph's and 2 existing dwelling houses. Likewise, to the north east, there is an entrance to a greenway, a detached dwelling house, and a parade of street-fronted shops. The only consistent feature is a high granite stone wall along the back of the footpath to Leopardstown Road.
- As outlined above, the detached townhouse and Block C would enhance the streetscape of the site. Furthermore, the terraced townhouses would incorporate a granite stone finish.

#### Quality of the design

- The appellants' concerns are considered to be misplaced. Thus, the scale and massing of apartment blocks would be appropriate, especially, in view of the setback of the top storey to Block A that was submitted under further information. Likewise, the incidence of dual aspect apartments would accord with the requirements of the Sustainable Urban Housing: Design Standards for New Apartments (SUH:DSNA) Guidelines.

#### Trees

- The design approach to the site was informed by the presence of the protected structure, trees that were the subject of an objective seeking their protection, and Zoning Objective "A" that permits in principle residential development. A balance across these three considerations is required to be struck: the applicant considers that the proposal achieves this.
- The submitted "Tree Constraints Plan" sets out the pre-development situation with respect to trees on the site.
- Clearly, if every tree on the site were to be retained, then the opportunity for redevelopment would be highly restricted and density targets would be missed. Thus, the design approach adopted was to seek the retention of trees around the boundaries of the site, thereby facilitating redevelopment in more



central locations. As tree retention requires that the associated portion of site be left undisturbed, the opportunity to increase tree retention, once services are factored-in, would not arise.

- On the specific question of Ramp A, this means of access would entail the loss of 5, rather than 8 trees. Given the importance of this access, the Board is requested to accede to the said loss.

#### Open space

- Exception is taken to the appellants claim that the proposed provision of open space would be deficient in quantity and quality. The applicant insists that this provision would be sufficient on both counts, as 5960 sqm would be provided and the spaces themselves would be designed and laid out to facilitate a variety of passive and active recreational activities.

#### Ecology

- The site does not constitute a natural habitat but a managed suburban habitat. Species such as foxes are highly adaptable. While some loss of habitat would occur, this needs to be seen within the context of considerably larger expanses of green spaces within the wider area, e.g. Foxrock and Leopardstown Golf Courses, Leopardstown Race Course, and Leopardstown Park Hospital.
- Condition 32 refers to mitigation measures proposed with respect to bats, which are set out in the submitted Ecological Impact Assessment (EclA). The NPWS derogation licence application would include records of bat roosts, information which of necessity must remain confidential.
- The risk of disturbance to birds and bats during any construction period would be limited to the duration of that period and more particularly would be linked to “loud, stochastic<sup>1</sup> noises” rather than low level continuous noises to which species become habituated. Such noises would be intermittent and so any displacement would be likely to be reversed.
- Condition 33 relates to the protection of birds during the nesting season.

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<sup>1</sup> Stochastic: “having a random probability distribution or pattern that may be analysed statistically but may not be predicted precisely.”

- A specific concern relates to the displacement of collared doves, which are one of the most common species of Irish bird and so they are not of conservation concern.
- The applicant acknowledges that the EclA is not based on a survey conducted during the nesting season. Nevertheless, a precautionary approach was taken to the question of impact upon such birds.
- The presence of trees on the site means that the resulting habitat would not attract wader species such as those that are of special conservation interest to the Dublin Bay SPA.

#### Engineering Matters

- An area within the site would be dedicated to parking for construction personnel.
- Construction days and hours (and associated lighting) would accord with Condition 36 and noise would be controlled/monitored in accordance with BS 5228-1 & 2.
- Neither Dun Laoghaire-Rathdown County Council nor Irish Water have responded to the applicant's detailed plans by indicating that there are any issues with the local infrastructure. SuDS methodologies would be employed.
- A geotechnical ground condition survey has informed the siting of the basement car park in a portion of the site, wherein the need for rock excavation would be limited. No pile foundations would be required and vibrations from the needed excavation/construction works would be controlled/monitored in accordance with BS 5228-1 & 2.
- In addition to noise and vibration impacts, dust would be controlled/monitored in accordance with BS 6187 and demolition debris would be handled in accordance with the submitted Waste and Construction Management Plans.
- The submitted Flood Risk Assessment Report concludes that the site is not the subject of any identifiable flood risk.

### Legal estate and interest

- No ambiguity pertains to legal title to the site and works required in the public road to facilitate the proposal would follow normal protocols.

### Unit types

- The scope for a mix of dwelling types and sizes is constrained by the need to ensure that the site yields a high density due to its favourable location with respect to public transport. Within this constraint, a mix would nonetheless be achieved.

### EIS requirement

- The proposal is clearly a sub-threshold one for the purposes of EIS.

### Reduction in property values and undesirable precedent

- In view of the applicant's responses, set out above, these concerns are considered to be misplaced.

The applicant's transport consultant has responded to each of the appellants' grounds to do with traffic, access, and parking as follows:

### In relation to appellant (a):

- To omit the Leopardstown Road access in favour of the exclusive use of the Brewery Road access via Silver Pines would lead to longer journeys for residents and so it would be less desirable than the dual access strategy proposed.
- If the car parking standard for two-bed houses rather than apartments is applied to the proposal, then the level of parking provision proposed would be consistent with the CDP's car parking standards.
- Concerns that residents would park on surrounding residential streets as part of their commute are misplaced.
- The submitted Construction Traffic Management Plan (CTMP), which includes dedicated on-site parking for construction personnel, would be fully implemented.
- All construction traffic would use the Leopardstown Road access.

In relation to appellant (b):

- The submitted TIA concluded that the traffic impact of the proposal upon the local road network would be minimal.
- Car parking provision would be adequate.

In relation to appellant (c):

- See above with respect to traffic and parking.
- The permeability of the proposal would serve pedestrians and cyclists and benefit existing, as well as future, residents of the area.
- The consolidation of the existing three Leopardstown Road accesses into one would benefit road users and be in the interest of road safety.

In relation to appellant (d):

- The use of St. Joseph's House at present generates traffic movements through Silver Pines. The TIA indicates that there would be a modest net increase in such movements.
- While the road through Silver Pines was constructed some years ago, its attributes are akin to those advocated by DMURS.
- The preference of the Silver Pines residents for a Leopardstown Road access only mirrors the preference of Tudor Lawn residents for the opposite approach. The dual access strategy would have the least *overall* impact upon the area.
- The TIA employs TRICS data and the consultant also draws upon their experience of traffic in Dublin.
- Cycle access to the basement would be either by means of the proposed ramps or the proposed lifts.
- Mobility Management Plans are an effective tool for promoting the greater use of sustainable transport options. The growing use of Go-Cars and other initiatives mean that future car ownership rates are likely to contract, especially in residential areas close to employment areas/good public transport links.

- There would be no need to introduce a cycleway into Silver Pines.
- See above with respect to traffic and construction personnel parking provision.

In relation to appellant (e):

- See above with respect to parking.
- The walking travel times and distances from the site to public transport nodes is made explicit in the applicant's submissions. These demonstrate that the site is incontrovertibly well placed for such nodes.

In relation to appellant (f):

- The Leopardstown Road access is the subject of a RSA.
- The TIA was informed by up to date and relevant traffic counts.
- See above with respect to parking.
- Leopardstown Road is a designated bus priority route.

### 6.3. **Planning Authority Response**

The Planning Authority considers that condition 2 is justified in order to safeguard the amenities of "Alhambra", although some form of development could be satisfactorily sited on this portion of the site in the future.

### 6.4. **Observations**

The observers' observations are summarised below:

- Traffic congestion on the N51 and the R113, which is already due to deteriorate with the opening of an international school and the relocation of Microsoft, and inadequate parking provision, which would result in overspill on-street parking. The use of Silver Pines as a means of access would be wholly inappropriate.
- The proposal should comprise two storey, or at the maximum three storey, buildings to accord with the CDP.

- The proposal would be out of scale with its context and it would contravene the Zoning Objective for the site. Overshadowing, overlooking, and noise would ensue.
- Unsatisfactory boundary treatments to the Greenway and its increased usage would pose security risks to adjoining residential properties.
- Local infrastructure would be inadequate to serve the proposal satisfactorily.

## 6.5. Further Responses

### (a) Tudor Lawns Residents Association

- Condition 2 is supported.
- Attention is drawn to the Board's refusal of new build development in the vicinity of Gowrie House, a protected structure, PL06D.247920. This case is considered to be analogous to the current one.

This appellant expresses support for grounds of appeal cited by the appellants Thomas C. Toner, Eamon C. Kerney, and the Leopardstown Action Group.

### (b) Eamon C Kerney of "Alhambra", Leopardstown Road

The applicant's defence of the townhouses is contested and their visual depiction is considered to be unsatisfactory. The appellant has thus commissioned his own photomontages of these townhouses from the perspective of his residential property. These photomontages show existing vegetation only and so they depict more accurately the visual impact of them upon his property.

### (c) Leopardstown Brewer Road Residents Association

Expresses support for grounds of appeal raised by Helena M Daly & Others, Thomas C Toner, and the Leopardstown Action Group.

### (d) Helena M Daly & Others of Silver Pines

Expresses support for grounds of appeal raised by the other third party appellants. Exception is taken to the applicant's appeal and its highlighting of discussions at the pre-application stage.

**(e) Thomas C Toner** of “The Crossing”, Leopardstown Road

- Condition 2 is supported, although the Planning Authority’s view that some form of development on this portion of the site would be acceptable is contested.
- Attention is drawn to the omission of a rear elevation of the terraced townhouses and the applicant’s defence of the detached townhouse fails to acknowledge its breach of the front building line.

**(f) Leopardstown Action Group**

Expresses support for grounds of appeal raised by the other third party appellants.

## 7.0 Oral Hearing

- 7.1. An oral hearing into the proposal was held on the 20<sup>th</sup> and 21<sup>st</sup> of February, 2018, in the Board’s offices. The Board, in electing to have this oral hearing, issued the following Direction:

*The Board noted the considerable local interest in this case, as evidenced by the number of submissions at the Planning Authority stage, and the number of third party appeals, and also the issues raised in the appeals relating to the impact of the proposed basement construction within an area of granite on the amenities of neighbouring residential property, and the impact of the proposed development on the setting of the existing protected structure, and considered that these issues could be further examined within the context of an oral hearing.*

- 7.2. I present a summary of the hearing below with an emphasis on new or clarified information that emerged thereby.

### **First Day**

- 7.3. The applicant’s architect, Derek Murphy of O’Mahony Pike Architects, presented an overview of the proposal.
- 7.4. Of the six appellants, five chose to participate in the oral hearing.

7.5. Appellant (b), **Eamon C Kerney**, was represented by Michael A O'Neill of O'Neill Planning. The appellant resides in "Alhambra", the dwelling house that is adjacent to the south-western boundary of the site. The following concerns were expressed:

- Blocks A and B would be overbearing and they would lead to overlooking,
- The dwelling houses identified as T1 in Block D would, due to their continuous form and finishing materials, be seriously detrimental to visual amenity. Draft condition 2, to omit these dwelling houses, should therefore be retained, and
- The dwelling house identified as T2 in Block D would, due to its siting and design, break the building line and lead to overlooking. This dwelling house should be recessed so that its rear elevation would be behind the line of the front elevation to "Alhambra".

CGIs showing the proposal from within "Alhambra" were submitted. These CGIs feature only existing landscaping within the grounds of "Alhambra".

7.6. Appellant (c), **Leopardstown Brewery Residents Association**, was represented by Dr Diarmuid O'Grada, Planning Consultant. Provisions of the CDP were reviewed. Attention was drawn to Zoning Objective A for the site, which is understood to prioritise the protection of existing residential amenity, and to the protected structure and trees on the site, the latter of which are protected by an objective, too. The proposal would, due to its density and height, materially contravene the aforementioned objectives.

7.7. If the curtilage of the protected structure is excluded from the site, then the density of the proposal would be considerably higher than that calculated by either the applicant or the Planning Authority. With respect to height, tall buildings are ones that are significantly taller than existing ones in the area, i.e. two storeys. The CDP's BHS indicates that building heights in the Stillorgan Neighbourhood Centre should be capped at four storeys and so, by deduction, in the more sensitive Zone A of the site, lower heights would be appropriate. Likewise, the location of Zone F open space lands adjoining the north-eastern boundary of the site prompts the need for a transitional area along this boundary. Furthermore, the proximity and height of Block A to the protected structure would serve to belittle this structure and so this Block should be omitted in its entirety.



- 7.8. Similar issues of proximity and height to a protected structure, Gowrie House, led the Board to refuse a proposal to link this protected structure to a three storey building under PL06D.247920.
- 7.9. If the areas of mature trees of defining importance within the site are excluded, then the density of the proposal would be considerably higher again than that calculated by either the applicant or the Planning Authority.
- 7.10. A triangular area of land between Leopardstown Road and a boundary wall is included within the site. In the light of the Frascati case, the question was posed as to whether or not the applicant has either sufficient legal interest in this area or obtained the consent of the Roads Authority to its inclusion within the site.
- 7.11. Appellant (d), **Helena M Daly & Others**, was represented by Helena M Daly. Whereas the interest attendant upon the protected structure has been identified as architectural and historic, its continuous health care use is such that it is of cultural and social interest, too. As Austrian Pines within the vicinity of this structure were planted contemporaneously with its construction, they form part of its setting and so should be protected.
- 7.12. Both the Planning Authority's Conservation Officer and Parks and Landscaping Services favoured the proposed Leopardstown Road access option as this would have obviated the need for access ramp A and the loss of fewer trees and the minimisation of traffic through the grounds of the protected structure. That this option has not been selected and instead one that would lead to these very impacts is incomprehensible.
- 7.13. The extend of tree loss on the site would be such that its sylvan character would be largely lost. Such loss in conjunction with the scale of the proposed blocks would lead to them dominating and overwhelming the protected structure. Furthermore, the removal of trees from the inner rim adjacent to Silver Pines may jeopardise trees on the outer rim, due to the intermingling of roots. Extra trees would be lost, due to the addition of two car parking spaces in this part of the site.
- 7.14. The proposal would adversely impact upon the amenities of the area in a variety of ways. The risk of radon gas release from granite excavation and the risk to road safety on Silver Pines are of particular concern. With respect to the latter, attention was drawn to the continuing future use of Silver Pines as means of pedestrian

access for users of the Anne Sullivan Centre and to the absence of a RSA of this residential street.

- 7.15. Conor O'Neill highlighted the incidence of 90 degree turns and the narrow width of Silver Pines. Use of this street is made more challenging again by on-street parking, notwithstanding the presence in places of double yellow lines. The applicant's traffic forecasts were contested on the basis that likely traffic movements would be greater than the numbers suggested. Existing pressure at peak times on the junction between Brewery Road and Silver Pines would be exacerbated and overspill car parking from the site is anticipated, due to the failure to meet CDP standards in this respect. Any justification for the height of the proposal stemming from the proximity of public transport was contested on the basis that the nearest Luas stop is 665m away and the nearest QBC is 1km away.
- 7.16. Appellant (e), **Thomas C Toner**, was represented by Anthony Marston of Marston Planning Consultancy. He called Martin Peters of MPA Consulting Engineers, who drew attention to the applicant's "preferred access strategy", which, when subject to the Planning Authority's left in/left out requirement at the Leopardstown Road access, is altered in a manner that the applicant neither welcomes nor has tested. Martin Peters predicts that considerably more traffic movements on Silver Pines would occur at peak times than those predicted by the applicant. He also drew attention to the applicant's TIAs, both of which were based on data from the UK and Ireland. If such data is restricted to Irish sources only, then significantly higher trip rates emerge, which indicate that the applicant has under estimated traffic movements that would be generated by the proposal overall. Whether or not the applicant's TIAs allow for increased traffic resulting from the recently opened Microsoft Offices and future developments in Sandyford is unclear.
- 7.17. Anthony Marston called David Averill, a Grade 1 Conservation Architect of Sheehan & Barry Architects Ltd, who set out the history of the protected structure, as a convalescent home, and who indicated that the planting of the Austrian Pines within its vicinity may have been an expression of the view that Alpine like environments were conducive to the restoration of health and well-being. The modulated design of the protected structure is such that, although it is a relatively large institutional building, its scale is domestic. By contrast, proposed Block A would be monolithic and its height and scale would overwhelm the protected structure.

- 7.18. Anthony Marston drew attention to the relationship that would exist between Blocks B and C and the dwelling house known as “The Crossing”. (CGIs were submitted to illustrate this relationship). He stated that these Blocks would constitute over development of the site and so they would be overbearing and they would lead to overshadowing and overlooking of this dwelling house. He also drew attention to the density and the height of the proposal. With respect to the former, the accessibility of public transport should not be the only consideration, as site configuration, open space requirements, and the characteristics of the area are of relevance, too. With respect to the latter, certain of the BHS’s upward and downward modifiers are discussed, i.e. proximity to the Luas, the area of the site, and the presence of a protected structure on the site. He concluded that justification for the said height does not exist under the BHS.
- 7.19. Appellant (f), **Leopardstown Action Group**, was represented by Michael A O’Neill of O’Neill Planning. He called Cllr Barry Saul, who spoke of his experience in the adoption of a succession of CDPs. He expressed his conviction that the current CDP strikes a balance between development to meet future needs and the safeguarding of residents existing amenities. He expressed his concern that such balance is not reflected in the current proposal.
- 7.20. Michael O’Neil called Caroline Jolly of Leopardstown Court and Margaret Carolan of Leopardstown Lawn, who both spoke, as local residents, of their amenity concerns. He also called Adrienne O’Sullivan, chairperson of the Leopardstown Action Group, and Ronan Smith, chairperson of the Brewery Road Management Company. The first of these witnesses drew particular attention to the finished ground floor level, which would be 1.45m above the existing ground level, and to the lower ground floor levels of adjacent dwelling houses on Leopardstown Lawn, i.e. by c. 1.3m. Consequently, from these dwelling houses, the proposal would appear to be an additional storey in height. The second of these witnesses drew particular attention to the acknowledged sylvan skyline of the site, when viewed from Arkle Square in the ACA within The Chase.
- 7.21. Michael O’Neil called Joseph McConville of J M McConville Arboricultural Consultants, who critiqued, in the light of BS 5837: 2012, the applicant’s tree survey and arboricultural impact assessment and method statement. He also drew attention to the commencement of the Forestry Act 2014, which under Section 19 brings

within its ambit trees “within the curtilage or attendant grounds of a protected structure”.

- 7.22. Michael O’Neil, himself, summarised the concerns of those he called and placed these concerns within the context of relevant planning policies and objectives.
- 7.23. The **Planning Authority** was represented by Louise McGauran, Senior Planner, and Sinead O’Hara, Executive Conservation Officer. The former representative gave an overview of the progression of the application, including its assessment and determination. Specific reference was made to the handling of the BHS and to advice contained in the Development Management Guidelines to the effect that, where the advice from consultees differs, the planning report on an application “must strike an appropriate balance between concerns at local level and an overview of all relevant policies and information.” Draft condition 27 was suggested for amendment to explicitly include rock excavation within the CMP. The latter representative recorded how, under further information, the setting back of the top storey to Block A has overcome her initial concerns over the relationship between this Block and the protected structure. Likewise, insofar as access through the grounds of this structure to proposed ramp A would not be the only means of access to the new build proposals, her initial concerns over the risk of this being the sole means of access have been overcome.
- 7.24. The **applicant** was represented by the barrister Michael O’Donnell. He called Derek Murphy of O’Mahony Pike Architects, who set out the influences that shaped the design process at the pre-application and application stages. Derek Murphy responded to several of the appellants’ critiques. Thus, he insisted that the proposal would be an integrated one and so it is appropriate to calculate density on the entire area of the site. He also justified the layout of the proposal on the basis that the emerging curtilage of the protected structure would be enclosed by means of Block A and the “green veil” of Austrian Pines that would accompany its north western elevation. Furthermore, the vista of this structure from Leopardstown Road would be reproduced and defined on its south-eastern side by Block D, the design of which would complement the other Blocks and the stone boundary wall to the said Road. He, thus, requested that draft condition 2 be omitted.

## **Second Day**

- 7.25. Michael O'Donnell called Derek Murphy who continued to respond to the aforementioned critiques. Derek Murphy submitted a "Development Interface Analysis" of the developed site, which crystallises on the separation distances that would arise between the proposal and surrounding dwelling houses.
- 7.26. Michael O'Donnell himself commented on a range of matters, amongst which he expressed the view that the curtilage of the protected structure was confined to its footprint and that the triangular area of land identified by appellant (c) is not analogous to the Frascati case.
- 7.27. Michael O'Donnell called Suzanne McClure of Brock McClure Planning & Development Consultants, who set out the applicant's position on key issues arising from the proposal. Thus, in relation to height, the BHS envisages that apartment schemes of 3-4 storeys are appropriate and, where at least two upward modifiers pertain, then an extra storey can be added. As two such modifiers do pertain and the downward modifiers identified by the appellants do not, the proposal would be of an appropriate height. In relation to density, the Objective 35 of the National Planning Framework cites infill development as a means of achieving the densification of existing settlements. The proposal would constitute such development and for the purposes of calculating density the entire site is of relevance, as the new build elements would be intrinsically linked to the proposed uses of the protected structure, i.e. the creche and the residents' clubhouse.
- 7.28. Susan McClure stated that the Gowrie House case is not comparable to the current proposal and a letter from the Road Maintenance Section of Dun Laoghaire-Rathdown County Council's Municipal services Department is appended to her statement of evidence, which confirms that Silver Pines and Leopardstown Road have been "taken in charge".
- 7.29. Michael O'Donnell called James Slattery, Conservation Architect of David Slattery Conservation Architects Ltd, who presented a chronology of St. Joseph's House, the protected structure. On the basis of NIAH criteria, James Slattery stated the view that this structure is of regional significance. He also expressed the view that, due to internal alterations, it is the exterior that is of architectural interest. Under the

proposed works to the protected structure its exterior, especially, would be enhanced.

- 7.30. Michael O'Donnell called John Considine, a Chartered Engineer with Barrett Mahony Civil & Structural Consulting Engineers, who addressed the issue of granite extraction. He stated that granite with an estimated volume of 1750 cubic metres and an average depth of 0.45m would be excavated by mechanical means, rather than blasting, over a 2-week period. He also stated that pad rather than piled foundations would be utilised. Details of noise and vibration levels and corresponding mitigation and monitoring measures were delineated.
- 7.31. Michael O'Donnell called Christy O'Sullivan, a Civil Engineer with Independent Land-use and Transport Planning Consultancy (ILTP), who explained how the preferred access strategy had been arrived at and its attendant benefits. Christy O'Sullivan responded to appellant (e) by expressing confidence in the robustness of the submitted TIAs, which do not, for example, allow for the reduction in existing traffic that serves St. Joseph's House. He observed that there are existing issues on Silver Pines arising from on-street commuter parking and, drawing upon his own experience elsewhere, he stated that apartment car parks in suburban locations tend to have an occupancy rate of 80%.

### **Questions and Answers**

- 7.32. The appellants and I asked questions, firstly, of the Planning Authority and, secondly, of the applicant. In order to avoid undue repetition, I summarise the resulting exchanges on a subject-by-subject basis with, again, an emphasis on new or clarified information that emerged thereby.

### **The Planning Authority (PA)**

#### **(i) Zoning Objective A**

- 7.33. Attention was drawn by appellant (c) to the differing emphasise of Zoning Objectives A and A1, i.e. residential amenity and new residential communities, and, while residential uses are "permitted in principle" in Zone A, what precedence was given by the PA to the Objective for this Zone. The PA responded that the Zoning Objective and the said permitted use were considered in conjunction with one another.

**(ii) Density**

7.34. Appellants (c) and (e) raised the question of the appropriate basis upon which to calculate the density of the proposal. The PA drew attention to the fact that 50 dwellings per hectare is a minimum standard for the site. As there is no maximum, if the sub-division of the site leads to a higher density, then this is a matter of indifference.

**(iii) BHS**

7.35. Appellant (e) and I enquired as to the PA's interpretation of the third paragraph of Section 4.8 and whether the apartment developments cited are confined to "established commercial cores" or not. The PA does not interpret this paragraph to mean that such confinement is in view. I also enquired about the reference in the fifth paragraph to "exceptional circumstances" and to any such circumstances that the PA had identified. The PA responded by citing the two upward modifiers that they had previously identified in their presentation.

**(iv) Draft condition 2**

7.36. Appellants (b) and (c) referred to imprecision in the wording of this condition and requested that additional visitor parking and open space be considered for the site of Block D. The PA expressed the view that this site would rather lend itself to the provision of two dwellings, along with the parking proposed under further information.

**(v) Curtilage to St. Joseph's House**

7.37. Appellant (c) drew attention to the depiction of the curtilage to St. Joseph's House under Section 13.2 of his brief of evidence. While the PA did not have a definitive view of this curtilage, it did not object to the said depiction.

**(vi) Trees**

7.38. Appellant (e) drew attention to the tree objective notation in Map 6 of the CDP and, specifically, to the notation and its relationship to the site. The PA stated that this notation is indicative only and it is intended to alert readers to the presence of trees, which in this case exist on the site and along the adjoining greenway.

7.39. Appellant (c) drew attention to the extent of tree loss that would occur under the proposal and whether or not such loss was compatible with the tree protection objective for the site. The PA responded by drawing attention to Policy OSR7 of the

CDP and the undertaking contained therein to preserve trees, which are the subject of this objective, “wherever possible”.

- 7.40. Appellants (e) and (f) drew attention to draft condition 13 and a scenario wherein trees identified for retention may be lost, too. The PA responded by clarifying that this condition requires the presence on site of an arborist whenever work within the vicinity of trees is being undertaken, as well as at least once a month.
- 7.41. Appellant (f) raised a series of matters with respect to BS 5837: 2012, the change in the specification of foundation type, and the absence of TPOs from the site. With respect to the latter matter, attention was drawn to examples of protected structures elsewhere in the County where trees form the setting to the same and are the subject of TPOs. The PA responded that Parks and Landscaping Services had no issues with the work undertaken by the applicant’s arborist, a revised condition could address the change in foundation type, and Dun Laoghaire-Rathdown County Council had not made any TPOs since the 1980s.

**(vii) Amenity**

- 7.42. Appellant (e) cited the conventional separation distances of 22m, where the rear elevations of two storey dwelling houses correspond, and 35m, where dwelling houses and apartment blocks correspond. The PA was asked to comment on the relationships that would arise between Blocks B and C and the dwelling house known as “The Crossing”. The PA drew attention to the 27m set back that would exist in the former instance and the presence of the front garden to this dwelling house that would feature in the latter instance.
- 7.43. Appellant (f) drew attention to the relationship that would arise between Block B and dwelling houses on Leopardstown Lawn. The PA did not express any disquiet in this respect.
- 7.44. Appellant (d) raised the matter of radon gas and the appropriateness of addressing this risk under a condition. The PA stated that this matter could be addressed under an expanded CMP. However, radon gas was essentially a matter for the EPA.

**(viii) Traffic, access, and parking**

- 7.45. Appellant (b) raised the matter of the triangular portion of land. The PA has no issues with the inclusion of this portion of land in the site.



- 7.46. Appellant (d) drew attention to the likely bias that would arise in the use of Silver Pines, given the left in/left out requirement to the Leopardstown Road entrance, as a means of access to the site and the attendant question of safety and the need for a RSA. The PA accepted that the majority of traffic movements generated by the proposal at peak times would be likely to use Silver Pines, but that the width and layout of this residential street would be able to accommodate such movements. (Mick Madden, Senior Engineer with Dun Laoghaire-Rathdown County Council spoke in this respect).
- 7.47. Appellant (e) enquired, if in view of the foregoing, the PA's Executive Conservation Officer was concerned about traffic and the protected structure. She explained that her original concern in this respect related to the sole use of Silver Pines as a means of access and that, as this was still not the option in view, her concern remained allayed.
- 7.48. I asked about the effect of the left in/left out requirement on drivers wishing to turn right into the Leopardstown Road entrance, now that the Leopardstown Road and Brewery Road junction no longer permits right hand turns from the former to the latter. The PA accepted that a more convoluted route would ensue. I also asked about the CDP's car parking standards that require 1.5 spaces for two-bed apartments and only 1 space for two-bed dwelling houses. The PA accepted that this was an anomaly and cited the standard of 1 space for two-bed apartments in the Sustainable Urban Housing: Design Standards for New Apartments Guidelines as being the more appropriate one.

## **The Applicant**

### **(i) Zoning Objective A**

- 7.49. Appellant (c) enquired as to the relationship between Zoning Objective A and the "permitted in principle" status of residential use. The applicant stated that this relationship is clear and unambiguous.

### **(ii) Density**

- 7.50. Appellant (c) enquired as to the appropriate basis upon which to calculate density. The applicant stated that any basis other than the site in its entirety would be inappropriate.

**(iii) BHS**

- 7.51. Appellant (e) enquired as to the justification for exceeding 3-4 storeys. The applicant cited PL06D.248265 as a precedent and pointed to the same upward modifiers as were identified by the PA.
- 7.52. I enquired as to the basis upon which the finished ground floor level had been established. The applicant responded by referring to the need to minimise granite extraction and the need to ensure that the required fall would be available for drainage purposes.

**(iv) Draft condition 2**

- 7.53. None.

**(v) Curtilage to St. Joseph's**

- 7.54. Appellant (c) reiterated the previously expressed view as to the extent of the curtilage. The applicant responded by re-stating that the existing curtilage is confined to St. Joseph's footprint and that under the proposal it would be extended outwards to approximate to the extent denoted by appellant (c).

**(vi) Trees** (The applicant's arborist, Andy Warsnop answered these questions).

- 7.55. Appellant (d) enquired about the further tree loss that would arise as a result of the addition, under further information, of 2 extra car parking spaces to the north-western side of St. Joseph's House. The applicant expressed a willingness to omit these spaces in the interest of greater tree preservation.
- 7.56. Appellant (f) drew attention to a group of Montgomery Cyprus trees (nos. 305 – 316), which are on the northern boundary of the site in a position that would be between proposed Block B and dwelling houses on Leopardstown Lawn. These trees have been identified for removal and yet they are shown in the landscaping proposals for the site as being retained for screening purposes. The applicant responded by stating that these trees would be removed on a phased basis in conjunction with replacement planting in a bid to ensure continuity of screening.
- 7.57. Appellant (f) also drew attention to the phrase "review regard retention context" used by the arborist in his report. The applicant stated that this phrase denotes a tree that is fine at present, but in a changing situation, it may need to be revisited. An example of such a tree is no. 310. Furthermore, as many of the trees on site are of a similar

old age, a long-term future tree management and new tree planting programme would be of importance.

- 7.58. Appellants (e) and (f) expressed concern that the management of the edge to the excavation for the basement may necessitate encroachment into adjacent designated Root Protection Areas (RPAs). The applicant responded by stating that the arborist would establish a line “on the ground” to safeguard these Areas.
- 7.59. I enquired as to whether the approach of safeguarding trees on the boundaries to the site had been considered on the basis that “Dalwhinne” was an addition to this site and so trees adjacent to what would be the south-western boundary but for this house plot would count as being on the boundary. The applicant responded by stating that the approach to the site had always been on the basis of “Dalwhinnie’s” inclusion.

#### **(vii) Amenity**

- 7.60. Appellant (e) critiqued the depiction of the relationship between proposed Blocks B and C and the dwelling house known as “The Crossing”. The applicant responded by stating that it was customary for separation distances to be measured between original elevations and by questioning the conventional separation distances insofar as they are drawn from the Residential Density Guidelines that date from 1999.
- 7.61. Appellant (e) also critiqued the applicant’s shadow analysis insofar as it underplays the over shadowing that would arise at “The Crossing”, e.g. in the evening time during the Equinoxes. The applicant responded by stating that this analysis needs to be read “in the round”.
- 7.62. Appellant (d) enquired about radon gas. The applicant responded by stating that this gas poses a risk in enclosed spaces and that it was not anticipated that the proposed excavation of granite would increase radon levels over those that would occur naturally. (Paul Stevenson, an engineer with Barrett Mahony Civil & Structural Consulting Engineers, spoke in this respect).

#### **(viii) Traffic, access, and parking**

- 7.63. Appellant (f) enquired as to the number of trips by truck that would be entailed in removing the excavated granite from the site. The applicant stated that c. 200 trips

would be made, but that through stock piling this material they need not all occur within the 2-week timeframe of the excavations themselves.

7.64. Appellant (d) drew attention to page 8 of Christy O'Sullivan's presentation and the statement that the Anne Sullivan Centre was supportive of the preferred access strategy. Evidently, such support was given to the Leopardstown Road only access option. The applicant, therefore, agreed to withdraw this statement.

7.65. Appellant (d) expressed concern about on-parking along Silver Pines and the risk that this could be exacerbated by overspill parking from the proposal. The applicant referred to possible means of controlling such parking that lie beyond the planning system and reiterated experience from elsewhere as to occupancy rates in apartment car parks.

#### **(ix) Public transport**

7.66. Appellant (c) expressed the view that the appropriate point of reference with respect to the Luas was the nearest stop rather than the route of the line itself. On this basis, the nearest stops would be more than 500m away. The applicant stated that it was the line itself. PL06D.248265 was cited in this respect. Furthermore, extra stops can be added to lines in the future.

7.67. Appellant (d) drew attention to the crowded conditions on the Luas at peak times and to the decidedly limited bus service available on Brewery Road.

#### **(x) Aesthetics**

7.68. Appellant (c) critiqued the proposal with respect to its effect upon the protected structure and its setting and with respect to its design and materials. The applicant responded by drawing attention to the evolving setting of this structure, which has long since ceased to be rural in character, and to the enclosing and hence defining effect that proposed Block A would have on this setting. The applicant dissented from appellant (c)'s characterisation of the proposal.

#### **Appellant (e)**

7.69. I enquired if there was any documentary evidence for the description of St. Joseph's House and the Austrian Pines as an alpine milieu. Appellant (e) did not know of such evidence, but, more widely from knowledge of the period of the 1860s and comparable institutional buildings, such an association was plausible.

## Conditions

- 7.70. Prior to closing statements from the parties, each party had the opportunity on a without prejudice basis to suggest conditions that might be attached to any Board order to grant the proposal.
- 7.71. Appellants (b) and (c) requested that draft condition 2 be amended to require that the area of the site in question be laid out as open space. The applicant objected to this amendment.
- 7.72. Appellant (d) requested conditions relating to increased tree retention to the north-western side of St. Joseph's House, conducting a RSA of Silver Pines, on-street parking on Silver Pines, and radon gas. The applicant did not comment on the first of these, described the second as unusual but tolerable, and the third and fourth as *ultra vires*.
- 7.73. Appellant (f) requested that a floor be omitted from proposed Blocks A and B and that granite excavation be restricted to weekdays between 09.00 and 17.00. The applicant objected to the first of these and, while questioning the need for the second, did not oppose it.

## 8.0 Assessment

- 8.1. I have reviewed the proposal in the light of national planning guidelines, the CDP, relevant planning history, the written and oral submissions of the parties, and my own site visits. Accordingly, I consider that this application and the first and third party appeals of the Planning Authority's draft decision should be assessed under the following headings:

- (i) EIS,
- (ii) Legal interest,
- (iii) Land use,
- (iv) Density,
- (v) Height,
- (vi) Site layout, trees and wildlife,
- (vii) Aesthetics and conservation,

- (viii) Development standards
- (ix) Amenity: construction phase,
- (x) Amenity: operational phase,
- (xi) Traffic, access and parking,
- (xii) Water, and
- (xiii) AA.

**(i) EIS**

- 8.2. Appellant (f) considers that the proposal should be the subject of an EIS, due to the environmental impacts that would arise from it, e.g. the excavation works that would be entailed in constructing the basement car park, which would include the removal of granite.
- 8.3. During the oral hearing, the applicant confirmed that the excavation of granite within the site would be undertaken by mechanical means and so no blasting would be required.
- 8.4. Under Item 10(b)(ii) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2017, mandatory EIS is required when more than 500 dwellings are proposed. The current proposal in its original and revised forms would entail the provision of 139 and 131 dwellings and so it would clearly fall below this threshold.
- 8.5. Schedule 7 to Articles 103, 109 and 120 of the aforementioned Regulations, sets out criteria for determining whether a development would or would not be likely to have significant effects on the environment. I have reviewed the current proposal under the terms of these criteria, i.e. its characteristics, its location and its potential impacts, and I consider that this proposal would not be likely to have significant effects on the environment.
- 8.6. I conclude that the proposal would not require to be the subject of either a mandatory or a sub-threshold EIS.

**(ii) Legal interest**

- 8.7. Appellant (c) draws attention to the triangular portion of land between the south-eastern boundary wall on the site and Leopardstown Road. The question was asked

as to whether or not the applicant has sufficient interest in this land for it to be included within the application site. The Frascati case was cited in this respect.

- 8.8. At the oral hearing, the applicant submitted a letter from the Roads Maintenance Section of the Municipal Services Department of Dun Laoghaire-Rathdown County Council, which confirms that utilities in Leopardstown Road abutting the site have been “taken in charge”. Thus, it would appear that the triangular portion of land in question is highway land and so under the control of the Roads Authority. Also, at the oral hearing, the Planning Authority stated that it had no issue with the inclusion of this portion of land within the application site.
- 8.9. I recognise that it is customary for developers to avail of highway land for the purpose of connecting to utilities and/or the provision of a means of access. Given that planning applications are the subject of consultation with other departments within the local authority, if such connection or means of access presents an issue, then there is an opportunity for that to be raised. In the case of the current proposal, no issues were raised.
- 8.10. I conclude that there are no legal impediments to the Board assessing and determining the current proposal in the normal way.

**(iii) Land use**

- 8.11. Under the CDP, the site is shown as lying within Zone A, wherein the Objective is “To protect and/or improve residential amenity.” Under Table 8.3.2, “residential” is deemed to be “permitted in principle” within this Zone and “childcare service” is deemed to be “open for consideration”. Section 8.3.4 states that this latter use may be permitted where it “would be compatible with the overall policies and objectives for the zone, would not have undesirable effects, and would otherwise be consistent with the proper planning and sustainable development of the area.”
- 8.12. Appellant (c) sought to explore the relationship between the permitted nature of residential use on the site and the Zoning Objective for the site, which unlike that for Zone A1, emphasises residential amenity. (Zone A1 is for new residential communities and so, under Table 8.3.3, it lists a wider range of “permitted in principle” uses than occur under Zone A). The Planning Authority commented that the permitted use and the Zoning Objective need to be “read” in conjunction with one another. I consider that, if this is done, then the residential development of the site,

which is permitted in principle on land use grounds, needs to be assessed in the light of its impact upon the residential amenities of the area.

- 8.13. I note that the proposed creche was included within the proposal at the further information stage to ensure compliance with the Childcare Facilities Guidelines. I note, too, that the applicant intends that this creche be used by future residents of the site. Accordingly, it would function on an ancillary basis to that of the proposed residential development and so I consider that it would comply with the provisions of Section 8.3.4 set out above.
- 8.14. Appellant (c) also explores the juxtaposition of the site with the adjoining playing field (Zone F open space) to the north east. This juxtaposition was presented as entailing a transitional zonal area within the site, as the existing open space use was seen as being more environmentally sensitive than the proposed residential use. However, Section 8.3.2 of the CDP, which addresses transitional zonal areas, cites examples wherein residential use is the more environmentally sensitive one, and so it is not self-evident that the open space use is more environmentally sensitive than the proposed residential use.
- 8.15. I conclude that there is no in principle land use objection to the proposed residential use of the site and that the proposed creche would be an appropriate accompanying use.

#### **(iv) Density**

- 8.16. The site has an area of c. 1.65 hectares. Appendix A of the SRDUA Guidelines advises on the calculation of net and gross densities. What can be included and what can be excluded from the calculation of net density is delineated. *Prima facie* the entire site should be included. Thus, as the original and revised schemes for this site are for variously 139 and 131 dwellings, the net density exhibited by the proposal would be 84.24 and 79.39 dwellings per hectare.
- 8.17. At the oral hearing, appellant (c) contended that St. Joseph's House, as a protected structure, and its curtilage and the trees of defining importance to the site, which are protected, should be excluded from the calculation of net density. Consequently, the density exhibited by the new build development would be considerably higher than the figures cited above.



- 8.18. Both the applicant and the Planning Authority considered that such sub-division of the site would be inappropriate as the proposal is an integrated one for the whole of the site. Thus, for example, St. Joseph's House would be converted into apartments, a creche and a residents' clubhouse and access to the site from Silver Pines would be through the grounds to this House. I concur with this view.
- 8.19. Policy RES 3 of the CDP refers to the SRDUA Guidelines, amongst other Guidelines. 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." Chapter 5 of the said Guidelines advises on appropriate locations for increased densities. Thus, where sites are within 1km walking distance of a Luas stop, increased densities should be promoted, i.e. minimum net densities of 50 dwellings per hectare, subject to appropriate design and amenity standards.
- 8.20. The subject site would be c. 0.6km from the Sandyford Luas Stop and c. 0.7km from the Central Park Luas Stop and so this site is a candidate for increased density. The above cited net density figures would exceed the 50 dwellings per hectare set out in the Guidelines, but as this is a minimum figure with no accompanying maximum figure, these figures are in order.
- 8.21. I, therefore, conclude that, in principle, the density of the proposal would accord with the advice of the SRDUA Guidelines.

#### **(v) Height**

- 8.22. Under Policy UD6 of the CDP, the Planning Authority's Building Height Strategy (BHS) is set out under Appendix 9. Under this Strategy, the subject site is located outside the cumulative areas of control and in the residual suburban area of Leopardstown. Section 4.8 of the BHS sets out the policy for residual suburban areas and is thus of relevance.
- 8.23. Under the third paragraph of Section 4.8, the BHS states that within the residual suburban area of Leopardstown a general recommended height of two storeys will apply. However, apartment or town-house type developments may be permitted to a maximum of 3-4 storeys in appropriate locations, "provided they have no detrimental

effect on existing character and residential amenity”. Examples of such locations are cited, i.e. large redevelopment sites and sites adjacent to key public transport nodes.

- 8.24. I understand the aforementioned third paragraph as summarising the upward and downward modifiers that are then set out in greater detail in Sub-Sections 4.8.1 & 2 of the BHS. These modifiers influence the height that can be achieved on sites and the BHS recognises that a mixture of them may arise in certain situations. The Strategy also envisages exceptional circumstances in which “additional height” may be possible, i.e. greater than 3-4 storeys. Such “additional height” would require more than one upward modifier to be present to justify it. If the downward modifier pertaining to residential amenity features (Item 1 of Sub-Section 4.8.2) in any situation, then particular importance will be attached to it.
- 8.25. The current proposal would entail the construction of four new build blocks, which would range in height from 2 – 5 storeys. The applicant has set out the factors upon which reliance is placed to justify these heights (cf. Section 6.2 above under the heading “Height and the CDP’s BHS”). These factors include connectivity with an adjoining park, a new vista of St. Joseph’s House, and the residential amenity that would be afforded to future residents. If these factors are compared with the upward modifiers set out in Sub-Section 4.8.1, then the second of these would be capable of being categorised under (a) urban design benefits. (The first and third would only subsist for the benefit of future residents and so they would not be capable of being categorised as upward modifiers). In addition, the proposed renovation of St. Joseph’s House would be capable of being categorised under (c) civic, social, or cultural importance and the presence of treed boundaries to the site would be capable of being categorised under (d) concerning the receiving environment.
- 8.26. As the current proposal would entail the construction of blocks in excess of 4 storeys, exceptional circumstances need to exist to justify the fifth storey, i.e. at least two upward modifiers. Both the applicant and the Planning Authority consider that such circumstances do exist and they consider that the two applicable upward modifiers are (e) exceptional public transport accessibility (the site is within a 500m walk band of the Luas corridor, as distinct from a Luas stop) and (f) the site would be greater than 0.5 hectares in area and thus “could set its own context away from boundaries with existing residential development”.

- 8.27. The appellants and observers object to the height of the proposal. In doing so they draw attention to downward modifiers, under Sub-Section 4.8,2 of the BHS, i.e. where the proposal would adversely affect (1) residential living conditions through overlooking, overshadowing or excessive bulk and scale, and (2) the setting of a protected structure. In relation to the first of these items, appellants (b), (e), and (f) have, variously, “Alhambra”, “The Crossing”, and Leopardstown Lawn primarily in view. In relation to the second, St. Joseph’s House on the site is a protected structure.
- 8.28. Clearly, the majority of the aforementioned upward and downward modifiers relate to matters that are in contention between the parties. As these matters are addressed separately under subsequent headings of my assessment, I will return to the application of upward and downward modifiers in the conclusion to my report.
- 8.29. I conclude that, under the BHS, the site can, subject to the application of relevant upward and downward modifiers, be the subject of a 3-4 storey development. Furthermore, it can, subject to these modifiers, be the subject of 5-storey development, provided, presumably, the same modifiers are not relied upon.

**(vi) Site layout, trees and wildlife**

- 8.30. The applicant sets out the influences that shaped the proposed site layout. These influences included the presence of St. Joseph’s House and trees on the site and the need to scale down new build elements towards the site boundaries with adjoining and adjacent residential properties. They also included the quest to maintain a line of sight between Leopardstown Road and St. Joseph’s House and to promote pedestrian permeability both within the site and with the adjoining greenway and playing pitch beyond along the north-eastern boundary of the site.
- 8.31. Appellant (b) draws attention to the existing dwelling house “Dalwhinnie”, which is one of seven detached two-storey dwelling houses that form a staggered row along the northern side of Leopardstown Road. Under the proposal, this dwelling house would be demolished and replacement dwelling houses (Block D) would be built on the cleared housing plot. Appellant (b) expresses concern that one of these dwelling houses would be sited in a position forward of the footprint of the existing dwelling house. Furthermore, the proposed three storey apartment building (Block C) would,

likewise, be sited in a position closer to Leopardstown Road than the dwelling house “Annaghkeen”. The existing building line would thus be over ridden.

- 8.32. The applicant responds by drawing attention to the absence of a pronounced building line at present due to the combination of the staggered pattern of the said row of dwelling houses, the one-off siting pattern of “Annaghkeen” and “The Crossing”, and the street-fronted parade of shops further to the east beyond the entrance to the greenway. The presence of high granite front boundary walls and trees obscures further this building line. The applicant goes on to contend that the proposal would span the gap between the row of dwelling houses and the said parade in a more coherent manner than exists at present, thus enhancing the streetscape.
- 8.33. The applicant also draws attention to the new street that would be created on-site by means of the relationship that would exist between the south-western ends of Blocks A and B, on the one hand, and the row of dwelling houses that would be comprised in Block D, on the other hand. This street would afford a vista between the Leopardstown Road access to the site and St. Joseph’s House that would be similar to that afforded by the existing avenue between this Road and House that pertains at present.
- 8.34. Turning to trees, Map 6 of the CDP shows a tree symbol sited centrally along the north-eastern boundary of the site. The key to this Map states that the objective attendant upon this symbol is “To protect and preserve trees and woodlands”. The accompanying written statement addresses trees under Policy OSR 7 and Section 8.2.8.6. This Policy states that “Trees...which form a significant feature in the landscape or are important in setting the character or ecology of an area should be preserved wherever possible” and this Section cites BS 5837 (2012) as the relevant standard for handling trees on development sites.
- 8.35. During the oral hearing, the Planning Authority clarified that the tree symbol in question was indicative and it was there to alert readers of the CDP to the presence of trees on the site and within its vicinity, e.g. along the greenway, that should be protected “wherever possible”. The applicant and the Planning Authority highlighted that, as the site is subject to Zoning Objective A and is a candidate for densification,

a balance needs to be struck between these factors, on the one hand, and the need to protect trees on the site, on the other hand.

- 8.36. Generally, appellants and observers took exception to the extent of tree loss that would occur as part of the proposed development of the site. Statistically, 169 individual trees on the site were surveyed, of which 0 were placed in category A, 64 were placed in category B, 91 were placed in category C, and 14 were placed in category U. Under the proposal, 78 trees would be removed, i.e. 46.70%, of which 0 would be category A trees, 26 would be category B (40.63% of this category), 38 would be category C (41.76% of this category), and 14 would be category U (100% of this category). Clearly, significant tree loss would be entailed in the proposal and, ultimately, the acceptability or otherwise of such loss hinges on where the balance is struck in terms of the factors mentioned in the foregoing paragraph.
- 8.37. The applicant explains that the approach adopted to tree protection involves seeking to maximise tree retention along the north-eastern boundary of the site and in the vicinity of St. Joseph's House. The former trees accompany the greenway and adjoining playing pitch and the latter trees, which include tall Austrian Pines, were planted contemporaneously with the opening of St. Joseph's House as a convalescent home in the 1860s. Appellant (e) expresses the opinion that such planting may have been an expression of the view then prevalent that Alpine like environments were conducive to human health and well-being. Thus, while these trees enhance the setting of this House, if credence is given to this opinion, then their presence is instructive in understanding the early cultural history of this protected structure, too.
- 8.38. The applicant's approach to tree protection allows the central and south-eastern portions of the site to be redeveloped. While a row of Austrian Pines would be retained between St. Joseph's House and proposed Block A, i.e. nos. 303 – 310 in the applicant's tree survey, more controversially, the particularly imposing Austrian Pines nos. 317, 318, and 319 would be removed. The former trees are an important feature within the setting of St. Joseph's House and they would provide, in the applicant's words, "a green veil" between this House and the said Block. The latter trees lie beside the avenue between Leopardstown Road and the House and so they contribute to the said setting, too. They also make an important contribution to the wider sylvan skyline of the area, especially when viewed from "Alhambra". This

skyline is a key distinguishing characteristic of the locality of the site and it forms part of the backdrop to the ACA at The Chase further to the west.

- 8.39. During the oral hearing, I drew the applicant's attention to the approach to tree retention on the boundaries of the site and how the addition of "Dalwhinnie" to the overall site effectively internalises what would otherwise be an external boundary to the site along the avenue with implications for the application of the said approach, especially with respect to the Austrian Pines nos. 317 – 319. The applicant's architect confirmed that the site with "Dalwhinnie" included had, at all times, been the site upon which he had been briefed to work upon.
- 8.40. Appellant (d) draws attention to the fact that, if the Leopardstown Road only access option was selected for the new build elements of the proposal, then the need for proposed ramp A would be obviated and so additional trees within the setting of St. Joseph's House would be retained, i.e. 8 trees. I note from the applicant's tree survey that 6 of these trees were placed in category C and 2 in category B, 1 of which is an Austrian Pine. I note, too, the applicant and Planning Authority's position that, as the preferred access strategy would entail the provision of the access ramp A, the removal of these trees is unavoidable.
- 8.41. During the oral hearing, appellant (f) drew attention to Page 5 of the applicant's tree survey in which a commentary is provided upon a group of Monterey Cypress, i.e. nos. 355 – 366. Essentially, this commentary concludes that a significant number of these trees have suffered dramatic mechanical failure and so they need to be removed. In their absence, the remaining trees would be prone to such failure, too, and so the recommendation is that they be regarded as a group in need of removal.
- 8.42. The applicant responded to the aforementioned inconsistency by confirming that the said trees would indeed be removed, but that this would be undertaken on a phased basis in conjunction with replacement tree planting.
- 8.43. During the oral hearing, appellant (d) drew attention to the cluster of Austrian Pines adjacent to the north-western boundary of the site, which lie between the north-western side elevation of St. Joseph's and the rear gardens to the nearest dwelling houses on the Silver Pines housing estate. She expressed concern that, due to the likely intermingling of roots, the removal of trees for reasons of good tree management may have the effect of harming trees that are to be retained. She also

expressed concern that, due to the introduction of two extra car parking spaces under further information, more trees may be affected than would otherwise be the case.

- 8.44. The applicant responded to these concerns by agreeing to examine again the extent of tree removal that would be necessary and by expressing enthusiasm for the removal of the said car parking spaces.
- 8.45. I have compared the original and revised plans for the aforementioned tree cluster. I have been unable to identify any increase in tree removal that would occur in moving from the former to the latter plans, i.e. the same 6 trees are shown in each case. However, the prospects for the retention of the 1 category B tree (no. 225) amongst these 6 may be enhanced by the omission of the said car parking spaces and so I consider that this possibility should be pursued, subject to my overall assessment of car parking.
- 8.46. The tree removal envisaged under the proposal would have a bearing upon wildlife, insofar as nesting opportunities for birds and, potentially, roosting opportunities for bats would be reduced. The applicant has submitted a EclA, which identifies bird species present on the site and which found no evidence of bats, although further survey work would be needed in this respect. Appropriate mitigation measures are identified, which would be applicable to the construction and operational phases of the proposal.
- 8.47. I conclude that the site layout of the proposal would be appropriate, insofar as it would incorporate a new building line with respect to Leopardstown Road and an on-site street similar to the existing avenue between this Road and St. Joseph's House. I am, however, concerned that this layout would entail not only the removal of almost half the trees on the site, but more especially the removal of some of the finest if not the finest of these trees, an outcome that would run contrary to the tree protection objective for this site. I will return to this concern under the following heading of my assessment.

#### **(vii) Aesthetics and conservation**

- 8.48. The applicant draws attention to several developments designed by O'Mahony Pike Architects that entailed the renovation of protected structures in conjunction with the introduction of new buildings to surrounding lands. The current proposal would entail

just such a scenario. Thus, the works proposed for St. Joseph's House, a protected structure, would entail the removal of a number of more recent unsympathetic extensions and outbuildings and the conversion of the interior for re-use as apartments, a creche, and a residents' clubhouse. New buildings would be constructed to the south east. These would be of contemporary design and appearance and so they would contrast with the Victorian Gothic architecture of the red brick St. Joseph's House. Of these buildings, Block A, which would be one of two five storey blocks, would have the most pronounced relationship with this House.

- 8.49. The applicant's Conservation Architectural Report includes within Appendix 1 a series of extracts from historic Ordnance Survey maps which show that St. Joseph's House was originally accompanied by more extensive lands than occurs now. Thus, this House occupied a rural setting and was accessed off Brewery Road by means of a winding avenue. This setting has been largely lost due to the development of the Silver Pines housing estate and dwelling houses both within the current application site and on adjoining lands. Instead, the House now has a sylvan setting, by virtue of, for the most part, tall Austrian Pines.
- 8.50. During the oral hearing, the parties discussed the question of curtilage with respect to the protected structure. While the applicant expressed the view that this curtilage may simply coincide with the footprint of St. Joseph's House at present, under the proposal, it would expand outwards towards Block A. Appellant (c)'s brief of evidence included under Section 13.1 a relevant extract from a recent Ordnance Survey map on which was superimposed a depiction of the curtilage as extending outwards from the House in all directions towards existing physical boundaries, except to the south east where it would extend to roughly the line of the north western elevation of proposed Block A. While the Planning Authority was not prepared to be definitive, it did not raise any objection to appellant (c)'s depiction. There was thus a measure of agreement between these parties as to the extent of the curtilage to St. Joseph's House that would arise under the proposal, subject to its scaling back to the south west, to allow for the exclusion of the Anne Sullivan Centre. (The blockwork wall specified for the common boundary that would be thereby established would be unsympathetic to the character of the adjacent protected structure and so it should be re-specified, e.g. as a quality timber fence to complement the sylvan character of the setting to this structure).



- 8.51. I consider that, while the foregoing discussion addresses the question of the historic curtilage of St. Joseph's House and the one that would arise under the proposal, the curtilage as it pertains today still needs to be considered. During my site visits, I observed that the avenue between Leopardstown Road and the House is used as a space within which existing residents can exercise. I also observed that the north-western end of this avenue is accompanied by a garden area that includes within it the Austrian Pines nos. 317, 318, and 319. I, therefore, consider that this avenue and garden demonstrably form part of the functioning curtilage of St. Joseph's House in addition to that depicted by appellant (c).
- 8.52. In the light of the foregoing discussion of curtilage, proposed Block A would be sited partly within the curtilage, which also forms part of the setting of St. Joseph's House, and partly within its wider setting. The question thus arises as to its impact upon this setting. At the application stage, the Planning Authority expressed, under further information, its concern that the scale of Block A would be excessive and so one storey should be omitted from it. The applicant responded by recessing the fifth storey to reduce its visibility from the immediate vicinity of St. Joseph's House. While the Planning Authority considered that this response was adequate to ease the impact on the said setting, appellants and observers disagree and question why the Planning Authority did not at least require the omission of a full storey.
- 8.53. During the oral hearing, the applicant drew particular attention to the CGI View 08, which is orientated in a south easterly direction with St. Joseph's House in the foreground and the north-western elevation of proposed Block A in the background beyond a row of Austrian Pines. A superimposed purple line picks up on the eaves line of the House and follows this through to the fourth storey level of the Block, at which level zinc cladding would be specified in a bid to lessen the visual impact of this storey. From this perspective, the two buildings appear to be in proportion to one another. However, it needs to be "read" in conjunction with the submitted plans, which show that the south-western half of the north-western elevation of Block A would directly correspond with the south-eastern side elevation of St. Joseph's House over a separation distance of 25.71m. The overall length and height of this Block would be considerably in excess of St. Joseph's House, i.e. 56.40m compared with c. 39m and to the parapet height above the fourth storey and recessed fifth floor roof height 13.2m and 17.35m compared to the eaves and ridge heights 7.6m and

12.8m, respectively. The submitted cross section of the relationship between these two buildings shows that the top storey of Block A would be recessed to varying degrees, i.e. the central portion considerably and the wing portions to a lesser extent. The visibility of these portions would vary accordingly.

- 8.54. During the oral hearing, appellant (e) drew particular attention to the modulated form of St. Joseph's House, which means that, although it is an institutional building, it maintains a domestic scale. By contrast, proposed Block A would be of monolithic form. Thus, any assessment of the dimensions of these buildings set out in the foregoing paragraph should be informed by this pertinent observation.
- 8.55. In the light of the preceding two paragraphs, several appellants expressed concern that the setting of the protected structure would be overwhelmed and the structure itself "belittled". The applicant disagrees and draws attention to the revisions to this Block that were made under further information in a bid to achieve a more comfortable relationship between these buildings.
- 8.56. I note that the scale and form of proposed Block A would differ markedly from St. Joseph's House and that the aforementioned critique, that this House would be overwhelmed, has some validity to it. Accordingly, some reduction in its scale would be appropriate.
- 8.57. Returning to the concern that I voiced in the conclusion to the sixth heading of my assessment, the siting of Block A would entail the loss of the Austrian Pines nos. 317, 318, and 319, which form a centre piece to the existing residents' garden. These trees are either the finest or amongst the finest examples of their kind on the site and so they should be retained and, ideally, the opportunity of such retention should be capitalised upon to maintain them as a centre piece to any redevelopment of the site.
- 8.58. I conclude that the scale and form of proposed Block A and St. Joseph's House would contrast with one other another to such an extent that, ultimately, it would be to the detriment of the setting of the House, which is a protected structure. I conclude, too, that the siting of this Block would entail the loss of the Austrian Pines nos. 317, 318, and 319, trees that lie within the curtilage to St. Joseph's House and which contribute to its setting and the wider sylvan character of the locality. These trees along with other Austrian Pines within the setting of this House date from its

foundation and so they should be retained in their own right and as an important accompaniment to the protected structure.

**(viii) Development standards**

- 8.59. As originally submitted, the current application proposed 139 dwellings of which 27 would have been one-bed, 97 two-bed, 14 three-bed, and 1 four-bed, i.e. a mix of 19.42%, 69.78%, 10.07%, and 0.72%. As revised, this application proposes 131 dwellings of which 27 would be one-bed, 93 two-bed, 8 three-bed, and 3 four-bed, i.e. a mix of 20.61%, 70.99%, 6.11%, and 2.16%. Under either of these scenarios the mix envisaged would accord with advice contained in the SUH:DSNA Guidelines (December 2015) and by extension March 2018.
- 8.60. The application is accompanied by a Housing Quality Assessment (HQA), which demonstrates that the proposed new build apartments and townhouses would comply with the relevant quantifiable development standards set out in the aforementioned Guidelines (December 2015) and by extension March 2018. The apartments that would be provided as a result of the conversion of St. Joseph's House would also be compliant.
- 8.61. At the application stage, the proposal was the subject of a request for further information, which addressed a deficiency in the number of new build apartments that would be dual aspect. The applicant duly rectified this deficiency.
- 8.62. Under Section 8.2.8.2 of the CDP, the basis for the calculation of public/communal open space is set out. Under the proposal a total of 5960 sqm of such space would be provided, which would comfortably exceed the minimum amount required under the said Section. This space would provide satisfactorily for active and passive recreational uses.
- 8.63. I conclude that the proposal in its revised form would accord with the relevant development standards and so a satisfactory standard of amenity would be afforded to future occupiers of the proposed dwellings.

**(ix) Amenity: construction phase**

- 8.64. The appellants and observers expressed concerns over the environmental impact of the proposal during the construction phase of the proposal and attendant amenity and potential public safety/health impacts.

- 8.65. The Planning Authority's draft conditions 11, 27, 28, and 36 pertain, variously, to the preparation of a Construction Waste Management Plan, compliance with the submitted Construction Management Plan and the preparation of a Construction Traffic Management Plan, the provision of off-street car parking for staff, and the restriction of working hours to 08.00 – 19.00 on weekdays and 08.00 – 13.00 on Saturdays. These conditions would mitigate some of the impacts of concern to local residents. (While appellant (d) requested that the working weekday conclude at 17.00, I note that 19.00 is the conventional time in this respect and that any tightening would, presumably, extend the overall construction phase period).
- 8.66. At the oral hearing, the applicant undertook to access the site solely from Leopardstown Road, during the construction phase, thereby obviating the need to route construction traffic via Silver Pines. A presentation was also given concerning the extraction of granite. Thus, an estimated 1,750 cubic metres of granite would need to be excavated by mechanical means only over a 2-week period. Noise mitigation measures would be deployed in the form of an acoustic screen, in addition to a solid boundary hoarding that would be placed around the overall development site. Appellant (f) requested that the hours for extraction works be limited to 09.00 – 17.00 on weekdays as a further precaution. The applicant did not object to this request. An estimated 200 hundred tipper truck movements would be generated by the ensuing removal. These movements would not necessarily be concentrated within the said 2-week period, as recourse maybe had to stockpiling on-site.
- 8.67. At the oral hearing, too, appellant (d) expressed concern over the risk that the extraction of granite may lead to the release of radon gas. The applicant did not consider that an appreciably risk would arise over and above that which occurs naturally. As a public health matter, any concerns that may arise, in practise, would be dealt with by the EPA as the designated body in this respect. The Planning Authority did, however, suggest that draft condition 27 be amended to ensure that the CMP addresses, presumably protocols, in the unlikely event that radon gas proves to be an issue.
- 8.68. I conclude that, subject to the mitigation measures encompassed in the draft conditions and the applicant's subsequent undertakings and explanations, the proposal would be compatible with the residential amenities of the area.

**(x) Amenity: operational phase**

- 8.69. Appellant (b) resides in “Alhambra”, the residential property adjoining that portion of the site that is composed of the house plot “Dalwhinnie” which would be developed to provide Block D, appellant (e) resides in “The Crossing”, the residential property adjoining the south-eastern portion of the site which would be developed to provide Blocks B and C, and appellant (f) represents the interests of residents who reside in dwelling houses on Leopardstown Lawn beyond the south-eastern end of the north-eastern boundary to the site. Each of these appellants expressed concerns with respect to the amenities of their residential properties in the presence of the proposal during its operational phase. I will consider these concerns in turn.
- 8.70. In relation to appellant (b), concern is expressed that Block D would adversely impact upon the visual and residential amenities of his property. Specifically, the continuous form and metallic finish of the dwelling houses denoted as T1 and the forward siting and bulky design of the dwelling house denoted as T2 are contested. Additionally, overlooking from T2 and balconies at the south-western ends of Blocks A and B is identified as an issue.
- 8.71. Given appellant (b)’s concerns, he welcomes draft condition 2, which omits Block D. The applicant has appealed this condition and responded to these concerns. Attention is thus drawn to the revisions that were made to the T1 dwelling houses, under further information, in a bid to reduce their profile when viewed from within “Alhambra”. With augmenting landscaping along the common boundary, the visibility of these dwelling houses would, in time, be largely lost. Attention is also drawn to the “gate lodge” role of dwelling house T2 and to the fact that “Dalwhinnie” is further forward than “Alhambra” at present. Together these dwelling houses would mediate a transition in scale from Blocks A and B.
- 8.72. I note that a dwelling house from the north-western end of the row of T1 dwelling houses was omitted under further information and the plot reallocated to provide surface car parking spaces. I note, too, that whereas T2 would be designed to have no habitable room windows on the upper floors of its north-western elevation, its south-western elevation would have such a window and so there would be a need for this window to be accompanied by a privacy screen on its north-western side to obviate any line of sight with the front elevation of “Alhambra”.

- 8.73. The south-western ends of proposed Blocks A and B would lie c. 30m to the north west of the common boundary between the site and "Alhambra". These ends would have balconies and habitable room openings within them and so the opportunity to overlook the said boundary would arise from the uppermost storeys.
- 8.74. During the oral hearing, several of the parties cited a separation distance of 35m as being relevant in these circumstances. This distance appeared in the Residential Density Guidelines 1999, which have been superseded, and it has not been reiterated in subsequent Guidelines. Thus, I am not in a position to insist upon adherence to this distance. Nevertheless, its application suggests that, at the margin, some overlooking and loss of privacy would arise at "Alhambra".
- 8.75. In relation to appellant (e), concern is expressed that overshadowing and overlooking from Blocks B and C would impact upon the amenities of "The Crossing" and that together these Blocks would be overbearing. "The Crossing" is a single storey dwelling house, the principal elevation of which faces virtually due south. It has been extended on its western side and it is surrounded by a continuous garden area, which due to a high front boundary wall and heavily treed grounds affords a high level of privacy. The nearest portion of Block B to "The Crossing" is of three storey form and it would lie to the west north west, at a distance of c. 30m from the dwelling house. The three storey Block C would lie to the west south west, at a distance of 17m and upwards.
- 8.76. The applicant's Daylight and Sunlight Assessment shows overshadowing from the said two Blocks. Thus, such overshadowing would be caused by Block C from 16.00 onwards at the Equinoxes and it would be caused by both Blocks from 17.00 onwards at the Equinoxes. Given the presence of trees within the grounds of "The Crossing" and within the site adjacent to common boundaries between this property and this site, I anticipate that an increase in overshadowing would occur, quantitatively and qualitatively, i.e. both extensively and from intermittent shadows to solid ones.
- 8.77. Overlooking from the nearest elevation of Block B would arise from floor to ceiling height bedroom windows and overlooking from Block C would arise from the sides of balconies on the front and rear elevations. The former overlooking would be mitigated in time by new tree planting and the latter would be capable of being

mitigated by privacy screens to the sides of the said balconies. The presence of the two Blocks to the west of “The Crossing” would alter the setting of this residential property and so the outlook from the north-western side of the dwelling house, especially, would become more enclosed. I am mindful, however, that the grounds towards the south-eastern corner of the property and the elevations of the dwelling house looking out onto these grounds would remain largely unaffected by the proposal. Accordingly, while the residential amenities of this property would be impacted to a degree by this proposal, I do not consider that serious injury would ensue.

- 8.78. In relation to appellant (f), concern is expressed over the dominance of Block B in relation to the residential properties to the north north east, on the opposite side of the greenway from the site, at Leopardstown Lawn, e.g. Nos. 7 – 10 (inclusive). Attention is drawn to the lower ground level of these properties compared to that of the site itself and to the higher proposed finish ground floor level than might otherwise have been expected, as a result of the semi-basement car park. (The said ground floor level reflects the twin objectives of seeking to minimise granite extraction and the achievement of a necessary fall for drainage purposes). Effectively, these factors mean that the part of the north-eastern end of Block B which would be five storeys would appear as six storeys and the part which would be three storeys would appear as four storeys from the said properties, the two storey dwelling houses on which would lie 42m away.
- 8.79. The applicant’s Daylight and Sunlight Assessment shows overshadowing of the said properties caused by Block B from 16.00 onwards and from 17.00 from both Blocks A and B at the Equinoxes. Overshadowing occurs at present, due to the presence of a cluster of Monterey Cyprus trees nos. 355 – 366 on the north-eastern boundary of the site. However, as cited above, a distinction can be made between the solid shadow of a building and the more intermittent one of trees. The north-eastern ends of these Blocks would comprise habitable room openings and balconies and so overlooking would arise. Appellant (f) also cites light pollution and noise that would emanate from these openings and balconies. While trees occur at the foot of some of the rear gardens opposite, their presence is not consistent and they tend to be of deciduous species and thus subject to seasonal variation in their screening properties. Accordingly, mitigation would be limited.

- 8.80. During the oral hearing, appellant (f) drew attention to an apparent discrepancy within the applicant's plans insofar as the Arboricultural Report concluded that the cluster of Monterey Cypress trees nos. 355 – 366 would need to be removed in their entirety and yet the landscaping proposals for the site would entail their retention. The applicant responded by explaining that these trees would be removed on a phased basis in conjunction with a replacement tree planting programme. Thus, some continuity in the screening of Block B would be maintained.
- 8.81. In the light of the foregoing exchange, I consider that the significant screening that would be afforded by the said cluster of trees cannot reasonably be given weight, as it would not endure, and any replacement planting would take considerable periods of time to become established and even longer to achieve comparable levels of screening. I thus consider that Block B would have an overbearing relationship with adjacent residential properties and that cumulatively this impact and that of increased overshadowing and the novelty of overlooking would have a significant impact upon the residential amenities of these properties.
- 8.82. I conclude that the retention of Block D would be compatible with the amenities of "Alhambra", and so draft condition 2 can be omitted, and the impact of Blocks B and C upon the amenities of "The Crossing" would not result in serious injury. However, Block B would be overbearing with respect to the nearest residential properties on Leopardstown Lawn, and this would result in an increase in the quantity and quality of overshadowing experienced in these properties and to the introduction of overlooking and a consequent loss of privacy. Cumulatively, these factors would lead to an excessive and thus significant impact upon the amenities of these properties, which under the current proposal, would not be capable of satisfactory mitigation.

**(xi) Traffic, access and parking**

- 8.83. The applicant submitted a Traffic Impact Assessment (TIA) and Mobility Management Plan (MMP) to accompany both the original and revised proposals for the site. The TIA examines scenarios wherein traffic generated by the new build apartments would access the site by Leopardstown Road only, thereby entailing the provision of ramp B to the underground car park, or by Brewery Road via Silver Pines only, thereby entailing the provision of ramp A, or by both these accesses, thereby entailing the provision of ramps A and B. The latter option is selected as



being the preferred one, as it would minimise the overall impact of traffic generated by the proposal on the road network.

- 8.84. The Planning Authority's draft condition 3 supports the said preferred access strategy, but on the basis that the Leopardstown Road access would operate as a left in/left out only access/egress. The reason for this restriction is the concern that as this Road is an important link road between the N11 and Sandyford, which is heavily trafficked, right hand turning movements would be hazardous and they would interfere with the free flow of traffic. While this condition has not been appealed, the applicant has critiqued it on the grounds that it would be difficult to enforce and as westbound traffic is carried on two lanes, the outer lane could be used for right hand turning movements into the proposed access.
- 8.85. Draft condition 3 would have the effect of redistributing a greater proportion of traffic movements to the Brewery Road via Silver Pines access. Thus, the applicant's working assumption that such movements would be divided evenly between the two accesses would be upset, although to what extent is difficult to predict with precision.
- 8.86. Appellants (d) and (e) critiqued the underlying assumptions of the TIAs on the basis that it utilises UK data, the applicability of which to an Irish context is questioned. Instead, the former appellant goes back to first principles and estimates the number of one-way trips that would be likely to use Silver Pines daily. This approach departs from the convention of examining peak time traffic movements on the basis that, if junctions have the capacity to cope with these movements, then they would be able to cope at other times, too. The latter appellant utilises Irish data only and so he estimates that a greater number of trips than the applicant does, i.e. 37 rather than 24 for the am peak and 33 rather than 20 for the pm peak.
- 8.87. The applicant has responded to these critiques by defending the robustness of the submitted TIAs, e.g. the figures used make no allowance for the fact that existing traffic movements would be replaced, i.e. they are gross rather than net figures.
- 8.88. I recognise that the RFCs for the proposed junction between Leopardstown Road and the access to the site and the existing junction between Brewery Road, Woodford, Silver Pines/The Chase in the applicant's TIAs are relatively low and so I anticipate that, if appellant (e)'s higher trip figures were to be used, then they would not result in the crossing of any critical RFC thresholds.

- 8.89. I recognise, too, the somewhat anomalous situation “on the ground” whereby Leopardstown Road, the regional road (R113), is more heavily trafficked than Brewery Road, the national road (N31). The proposed access off the former Road would not be signal controlled, whereas the proposed means of access via the existing junction on the latter Road would be signal controlled. Thus, while the left in/left out restriction on the proposed access would generate instances of longer traffic movements on the road network, the opportunity to utilise to a greater extent the inherently safer existing signalled junction should be secured. I, therefore, support the said restriction.
- 8.90. Appellant (d), especially, draws attention to the narrow width and bendy alignment of Silver Pines and to the high instance of on-street car parking, due to a combination of insufficient off-street parking provision and commuter parking. Consequently, clearance space between parked cars can make through movements hazardous and the passage of larger vehicles can be obstructed.
- 8.91. The applicant responds to this situation by stating that, notwithstanding the age of Silver Pines, the layout of the road through this estate approximates to what is now considered to be good practice, i.e. its width and alignment discourages speeding, which poses the greatest risk to road safety. Attention is also drawn to measures that could be sought to address commuter parking, e.g. residents only parking schemes.
- 8.92. I acknowledge the validity of appellant (d)’s concerns and the applicant’s response. During the oral hearing, appellant (d) drew attention to absence of an RSA for the means of access to the site via Silver Pines and she requested that, just as the proposed Leopardstown Road access has been and would be the subject of further RSAs (cf. draft condition 24), this street should be, too. The applicant did not object to such a condition and so I consider that, if the Board is minded to grant, then one should be attached.
- 8.93. Turning to proposed on-site parking provision, under the revised proposal 177 car parking spaces, 10 motorbike parking spaces, and 200 bicycle parking spaces would be provided. Of the 177 car parking spaces, 139 spaces would be provided in the underground car park for the residents of Blocks A, B, and C and 28 spaces would be provided at surface level, i.e. 10 for the townhouses and 18 for St. Joseph’s House (8 for residents + 2 for visitors and 6 for creche staff + 2 for parents/guardians

to drop-off children). The remaining 10 for visitors to the apartments could be provided in either the underground car park or at surface level.

- 8.94. Appellants and observers express concern that the level of car parking provision would be insufficient to avert the risk of overspill on-street parking along neighbouring residential streets. They draw attention to CDP standards, under which the level of provision would fall short, I calculate by 18 spaces, i.e. 179 for all of the apartments, 10 for the townhouses, and 6 for the creche to give a total of 195. However, these standards contain an apparent discrepancy whereby a distinction is made between two-bed dwellings and two-bed apartments, the former requiring only 1 space and the latter requiring 1.5 spaces. During the oral hearing, the Planning Authority accepted that this discrepancy exists and advised that the uniform standard of 1 space in the SUH:DSNA Guidelines (December 2015 as distinct from March 2018 wherein no specific standard is cited for suburban sites that are highly accessible to public transport) be applied. If this standard is applied, then the proposal would have sufficient car parking spaces.
- 8.95. The applicant expresses a preference for the accommodation of the 10 visitor spaces for proposed Blocks A, B, and C in the underground car park. Such siting would allow the proposed street to function as a home zone. It would also create an opportunity for further landscaping. In this respect, the possibility of more extensive permeable paving, discussed under paragraph 8.97 below, should not be lost.
- 8.96. Under paragraphs 8.42 – 8.44 above, the omission of 2 car parking spaces intended for the dropping-off of children to the proposed creche was discussed. Given that this creche is intended for the use of future residents of the site and given, too, that the CDP standards subsume such spaces within the spaces earmarked for staff, I consider that such omission would be in order from a parking perspective.
- 8.97. I conclude that, on the basis of the applicant's preferred access strategy as modified by draft condition 3, the road network within the locality of the site would be capable of handling satisfactorily the traffic that would be generated by the proposal. I, also, conclude that car parking proposals for the site would be satisfactory, too.

## **(xii) Water**

- 8.98. The site is served, and would continue to be served under the proposal, by the public water mains in Silver Pines and Leopardstown Road. Foul water drainage is and would, likewise, continue to be served by the public sewers in these streets.
- 8.99. Surface water drainage would be handled by means of SuDS methodologies that would include green roofs, permeable paving, and storm water attenuation tanks with hydro-brakes. Discharge to public surface water sewers in the aforementioned streets and in the Greenway would be utilised.
- 8.100. With respect to the proposed street, on-street and off-street car parking spaces on its southern side would be finished in permeable paving, but on-street car parking spaces would not. There is no evident reason for this difference in approach and, as the re-specification of these spaces would also relieve an unnecessary expanse of tarmac that would otherwise arise, this matter should be rectified. If the Board is minded to grant, then it could be conditioned.
- 8.101. The applicant submitted a Flood Risk Assessment (FRA) for the site. This Assessment includes extracts from the relevant CFRAM, which shows that there is no identifiable risk of fluvial flooding either on the site or within its vicinity. It also includes an extract from the OPW's flood maps website, which shows a flood event symbol in the Greenway adjacent to the north-eastern boundary of the site. However, I have not been able to obtain any explanation for this symbol from the website.
- 8.102. The applicant's FRA goes beyond a Stage 1 flood risk identification to Stages 2 and 3 which entail initial and detailed FRAs. While the FRA concludes that there are no significant pluvial, fluvial or tidal flood risks, it does consider the risk posed by a burst water main and incorporates within the design of the semi-basement car park appropriate mitigating measures.
- 8.103. I conclude that the proposal would be capable of being satisfactorily served by the public water mains and foul and surface water drainage networks. Appropriate SuDS methodologies would be incorporated in this proposal. The site at present and as it would be if developed as proposed would face no appreciable risk of flooding from normal sources and any risk posed by a burst water main would be allowed for in its design.

**(xiii) AA**

- 8.104. The site is neither in nor near to a Natura 2000 site. The applicant has undertaken a Stage 1 Screening Exercise for AA. I will draw upon this Exercise in carrying out my own Stage 1 Screening Exercise below.
- 8.105. The nearest Natura 2000 sites to the site are found in Dublin Bay, i.e. South Dublin Bay SAC (site code 000210), South Dublin Bay and River Tolka Estuary SPA (site code 004024).
- 8.106. In relation to the former site, there is a source/pathway/receptor route between the application site and it, as foul and surface water drainage arrangements for the site discharge ultimately to Dublin Bay. During the construction phase, there would be a potential risk of pollutants entering the surface water drainage system. However, subject to good construction site management and due to dilution and water mixing factors, no significant effects upon the conservation objectives of the SAC would be likely. During the operational phase, foul water would discharge to Dublin Bay via the Ringsend WWTP. While this Plant is presently operating at over capacity, there is no proven link between it and the nutrient enrichment of sediments in Dublin Bay. Furthermore, it is in the process of being extended and so the “unpolluted” status of Dublin Bay, which exists at present, is likely to remain into the future even in the presence of on-going development.
- 8.107. In relation to the latter site, the conservation objectives concern various sea birds and waders. Given the distance of the application site from this site and the unsuitability of its woodland habitat to the bird species in question, I consider that the proposal would be unlikely to have significant effects upon the said objectives.
- 8.108. 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 proposal, individually or in combination with other plans or projects would not be likely to have a significant effect on European Sites Nos. 000210 and 004024, 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.

## 9.0 Conclusion

- 9.1. The crux of any assessment of the current proposal hinges on the interplay between the various objectives that apply to the site with respect to land use, densification, residential amenity, the protection of trees, and the setting of St. Joseph's House, a protected structure. I consider that the applicant has afforded too much weight to the former two objectives at the expense of the latter three objectives. Thus, the cumulative impacts of the proposal upon the residential amenities of adjacent properties to the north east of the site on Leopardstown Lawn would be excessive and they would lead to the serious injury of these amenities. Likewise, the siting of proposed Block A partly within the functioning curtilage of St. Joseph's House would entail the loss of the magnificent Austrian Pine trees nos. 317, 318, and 319, which form the centre piece to the existing residents garden. This Block itself would, due to its size and form, be out of scale with the modulated design of the protected structure and so unsympathetic to its setting.
- 9.2. The BHS does not make explicit how the upward and downward modifiers are to be handled when in effect a two-stage application is required, i.e. in assessing going from 2 to 3/4 storeys and from 4 storeys to 5. I consider that, in order to avoid the risk of counting the same modifier twice, a single assessment should be undertaken. Thus, in the light of my assessment, the upward modifiers (a), (c), (e), and (f) remain valid, (d) having been depleted by the tree loss that would occur along the north-eastern boundary of the site. Likewise, downward modifiers (1) and (2) are valid. Where a fifth storey is being sought, the BHS places particular emphasis upon (1), and so I consider that the proposal, insofar as it is for five storey blocks, would not be compliant with the BHS.
- 9.3. I am mindful that national and local planning policies seek to facilitate new residential development as a response to the current housing crisis that Dublin faces. Accordingly, I recognise that the proposed redevelopment of "Annaghkeen", "Dalwhinnie", and "Marian Villa" is welcome in principle. I have therefore considered whether or not my concerns over the current proposal would be capable of being overcome by means of prescriptive conditions. In this respect, the intricate design of the proposal militates against the "simple" removal of elements, and so I have concluded that such conditions would not be capable of satisfactorily identifying in

advance the creative redesign measures that I anticipate would be necessary to achieve an acceptable proposal. The Board may, however, wish to advise the applicant of the issues raised in my conclusion and to afford the opportunity for such measures to be brought forward.

## 10.0 Recommendation

10.1. That permission be refused.

## 11.0 Reasons and Considerations

1. Having regard to the siting, size, and design of proposed Block B, it is considered that this Block would have an overbearing relationship with adjacent properties on Leopardstown Lawn and that this relationship would lead to a significant increase in overshadowing of these properties and to the novelty of them being overlooking from the site. Consequently, this Block would be seriously injurious to the amenities of the said residential properties in the vicinity of the site and so they would be contrary to the proper planning and sustainable development of the area.
2. Having regard to the siting of proposed Block A, this Block would encroach into the functioning curtilage of St. Joseph's House, a protected structure, resulting in the removal of three highly visible and particularly attractive Austrian Pine trees nos. 317, 318, and 319, which contribute to the setting of this House, an understanding of its history, and the distinctive sylvan skyline of the area. As the site is the subject of an objective "To protect and preserve trees and woodlands", the removal of these trees would contravene this objective.

Having regard to the size and monolithic form of Block A and to its proximity to St. Joseph's House, it would be out of scale with this House and thus an unsympathetic addition to its setting.

Consequently, proposed Block A would, indirectly and directly, be seriously injurious to the visual amenities of the area and as such contrary to the proper planning and sustainable development of the area.

3. Having regard to the inclusion of a fifth storey within proposed Blocks A and B and in the light of the two foregoing sets of reasons and considerations, the proposal for the site would not exhibit the “exceptional circumstances” which would justify this storey under the Building Height Strategy of the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022. Accordingly, to accede to these Blocks, as proposed, would contravene this Strategy and thus be contrary to the proper planning and sustainable development of the area.

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Hugh D. Morrison  
Planning Inspector

20<sup>th</sup> March 2018