



An  
Bord  
Pleanála

## Inspector's Report ABP-300745-18

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### Development

Permission sought for 45 no. apartments, with car parking and cycle parking above the existing Frascati Shopping Centre.

### Location

Blackrock, County Dublin.

### Planning Authority

Dun Laoighaire Rathdown County Council

### Planning Authority Reg. Ref.

D17A/0950

### Applicant(s)

IMRF II Frascati Limited Partnership

### Type of Application

Permission

### Planning Authority Decision

Grant

### Type of Appeal

Third Party

### Appellant(s)

Margaret Foley  
William Killeen,  
George's Avenue Residents  
Association,  
Catherine Sampson,

Mairead Smith

**Observer(s)**

Rory & Clare Shelley  
Catherine Burke  
Brian & Natasha Higgins

**Date of Site Inspection**

24<sup>th</sup> July 2018

**Inspector**

Kenneth Moloney

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## 1.0 Site Location and Description

- 1.1. The appeal site is located on the site of the Frascati Shopping Centre in Blackrock, Co. Dublin.
- 1.2. The site is currently being redeveloped and the front of the site (east) is effectively a construction site whereas the shopping centre and the car park remains open to the rear. The appeal site is effectively the area above the two-storey commercial development which is currently under construction.
- 1.3. The size of the appeal site is approximately 0.62 ha (1.53 acres) and the shape of the site is irregular.
- 1.4. The subject site is enclosed by Frascati Road to the immediate east and housing / apartment developments to the immediate north, west and south.
- 1.5. Frascati Park, a two-storey semi-detached development is located to the west and south of the appeal site. There is an apartment development, Lisalea, located to the immediate north of the appeal site. This apartment development has a maximum height of four storeys.
- 1.6. George's Avenue is located to the immediate south east of the appeal site and George's Avenue comprises of two-storey houses with rear gardens adjoining the boundary of the appeal site.

## 2.0 Proposed Development

- 2.1. The proposed development is for 45 no. apartments over 3 storeys from the second to the fourth-floor level.

The apartment mix is as follows;

- 3 no. 1-bed units
- 36 no. 2 bed units
- 6 no. 3 bed units

- 2.2. The number of units per floor is as follows;

<u>Level</u>	No. of Units
2 <sup>nd</sup> Floor	16
3 <sup>rd</sup> Floor	16
4 <sup>th</sup> Floor	13

- 2.3. The access to the apartments is via proposed lift / stair cores. The proposed development includes a new lift / stair core within the ground and first floor commercial uses currently under construction. The private open space provision includes balconies generally to the front and rear of all apartments proposed.
- 2.4. The proposed development also includes a communal open space at second floor level which is effectively a roof garden.
- 2.5. The proposed development includes the provision a new first floor car park situated on top of the established car park. The proposed development includes 51 no. car parking spaces and 54 no. bicycle parking spaces.

### 3.0 **Planning Authority Decision**

- 3.1. Dun Laoighaire Rathdown County Council decided to **grant** planning permission subject to 17 no. conditions. The conditions are standard for the nature of the development proposed.

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

- 3.2.1. The main issues raised in the planner's report are as follows;

##### Area Planner

- Principle of residential development accepted.

- Planning history has established the redevelopment of a shopping centre on a prominent site.
- A similar scale of development was accepted in planning application D05A/0549.
- The overall residential density on the site with an area of 2.67ha is 17 dwelling per ha.
- High density schemes need to balance between achieving higher densities and retention of green urban spaces.
- The appeal site is located within 500m of many amenities.
- There is an 80/20 split between 2 bed units and 1 & 3 bed units.
- All apartments have dual aspect orientation.

### 3.3. **Internal Reports;**

EHO; - No objections.

Housing Department; - Additional information on the construction and development costs to determine the feasibility of the on-site provision proposal.

Transportation Planning; - No objections

Surface Water Drainage; - No objections subject to conditions.

Parks; - No objections subject to conditions. (1) Applicant shall retain a landscape consultant during construction. (2) Prior to commencement of development the applicant shall submit revised landscape proposals for the car park deck.

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

There were thirty third party submissions and the issues have been noted and considered and are generally similar to the issues raised in the third-party appeals.

### 3.5. Submissions

There is a submission from TII who outline that they have no observation to make and there is a submission from IW who have no objections subject to conditions.

### 4.0 Planning History

- L.A. Ref. D14A/0134 – Permission **granted** by Dun Laoighaire County Council for part demolition and extension of Frascati Shopping Centre to provide for its rejuvenation. The overall floor space of the rejuvenated Frascati Shopping Centre is 19,592 sq. metres and the proposal includes a lower ground floor car park with a floor area 6,158 sq. m.
- L.A Ref. D16A/0235 & appeal ref. PL06D.246810 – Permission **granted** for modifications to the parent permission (L.A. Ref. D14A/0134).
- L.A. Ref. D16A/0798 – Permission **granted** by Dun Laoighaire County Council for a part off-licence use within a permitted retail unit (G26) not to exceed 10% of floor area.
- L.A Ref. D16A/0843 – Permission **granted** by Dun Laoighaire County Council for amendments to parent permission (L.A. Ref. D14A/0134) to reduce the overall floor area of the gross floor space from 27,156 sq. m. in the permitted development to 26,489 sq. m. in the amended development.
- L.A Ref. D17A/0599 – Permission **granted** by Dun Laoighaire County Council for amendments to L.A Ref. D16A/0843 to allow for an overall increase in net floor space from 26,489 sq. m. to 26,848 sq. m.

## 5.0 Policy Context

### 5.1. Development Plan

Dun Laoighaire – Rathdown County Development Plan, 2016 – 2022, is the operational Development Plan.

The following County Development Plan provisions are relevant;

#### Residential

Policy RES3 – Residential Density

Policy RES4 – Existing Housing Stock and Densification

Policy RES7 – Overall Housing Mix

Policy RES9 – Housing for All

Policy RES13 – Planning for Sustainable Communities

#### Development Management

- Section 8.2.3.1 ‘Quality Residential Design’
- Section 8.2.3.2 ‘Quantitative Standards’.
- Section 8.2.3.3 ‘Apartment Development’.
- Section 8.2.4.5 ‘Car Parking’
- Section 8.2.4.7 ‘Cycle Parking’

## 6.0 National Policy

### 6.1. National Planning Framework, 2018

The recently published National Planning Framework, 2018 – 2040, recommends compact and sustainable towns / cities, brownfield development and densification of



urban sites and policy objective NPO 35 recommends increasing residential density in settlements including infill development schemes and increasing building heights.

Some other relevant policies from the NPF include the following;

- NPO 6 – Regenerate / rejuvenate cities, towns and villages
- NPO 8 – Targeted population growth in Ireland’s 5 cities
- NOP 13 – Relax car parking / building heights to achieve well-designed high-quality outcomes

## 6.2. **Sustainable Residential Development in Urban Areas, 2009**

The Guidelines promote higher densities in appropriate locations. A series of urban design criteria is set out, for the consideration of planning applications and appeals. Quantitative and qualitative standards for public open space are recommended. In general, increased densities are to be encouraged on residentially zoned lands, particularly city and town centres, significant ‘brownfield’ sites within city and town centres, close to public transport corridors, infill development at inner suburban locations, institutional lands and outer suburban/greenfield sites. Higher densities must be accompanied in all cases by high qualitative standards of design and layout. Chapter 6 sets out guidance for residential development in small towns and villages. Appendix A of this document sets out guidance for measuring residential density.

## 6.3. **Sustainable Urban Housing: Design Standards for New Apartments, Dec. 2018**

These guidelines provide recommended guidance for internal design standards, storage areas and communal facilities, private open spaces and balconies, overall design issues and recommended minimum floor areas and standards.

## 7.0 The Appeal

7.1. The following is the summary of a third-party appeal submitted by **Margaret Foley** of Apartment 18, Lisalea;

- Increase in car parking will result in overlooking and visual intrusion due to proximity (14.6m).
- Unacceptable scale, mass and bulk.
- Increase in noise and light pollution.
- Inadequate screening available.
- The location and orientation of CCTV cameras is a concern and will diminish residential amenity.

7.2. The following is the summary of a third-party appeal submitted by **William Killeen** of no. 29 Frascati Park;

- The scale of the proposal is over dominant when compared with Frascati Park.
- It is contended that the overall height of the proposed development is comparable to a 6/7 storey height due to the high commercial heights.
- The proposal will seriously detract from the architectural character of the area in terms of setting.
- This is a planning history of protecting protected structures on George's Avenue (appeal 227853) which relates to refusing permission for a vehicular access to the front of a house. The current proposal will destroy George's Avenue.
- The rear gardens and houses to the south east of the proposed development will be overlooked by terraces /balconies and the fifth-floor glass balustrade.
- It is submitted that the rear garden of no. 4 Frascati Park looks directly at a single storey structure however this will change to a 7-storey building should permission be granted.

- Overshadowing will be most significant on the rear gardens of Frascati Park to the south east of the proposed development.
- The proposed double podium car park will have adverse visual impacts.
- The increase in height of the car park podium from 4.4m to 6.75m (50%) will have an adverse visual impact on no's 35, 36 & 37 Frascati Park.
- The proximity of residential units of 50m length, 22m high adjacent to low rise dwelling in George's Avenue / Frascati Park.
- The proposed residential development will impair residential amenity and depreciate the value of these properties.
- Traffic movement at first floor level on the podium level car park will detract from established residential amenity.
- The impact on noise pollution has not been assessed. The existing plant and equipment gives rise to concerns and there is no assessment of the cumulative impacts with the existing and the proposed development.
- New traffic movements to the car park will cause noise pollution.
- There is a lack of visitor car parking spaces and traffic generation will have a negative impact on local areas.
- It is submitted that the character of Blackrock Village has not been adequately considered.
- An EIS is required having regard to the cumulative impact of the proposed development. There are many environmental issues that need to be addressed and this includes noise and light pollution, traffic and car parking congestion.
- There was no visual impact assessment submitted with the application. However a visual impact assessment was submitted with a lower rise development in the appeal site in 2014. The absence of a visual impact assessment is a deficiency in the application.
- The Planning Authority did not address issues raised in the objection by the appellants to the Planning Authority. This included land ownership and legal

basis for the application, lack of an EIS, car parking arrangements and lack of visual impact study.

7.3. The following is the summary of a third-party appeal submitted by **George's Avenue Residents Association**.

Adverse Impact on Character and setting of Surrounding Area

- The height and scale of the proposal is inconsistent with the village character, including the architectural character of George's Avenue and Frascati Park.
- The proposal will be imposing when prepared with the permitted development at Enterprise House.
- The height and scale will detract from the public realm.
- There are protected structures on George's Avenue and the proposal will detract from the architectural heritage.
- The proposed development exceeds 5-storeys as the retail units are larger than one floor in height.

Contravention of the Blackrock Local Area Plan

- The proposed development is contrary to built heritage policy objectives BK03, BK04 and BK05.
- The total height of the proposed development is greater than 5-storeys and therefore the proposal contravenes the 5-storey building height in the Blackrock Local Area Plan.
- The proposal is inconsistent with Objectives HS01 and FR7.
- Having regard to the height of the proposed development and its impact on George's Avenue the application is inconsistent with Objective SH2 of the Blackrock Local Area Plan.
- The proposal fails to protect and compliment the character of the street and the area in which it is set and is therefore contrary to Policy Objective UDS1.

### Overlooking

- The proposal will overlook George's Avenue / Frascati Park.
- The mature trees along the boundary are not protected and provide limited screening during October to March due to their deciduous nature.
- The additional stories will overlook into the second-floor bedrooms to properties on Frascati Park without any screening resulting in loss of residential amenities.
- The additional stories will overlook 1 – 15 Frascati Park.

### Overshadowing

- The shadow plans showing simply March 21<sup>st</sup> is inadequate.
- The rear gardens mainly enjoy the period April to September.
- A full year shadow cast is required to demonstrate the overall impact.

### Light Pollution

- Failure to set back the residential storeys and overlooking windows / balconies will result in light pollution from apartment windows to rear gardens of Frascati Park.

### Poor Inappropriate Standard of Design

- The imposing black / glass façade fails to respect the existing streetscape.
- It is contended that the revised design is inappropriate for a building defining the entrance to Blackrock.

### Noise Pollution

- As the set back distances are inappropriate the proposal will result in noise pollution.

### Traffic Disruption

- The traffic impact fails to take account of visitors to the apartments.
- The additional traffic will have an adverse impact of local families as the Local Authority prioritises walk and cycle to nearby schools.
- The provision of 51 no. car parking spaces is clearly inadequate. As this reduces the number of car parking spaces available to the shopping centre which is below the development plan standards.
- There are parking problems on George's Avenue and Frascati Park when on-street car parking is free. The shopping centre charges for car parking and customers will use the free car parking in George's Avenue / Frascati Park.

### Inadequate Information Provided

- An EIA is required.
- The overall building height of the proposed development is misleading and greater than 5-storeys.
- It is submitted that no visual impact study was submitted.

7.4. The following is the summary of a third-party appeal submitted by **Catherine Sampson** of Apartment 1, Lisalea;

- The proposal is equivalent to 8-storeys alongside the north east of Lisalea.
- The permitted height of two-storey retail, currently under construction, is the same height as the 4-storey Lisalea apartment building.
- There is a significant fall in topography from Lisalea.
- The appellant claims that the development will overlook her property with the loss of skyline, light, sunshine and privacy.
- The permitted development under construction is blocking sunshine.

- The developer is seeking to increase height of the car park to first floor level and this would create additional air and noise pollution.
- A number of apartments are looking directly out onto the car park wall at the moment.
- The submitted daylight study did not include summer months.
- The objections by Reid & Associates are fully endorsed.

7.5. The following is the summary of a third-party appeal submitted by **Mairead Smith** of Apartment 14 Frascati Park;

- The Daylight and Sunlight assessment shows a failure to demonstrate a compliance with appropriate standards.
- There are deficiencies in the planning application.
- The legal owners of the site are unclear.
- The application is inconsistent with Section 5.13 of the Development Management Guidelines.
- As the written consent has not been submitted the application is in breach of the Planning and Development Regulations, 2001.

#### Requirement on an EIS

- In the previous amending applications, the site area was 2.67ha which triggers an EIS. The current site area is different than the site area of the subject site in previous applications. It is argued that project splitting is taking place.
- The proposed scheme is dependent on established access areas and is not a minor element.
- It is contended that the applicant included in planning application D14A/0134 alterations recommended by the Board in D05A/0549 however these revisions have been excluded from the current development.

- The EIS submitted with D14A/0134 allows for greater set backs to all site boundaries and significantly reduced heights.
- The 2014 application cannot be built in accordance with that permission and this amounts to project splitting.

### Visual Impact Assessment

- There is no assessment of the visual impact from the high rise.
- The current proposal blocks sunlight and overlooks adjoining property.
- The contiguous elevation demonstrates the over bearing visual impact.
- In the previous applications on the subject site (D05A/0549 and D14A/0134) a visual impact assessment was included.

### Daylight & Sunlight

- The Planner's report accepts that the proposal will have no impact on overshadowing.
- The Planner's Report has no comment on skylight and daylight.
- It is submitted that an independent consultant has undertaken a Daylight and Sunlight Assessment and identified the following deficiencies;
  - Ground floor windows of no's 1, 2, 3, 4 & 5 of Frascati Park will be grossly affected by loss of daylight and skylight will also be impacted upon.
  - The current proposal was not tested for impacts on sunlight to the first 5 no. houses in Frascati Park. It is logical that there will be an impact on these properties.
  - The shared amenity spaces and private patio spaces of Lisalea apartments have not been tested for compliance with BRE requirements.



### Site Selection Plans

- Site Section DD selects house no. 5 Frascati Park also opposed to the closer houses 1 – 4 Frascati Park and is therefore misleading.
- It is contended that the height, scale and massing and levels of overlooking amount to significant, negative and detrimental impact on existing houses.

### Density

- The proposed density (70 – 140 units per ha) and height is not based on national policy.
- Indicative density for public transport corridors is 50 units per ha.
- Half the stated area of 0.6248 ha relates to podium car park which is almost half the site.
- The planning report considers that the overall density is 17 units per ha based on a site size of 2.67 ha.
- The density of 70 units per ha is based on a site size of 0.6248 whereas 140 dwellings per ha is based on the residential only site.
- There is no attempt to establish the plot ratio or the increased plot ratio on the site.
- The question of public realm on this important focal site has been ignored.

### Building Height

- The proposal is inconsistent with Policy Objective FR7.
- The proposed building height is the equivalent of 7 residential stories.
- Frascati Park is located at a lower level than the Shopping Centre and the proposal will have an adverse impact in terms of excessive scale, height, massing and proximity.

- There will be light pollution from habitable rooms along the south-east elevation causing intrusion to residential amenities.
- The extensive balconies / terraces proposed over 3 floors will amount to overlooking of rear gardens and houses in Frascati Park and therefore detracting residential amenities.
- Enterprise House is not surrounded by residential development on 3 sides and is therefore not comparable to the appeal site as claimed in the planner's report.

### Trees

- The site is exposed and the trees along the boundaries are deciduous in nature and will not mitigate issues of significant overlooking.

### Transitional Zonal Area

- The proposal is inconsistent with Section 8.3.2 'Transitional Zonal Area' of the County Development Plan as there is an abrupt change in height and scale from the more sensitive site.

### Impact on Residential Amenity & Character of the Area

- The height and scale of the proposal is significant and it is contended that the description in the statutory notices would not reflect this. There is a significant contrast between George's Avenue, Carysfort Avenue and Mount Merrion Avenue and the proposed development.
- The proposed development is disproportionate in scale and is over dominant in relation to established development.

### Standard of Proposed Development

- It is submitted that the courtyard at the second-floor level is of limited use due to the configuration and depth less than 1m.

- Section 8.2.8.3 of the County Development Plan sets out the use of green roofs and states that they shall never be used as part of the minimum open space provision.
- Car parking provision is 51 spaces whereas the required car parking provision in accordance with the County Development Plan provisions is 69 spaces.
- The proposed car park will be in use over a 24-hour period which will have implications for residential amenities.
- Landscaping by compliance is unacceptable as landscaping is of critical importance to the residents of Frascati Park and Mount Merrion Avenue.
- The Planner's Report notes the requirements of the Transportation Department to segregate resident's car parking and that the comment that this can be dealt with by condition but no condition requiring this has been set.

#### Proposed Podium Car Park

- The set back of the podium car park to the established residential properties does not meet a design guideline.
- The podium car park would result in overlooking.

### **7.6. First Party Response**

The submission by the applicant outlines the site location and context, relevant planning history, pre-application consultations, a description of the proposed development, planning policy context and responses to the third-party appeals.

The following is the summary of the relevant responses to the third-party appeals;

- The overall height of the proposed development would be 20.6m to the main fifth floor level and to 23.45 – 24.45m to a stepped back stair and lift core.
- The Planners' Report accepts the development description of 5 no. storeys.

- A solicitor's letter is submitted in Appendix 2 confirming that the applicant has sufficient legal interest to proceed with the proposed development.
- The proposed development having regard to the number of units and the size of the site is below the threshold for requiring an EIS for residential development.
- The submitted CGI's are accurate and based on photographs surrounding the site. The submitted architectural drawings, including floorplans, elevations and sections are drawn to scale and illustrate the proposed development relative to surrounding properties.
- The Planning Authority did not request a VIA. However, the applicant has submitted a VIA in the response submission.
- It is contended that the proposal forms part of the rejuvenation of the shopping centre and includes a well-proportioned façade that considers residential amenities.
- The proposed height accords with policy objective FR7 of the Blackrock LAP.
- It is considered that the scale of the proposal is acceptable having regard to the strategic location of the proposal adjacent to public transportation and the high amenity overlooking Dublin Bay.
- The Local Authority response submission considers the contemporary design would not have any negative impact on the streetscape.
- In response to daylight and sunlight concerns the applicant has submitted, in the response submission, additional daylight and sunlight assessments. The skylight assessment concludes that the proposed development will not impact in any material way skylight conditions available to residents. Of the 32 points assessed all 32 have been found to meet or exceed the minimum levels recommended by the BRE.
- The results from the sunlight assessment conclude that the proposed development will not impact in any material way on sunlight conditions available to established residents. The complimentary assessment confirms this.

- It is submitted that the additional response prepared by BPG3 rebuts all issues raised by the third-party appeals.
- It is submitted that the drawings in Appendix 5 of the submission demonstrate a 32 metre separation distance between the proposed apartments at Frascati Shopping Centre and the existing houses which front onto George's Avenue.
- This is a substantial set back, greater than the required 22m. This ensures that there is no overlooking to the residential properties at George's Avenue. Appendix 5 also illustrates adequate separation distances from adjoining properties.
- The planner's report concluded that the proposed development allowing for separation distances was unlikely to result in overlooking.
- In relation to concerns that the existing trees along the eastern boundary will not mitigate overlooking this is addressed in the landscape drawing in Appendix 6. This drawing illustrates evergreen screen planting along the eastern boundary to provide additional screening.
- The proposed screening on the perimeter of the car park will address overlooking concerns.
- In relation to noise concerns it is submitted that the separation distances of the proposed development to the properties at George's Avenue and the apartments at Lisalea is a sufficient distance to prevent any material noise impacts.
- In relation to concerns with the loss of privacy with security cameras it is submitted that there are existing CCTV cameras on site and no additional CCTV cameras are proposed.
- It is submitted that the residential density of the proposed development is 140 units per ha when the size of the residential site is considered. It is contended that the proposed development is consistent with Section 5.8 and Section 6.9 of the Sustainable Residential Development in Urban Areas Guidelines, 2009.
- The proposed height and density is consistent with the County Development Plan.

- The proposal is consistent with Policy Objective FR7 of the LAP and the heights indicated on Map 12.
- The planner's report considers that the scale and density of the proposed development is appropriate. The planner's report also concludes that the scale of the proposed development, in visual terms and in terms of streetscape, is acceptable having regard to Enterprise House.
- It is submitted that no issues in relation to Section 8.3.2 of the County Development Plan arise as the proposed development accords with the objectives of the County Development Plan and LAP and the proposal protects the adjoining residential amenities.
- It is submitted that the submitted Traffic and Transport Statement addresses any concerns in relation to traffic impact.
- In relation to concerns regarding inadequate public open space provision it is submitted that the proposed development includes public realm improvements and Section 8.2.8.2 of the County Development Plan allows for financial contributions in lieu of public open space where proposed developments are near established public parks.
- The proposed private open space and communal open space adequately meets the development plan standards.
- The proposed car parking provision is in accordance with Section 4.16 of the Apartment Guidelines, 2015.
- It is submitted that the proposed development is fully compliant with the Blackrock LAP and this is acknowledged in the planner's report.
- It is considered that the proposed development will have no adverse impact on the protected structures located in George's Avenue having regard to the separation distance of 80m. It is submitted that submitted drawings, photomontages and visual impact assessments illustrate that the proposed development will not be overbearing on the properties on George's Avenue.

## 7.7. Second Party Response

The following is the summary of a response submitted by the Local Authority;

- The proposal is appropriate to the scale of the overall site and the site is primarily zoned District Centre.
- District Centre allows for mixed uses.
- The Transitional Zone was considered in the planner's report and assessment.
- Transitional zone is considered in the 'Site Description and Context' Section and under the County Development Plan provisions.
- In the planners report the section entitled 'Planning History and Context' considers potential mass, scale and fenestration overlooking impacts on George's Avenue to the south of the site, car parking decks, area related primarily to Lisalea and then Frascati Park.
- Under the heading 'Residential and Visual Amenities and Streetscape' the façade set backs are considered in relation to George's Avenue, Lisalea and Frascati Park. It was considered that no overlooking would occur.
- The proposed building height and design is acceptable.
- The relevant section of the Development Plan in relation to separation distances is Section 8.2.3.3 (iv).
- Private open space and landscaping are considered acceptable. It is notable that the landscaping conditions are for planting details only.
- Car parking was fully examined in the Planner's Report.
- Density was considered having regard to District Centre zoning and the location of the site.
- The scale and density is appropriate having regard to Appendix 9 'Building Height Strategy' of the Development Plan.
- All third-party concerns were appropriately considered in the Planners Report.

- The submitted photomontages and the shadow analysis helped examine the question of visual impact.
- The same applicants of the subject site were the applicants of two previous applications on the subject site.
- It is reasonable to compare the proposed development to Enterprise House given their location on the opposite side of the road to one another and both fall under the same District Centre zoning. The proposed development is not a departure from Enterprise House.
- The early application (D05A0549) included a similar mix of uses to the proposed development.

## 8.0 Observations

The following is a summary of observations submitted by the stated following parties;

- Rory & Clare Shelley
- Catherine Burke
- Brian & Natasha Higgins

### Size / Height

- The height of the proposed development is equivalent to 7 residential stories with an enclosed plant area and dwarfs the local residential areas.
- The proposal is a gross over-development of the site.
- The proposal is an invasion of privacy.
- The proposed development is higher than Enterprise House and would be a towering structural bulk dwarfing all surrounding areas.
- The site is enclosed on three sides by residential development.
- The proposal is out of keeping with the Blackrock skyline.
- The proposal will impact on views, privacy and general atmosphere light pollution.



- The proposal will devalue property and set an undesirable precedent for future development.
- The development will cast a shadow on residential areas of George's Avenue and Frascati Park, reduce sunlight significantly.
- The proposal will have a significant adverse impact on the residential amenities of Lisalea due to the proposed first floor podium car park.
- The proposed development would be a shocking intrusion on apartments no. 1, 2 on the ground floor, no's 16, 17 on the first floor, no's 28 and 29 on the second floor and no's 38 and 39 on the third floor. The proposal would have a significant adverse impact on residential amenity at Lisalea in terms height, mass, bulk and size resulting in overlooking, overshadowing, loss of skyline, skylight, sunshine, visual amenity, noise and air pollution.

#### Adverse impact on infrastructure and traffic

- Inadequate car parking provision as customers to the shopping centre will be forced to park on the N31 and residential roads in the area.
- Traffic in the local area is bumper to bumper. Additional traffic will cause noise, pollution and safety issues and is inappropriate for a residential area.
- A previous planning application was denied in 2005 on the grounds that it would represent an unsafe pedestrian crossing from Blackrock Shopping Centre to Frascati Park Shopping Centre. The current application has not addressed this issue.
- Public transport network is operating at full capacity.
- There are other significant developments proposed in the local area.

### Planning Process

- It is contended that it is illegal to split a project into components to avoid the threshold of an EIA. The proposed development should be subject to EIA.
- The overshadowing study has not assessed the summer months.
- There will be significant light pollution from the proposed car park podium.
- It is submitted that it is incorrect of the developer to claim that the proposal will have no negligible impacts on established residential development.
- The Daylight assessment does not take account of height levels of the sun at times of the year and the potential impact on houses surrounding the development.

### Local Area Plan / County Development Plan

- The proposal is greater than a building height requirement of 5-storeys.
- The proposal is not respectful of the residential development in Frascati Park, George's Avenue and Mount Merrion Avenue.
- The proposal is inconsistent with the Local Area Plan as does not protect the existing village character or enhance the architectural fabric of the area.
- The proposal is inconsistent with Policy Objective FR7 of the County Development Plan.

### Separation Distances

- It is argued that the separation distances outlined in the planner's report are inaccurate as they should refer to the distances from the rear boundaries rather than include rear gardens.

### Other Issues

- The financial viability of the proposed retail development is questioned.

- A condition should provide for the protection of trees.
- Although the planner's report considers the proposed private open space provision there is no assessment as to the impact of these roof terraces and balconies on established residential amenities.
- The appeal submissions are fully endorsed.

## 9.0 Third Party Responses to First Party Response Submission

The following is a summary of the responses;

### Mairead Smith

- This submission supports the relevant grounds of other appeal submissions

### Catherine Sampson

- The appeal response fails to address the significant adverse impact the excessive height, mass, bulk and size will have on surrounding properties.
- The development under construction has caused loss of light.
- It is considered that the available skyline and skylight would be lost should the proposed increased in height be permitted.
- The submitted photomontages are misleading. The height of the proposed development is 3 storeys alongside Lisalea when the fall in topography and roof installations are considered.
- The residential amenity of Lisalea would be lost with the proposed development.
- The proposed development would amount to an increase in car parking height. The appeal response proposes landscaping and increased wall planting to address concerns. However, this would not address the concerns of residents in Lisalea.
- The increased car parking height would block residents outlook, reduce daylight, skylight, skyline and privacy and increase air, light, noise and vermin pollution.

- Roof gardens to the rear of Lisalea would be adversely impacted upon due to the loss of outlook, overshadowing and loss of privacy and increased air, light and noise pollution.
- The increased height would destroy residential amenities in Lisalea.

#### George's Avenue Resident's Association

- It is submitted that a number of key issues submitted by the residents has been ignored and this is similar to the case of the submission from the Local Authority.
- It is contended that the focus is clearly on the N31 streetscape.
- It is recommended as a compromise to (a) restrict the development to two floors of apartments, or (b) the setting back of both the second and third floors of apartments. These options would significantly reduce the adverse impact on residential amenity to the properties on George's Avenue.

#### Inappropriate and undue weight applied to comparisons with Enterprise House and N31 Streetscape

- Enterprise House differs from Frascati Shopping Centre for three reason (a) not surrounded by residential development, (b) located in the centre of the business district not the boundary, (c) Enterprise House is a full width of a dual carriageway away from George's Avenue.
- As such the photomontage submission is flawed.
- The setting back of both the second and third floor of the Frascati Park houses at the northern elevation end of Frascati Park /George's Avenue would eliminate overlooking.

#### Submissions in relation to JSA

- It is submitted that Section 5 of the JSA response has considered scale and design.
- Contrary to Section 5.25 the proposed development is overbearing.

- It is submitted that the plant barrier is an acknowledgement of overdevelopment on the site.
- Figure 13 of the JSA submission clearly shows a line of sight into the bedroom level of overlooked properties in Frascati Avenue. It is submitted that the minimum separation distances are inappropriate in this situation.
- An Bord Pleanála are requested to revisit the assessment of the proposed development in relation to policies BK04, BK05 and FR7.

#### Submissions in respect of Visual Impact Assessment (VIA)

- It is considered that the submitted VIA is inadequate as the analysis is unconvincing.
- It is submitted that photomontage view no. 3 is misleading as it claims that Enterprise House is more prominent. The impact of the proposed development on George's Avenue is not fully considered.
- It is submitted that view no. 5 is also misleading as it is not relevant to visual impact on George's Avenue.
- The argument by the applicant that the proposed development will be more prominent than the permitted development but will have a slight to no impact is not justified.

#### Inaccurate conclusions of the VIA

- The VIA fails to address all the adverse impacts including adverse impacts on George's Avenue and no's 1-8 Frascati Park.
- There is no adequate consideration of the impacts of the proposed apartments on neighbouring residential amenities.
- The conclusions in Section 6 of the VIA are unfounded.
- The proposed evergreen screen to the rear of the residential properties at the northern end of Frascati Park will not mitigate the overlooking into the bedroom level of the properties.

## 10.0 First Party Response to LA Submission

- The applicant submitted that they agree with the Planning Authority's response and has no further comments in relation to the Planning Authority's assessment.

## 11.0 Assessment

- Principle of Development
- Impact on Established Residential Amenities
- Proposed Residential Amenities
- EIS Screening
- Building Height
- Visual Impact and Impact on the Character of Local Area
- Density
- Traffic / Car Parking
- Appropriate Assessment Screening
- Landscaping / Trees
- Other Issues

### 11.1. Principle of Development

11.1.1. The recently adopted National Planning Framework<sup>1</sup> (NPF) recommends compact and sustainable towns / cities, brownfield development and densification of urban sites. The themes of compact and sustainable development are reinforced by policy objective NPO 35 from the NPF as this policy objective recommends increasing residential density in settlements including infill development schemes and increasing building heights. It is national policy, (i.e. Sustainable Residential Development in Urban Areas, 2009), to promote residential densities in urban areas

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<sup>1</sup> Adopted 16<sup>th</sup> February 2018

in close proximity to services and public transport. The appeal site and the proposed development intends on increasing residential density by increasing building height on an established commercial site, i.e. Frascati Shopping Centre. The appeal site is located adjacent to several bus routes serving the city centre and located within 500m of Blackrock dart station, which is a high quality public transportation corridor.

11.1.2. The majority of the appeal site is zoned DC '*To protect, provide for and /or improve mixed-use district centre facilities*'. A small portion of the appeal site, which is currently an outdoor car park, is zoned Objective A '*To protect and/or improve residential amenity*'. The appeal site is also located within an area designated 'boundary of Lands for which an LAP will be prepared'.

11.1.3. I would note that having regard to Table 8.3.7 of the County Development Plan that residential is a use that is permitted in principle within land zoned District Centre. Residential use is also permitted in principle within land zoned Objective A. Therefore, in principle, the proposed uses are acceptable.

11.1.4. The Blackrock LAP, 2015, is the operational Local Area Plan for the appeal site. Section 1.7 of the LAP sets out the Development Strategy for the Blackrock. In summary the key relevant issues for the proposed development are;

- Strengthening the urban fabric of the area
- Reinforcing local identity and sense of place
- Providing a coherent and preamble urban structure
- Promoting an efficient use of land

11.1.5. I also would note that the Planning Authority have stated in their planner's report that the principle of residential development on the appeal site is accepted. Therefore, I would conclude, having regard to the national planning policy and the zoning objectives in the County Development Plan, that the principle of residential development on the appeal site is acceptable in principle provided that the proposal has adequate residential amenity, adequately safeguards the amenities of the

adjoining properties, would not result in a traffic hazard, protects the environment, architectural character of the area and would be in accordance with the provisions of the Dun Laoighaire Rathdown County Council County Development Plan, 2016 – 2022.

## 11.2. **Impact on Established Residential Amenities**

- 11.2.1. In terms of established residential amenities and having regard to the proposed development I would consider that the relevant issues for consideration are overlooking, overshadowing / loss of daylight and visual overbearance.
- 11.2.2. The proposed three floors of apartments are located to the north east of the established commercial site and therefore the established residential properties in closest proximity to the proposed development would include no.'s 1 – 10 George's Avenue, the Lisalea apartment development, no.'s 8 – 16 Mount Merrion Avenue and no.'s 28 – 37 Frascati Park. Lisalea is a 3 – 4 storey apartment development whereas the other residential developments are traditional two-storey suburban housing.
- 11.2.3. In relation to no.'s 1 – 10 George's Avenue, the south-eastern elevation of the proposed development orientates towards the rear elevations of these properties. I would note from the submitted drawings that the proposed south-east elevation includes balconies at second, third and fourth floor level. The balconies at the second and third floor level are situated to the edge of the appeal site and are therefore set back a minimum distance of between 30m – 37m from the established rear elevations of no. 1 – 5 George's Avenue. The proposed balconies at fourth floor level are set back from the site edge to an appropriate, in my view, set back distance.
- 11.2.4. I would note Section 8.2.3.3 'Apartment Development' of the Dun Laoighaire Rathdown County Development Plan, 2016 – 2022, which states that minimum separation distance of 22m between opposing rear windows will normally apply in



the case of apartments up to three storeys in height however in taller blocks a greater separation distance maybe required having regard to context. In certain instances, in build-up areas, the County Development Plan provides for reduced separation distances. Section 7.4 of the 'Sustainable Residential Development in Urban Areas, 2009' recognises that the minimum separation distance between opposing rear windows is 22m however depending on location the guidelines advise a degree of flexibility can be applied. I noted from my site inspection that there was a line of mature trees situated along the southern eastern boundary of the appeal site effectively protecting established residential amenities in George's Avenue. These mature trees are deciduous in nature and therefore will offer limited screening during winter months. The applicant's response to the appeal submission includes a revised landscaping plan which provides for additional evergreen planting along the eastern boundary of the subject site. It is also worth considering the overall height of the proposed second and third floor which is relatively higher than a traditional residential block due to the higher commercial floor to ceiling heights at ground and first floor level.

11.2.5. I would consider that Section 8.3.2 'Transitional Zonal Areas' of the County Development Plan would be a relevant consideration having regard to the context of the proposed development. Section 8.3.2 outlines that it is important to avoid abrupt transitions in scale and use in boundary areas of adjoining land use zones. Essentially the County Development Plan advises that it is important to avoid developments which would be detrimental to the amenities of the more environmentally sensitive zone. I would consider that it would be reasonable, should the Board favour granting permission, that a condition is attached requiring apartments no. 201 – 205 (inclusive) on the second-floor level and apartments no. 301 – 305 (inclusive) on the third-floor level to include a balcony screen of approximately 1.5m high on the south facing balconies to prevent potential overlooking concerns on established residential amenities.

11.2.6. I would consider, based on the orientation of the proposed development relative to no.'s 1 – 10 George's Avenue, that overshadowing would not be a significant issue

and the established mature trees referred to above are more likely to cause overshadowing. I would note that the submitted shadow analysis assessing the impact on shadowing on March 21<sup>st</sup> which would be identical for September 21<sup>st</sup>. This shadow analysis demonstrates that there is no significant overshadowing impact on 1 – 10 George’s Avenue. However, notwithstanding that there is no shadow analysis for the 21<sup>st</sup> December or 21<sup>st</sup> June I would consider that overshadowing from the proposed development would not have any adverse impacts on established residential amenities at George’s Avenue.

11.2.7. In relation to Lisalea, the apartment development situated to the north of the appeal site, I would note that the minimum set back distances from the proposed balconies in the development before the Board are 36 – 40 metres. The northern elevation of the proposed development includes balconies at second, third and fourth floor level however these are situated at an oblique angle to the existing windows in the apartment building. I would consider that the separation distance, in this instance, is adequate to prevent undue overlooking. Furthermore, the eastern site boundary of Lisalea is heavily planted with both deciduous and evergreen shrubbery which will help screen any potential overlooking. I have reviewed the submitted shadow analysis for the proposed development and I would note that there would be some overshadowing to the open space to the immediate east of the Lisalea apartment block. The open space is not an active open space and it is heavily planted on the sloping ground. The open space provides a buffer between the Lisalea apartment development and the adjoining access to the Frascati Shopping Centre and acts as a visual amenity. The proposed development would cause shadowing between 10am and 2pm on the 21<sup>st</sup> March and 21<sup>st</sup> September. The shadow analysis does not cover the period December 21<sup>st</sup> and June 21<sup>st</sup>.

11.2.8. I would also acknowledge that some of the submissions to the Board outline concerns, in terms of overlooking, from the proposed podium car park. I would accept that this may be a concern given the roof top nature of the podium car park with open views and given the proximity of the adjoining Lisalea development to the podium car park. However, the revised landscape drawings submitted with the first party response to the appeal submission outlines landscape screening proposals to

prevent potential overlooking. This landscape drawing includes evergreen bay laurels, with an approximate height of 2 – 3 metres, around the perimeter of the proposed podium car park. This landscape proposal would, in my view, prevent any potential looking and loss of residential privacy.

11.2.9. I would consider that the proposed apartments are adequately set back from no.'s 8 – 16 Mount Merrion Avenue and 28 – 37 Frascati Park to cause any undue overlooking or overshadowing.

11.2.10. I would acknowledge that the proposed roof garden, situated off the second floor would orientate towards the rear gardens of Frascati Park. However, there is a significant setback distance from the communal open space to the site boundary adjoining the rear gardens in Frascati Park. I would also note that there is a line of mature trees along the boundary which would provide screening. I would also consider that the usability of the roof garden would be dependent on weather conditions. Overall, I would conclude that the proposed development is acceptable and would not have an injurious impact on established residential amenities.

### 11.3. **Proposed Residential Amenity**

11.3.1. I would consider that the provision of private open space, public open space, quality of housing units, would be relevant considerations in assessing the residential amenities for future occupants of the proposed development.

11.3.2. In terms of quality of the proposed apartment units it is notable that all the proposed units have a dual aspect orientation which is a positive feature for future occupants. Section 8.2.3.3 of the County Development Plan outlines that apartment developments are expected to provide a minimum of 70% units as dual aspect apartments and the proposed development would comfortably exceed this minimum requirement. I would acknowledge that Table 8.2.2 of the County Development Plan, 2016 – 2022, sets out the minimum overall floor areas required for apartments. These minimum floor areas in the County Development Plan exceed the minimum

floor areas as recommended in the national guidelines 'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities March 2018'. The floor areas for the proposed apartments would exceed the recommended minimum floor areas in the national guidelines and would generally exceed the minimum recommended floor areas in the County Development Plan. There are two proposed 2-bedroom units, i.e. unit no. 204 and unit no. 304, and both units have a floor area of 80.4 sq. metres which is marginally less than 85 – 90 sq. m. as required as the minimum floor area for a 2-bed apartment in accordance with Table 8.2.2. of the County Development Plan. Overall the standard of residential amenity as measured by floor area of apartments is high and would offer a good standard of residential amenity for future occupants.

11.3.3. Table 8.2.5 of the County Development Plan, 2016 – 2022, outlines the minimum private open space provision for apartments in the form of balconies / terraces. All the proposed residential units would offer balconies with floor areas greater than the minimum required in the County Development Plan and the national guidelines.

11.3.4. The proposed communal open space is located off the proposed second floor level and is effectively a roof garden with a south-west orientation. The overall floor area of the proposed space is 450 sq. metres which would exceed the minimum standard of 80 – 100 sq. metres public open space that would be required for the proposed development, as set out in the County Development Plan.

11.3.5. In conclusion therefore, I would consider that the proposed development would offer a good standard of residential amenity for future occupants.

#### 11.4. **EIS Screening**

11.4.1. Section 10 (b) (iv) of Schedule 5, Part 2 of the Planning and Development, 2001 (as amended) states that urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 ha elsewhere is development that requires an EIS. The appeal

site is not located within a business district however the appeal site is located within a built-up suburban area on a zoned site in accordance with the provisions of the County Development Plan.

- 11.4.2. The size of the site in the current application is 0.62ha and this therefore falls below the 10-ha threshold and therefore an EIS is not required having regard to Section 10 (b) (iv) of Schedule 5, Part 2 of the Planning and Development Regulations, 2001 (as amended).
- 11.4.3. The appellants argue that the size of the appeal site is the area within the blue line as indicated in the submitted drawing 'Proposed Site Location Map'. As such should the size of the site be considered the area within the blue line boundary then the appropriate site size would be 2.47ha. However, the site size of 2.47ha would still fall below the 10ha threshold which would trigger the requirement of an EIS. The proposed residential development is a category of development that can be considered for sub-threshold development that would trigger an EIS.
- 11.4.4. Schedule 7 of the Planning and Development Regulations, 2001, sets out criteria for determining whether a development would or would not be likely to have significant effects on the environment. This criterion includes characteristics of the proposed development, location of the proposed development and characteristics of potential impacts.
- 11.4.5. In accordance with the 'EIA Guidance for Consent Authorities regarding Sub-threshold Development', 2003, the following is stated "there is a requirement to carry EIA where competent/consent authority considers that a development would be likely to have significant effects on the environment". The guidelines advise the criteria to be considered for the need for sub-threshold E.I.S. and this includes (i) characteristics of the proposed development, (ii) location of the proposed development, and (iii) characteristics of potential impacts as referenced in Schedule 7. The guidelines outline that there may be projects below national thresholds in

Schedule 5 of the Planning Regulations, 2001(as amended), which are likely to have significant effects on the environment by reference to the use of natural resources, production of waste, environmental emissions or the risk of an accident associated with the use or storage of dangerous substances or a combination of these factors. I would consider that based on the information available that the proposed residential development is unlikely to have significant effects on the environment having regard to the above criteria.

11.4.6. The guidelines also advise that the environmental sensitivity of a geographical area may also mean that a project is likely to have significant effects on the environment.

11.4.7. I would conclude that having regard to the characteristics of the proposed development, the location of the proposed development and the characteristics of the potential impacts, that the proposal is not likely to give rise to significant effects on the environment and that an EIS would not be warranted in this instance.

## 11.5. **Building Height**

11.5.1. Policy objective BK05 of the Blackrock LAP, 2015 – 2021, is relevant. Policy BK05 states *'it is Council Policy to ensure that Building Height within future developments in Blackrock makes a positive contribution to the built form of the area and do not adversely impact on local amenity'*.

11.5.2. Map 12 'Existing and Proposed Building Height' of the Local Area Plan sets out the range of indicative heights for Blackrock. It is notable that the proposed building height limit on the appeal site is 5 storeys. Map 12 also indicates that the building heights graduate to 2-storeys on the peripheral of the subject site adjacent to established residential properties at George's Avenue, Frascati Park and Mount Merrion Avenue.

11.5.3. I would consider that in general the proposed development would be consistent with Map 12 of the Blackrock Local Area Plan. I would note the argument that the

proposed 5-storey building includes commercial units at ground and first floor level and therefore the relative height of the proposed development is higher than a standard 5-storey apartment building. I will assess below under the heading 'Visual Impact and Impact on the Character of the Local Area' the overall impact of the proposed building height on the local area.

#### 11.6. **Visual Impact and Impact on the Character of Local Area**

- 11.6.1. It is argued by the appellants that the proposed development will detract from the character of the area and Blackrock village and the established two-storey housing in George's Avenue and Frascati Park.
- 11.6.2. Policy Objective BK03 of the Blackrock LAP states that '*it is Council policy to ensure that Blackrock develops a coherent urban form focussed on a high quality built environment of distinct character and function*'.
- 11.6.3. The planning application includes two photomontages from the Frascati Road of the proposed development. View no. 1 outlines the proposal from the immediate north of the appeal site at the junction of Rock Road and Rock Hill. It is evident from this photomontage that there is a slope on the Frascati site and this corner, i.e. view no. 1, of the proposed development is prominent. This part of the building is located adjacent to the Lisalea apartment building.
- 11.6.4. View no. 2 outlines the proposed development from the immediate south east which would be visible travelling along the Frascati Road in a northern direction. It is evident from this elevation that the fifth floor is set back from the edge of the site and this would reduce impact on the scale of the proposed development and its impact.
- 11.6.5. I have reviewed the submitted photomontage document which accompanied the applicant's response submission. I would conclude that the scale of the proposed development is a departure from the established building form in the local area and also the permitted development on the site, currently under construction. However, I

would consider that allowing for the context of the appeal site whereby the appeal site overlooks the Frascati Road and given the scale of the Frascati Road. The Frascati Road is a dual carriageway with cycle lanes on either side of the centre median. The scale of the Frascati Road, in my view, allows for a development as proposed and ensures that the proposed development would not be overbearing on the streetscape. Overall, I would conclude having regard to the submitted drawings, photomontages and submissions on the file and also a visual observation of the area that the proposed development, although a departure from the established scale would not be detrimental to the character of the local area. The appeal site is removed from the village and therefore, in my view, having regard to the adjoining dual carriageway the site would allow for a degree of flexibility.

11.6.6. In considering a departure from the established scale locally I would also have regard to the National Planning Framework. Policy Objective no. 13 of the National Planning Framework states that planning standards in relation to building heights can be relaxed to achieve well-designed high-quality outcomes. Policy objective no. 35 of the National Planning Framework provides that an increase in building heights can be achieved to increase residential density in settlements.

11.6.7. Overall, I would consider that the design and scale of the proposed development is acceptable having regard to the strategic location of the subject site and national and local policy objectives.

## 11.7. **Density**

11.7.1. It is policy of the County Development Plan, 2016 - 2022, i.e. Policy RES3 to promote higher residential densities to achieve more compact development. This policy provision is consistent with national policy in the National Planning Framework, 2018.

11.7.2. It is national guidance in accordance with the 'Sustainable Residential Development in Urban Areas, 2009', to promote and encourage higher residential densities where



appropriate, i.e. within proximity to cities and towns. I would note the location of the appeal site is situated within a built-up area with established services and amenities with public transportation connections to the City Centre. I would note that Paragraph 5.8 of 'The Sustainable Residential Development for Planning Authorities, 2009', is relevant to the proposed development. Paragraph 5.8 recommends that increased densities should be encouraged within a 500m walking distance of existing transport corridors. The appeal site is located adjacent to bus routes connecting to the city centre and within a 500m walking distance of the Blackrock dart station. It is recommended that the minimum net densities of 50, dwellings per hectare, should be applied within public transport corridors.

11.7.3. The appeal site is primarily zoned DC '*To protect, provide for and /or improve mixed-use district centre facilities*'. There is an established commercial use on the appeal site and given the mixed-use nature of the site I would not consider that residential density is a significant consideration for the site as the proposed residential use provides for an additional use on top of an established commercial use.

11.7.4. However, should the Board have concerns in relation to density of the proposed development I would consider that the density of the proposed development having regard to the site size of 0.62 ha is approximately 73 units per ha and this density would exceed the minimum recommended density as set out in paragraph 5.8 of the 'The Sustainable Residential Development for Planning Authorities, 2009'. Overall, I would consider that density is not a significant issue.

#### 11.8. **Traffic / Car Parking**

11.8.1. The proposed development includes additional car parking provision for an additional 81 no. spaces on a podium car park at first floor level above an existing car park situated to the rear of the site. It is proposed to allocate 51 no. car parking spaces within the lower ground floor car park to the proposed residential units.

- 11.8.2. The submitted application includes a Traffic and Transport Statement (TTS) for the proposed residential development. The TTS sets out a review of the existing and proposed development, a review of existing traffic conditions and review of traffic impact of the proposed development. In summary the TTS concludes that the 45 no. residential units will add approximately 9 no. trips during morning peak and 7 no. trips during the evening peak traffic hour. The TTS states that this equates to less than 0.5% additional traffic onto the Frascati Road during the busiest traffic periods and concludes that there is little or no material impact on the existing background traffic on Frascati Road.
- 11.8.3. There is a report on the file from Transportation Planning, dated 29<sup>th</sup> November 2017, which outlines that there is no objection to the proposed development subject to a condition in relation to design. There is also a submission on the file from Transport Infrastructure Ireland, dated 13<sup>th</sup> November 2017, which outlines that they have no observations to make.
- 11.8.4. In relation to car parking provision and in accordance with Table 8.2.3 'Residential Land-Use – Car Parking Standards' of the County Development Plan the required car parking provision for the proposed 45 no. apartments is 67 no. spaces. Therefore, given that the proposed development provides 51 no. spaces there is shortfall 16 no. spaces. The TTS states that the shortfall in the required car parking spaces is acceptable given the proximity of the appeal site to high capacity public transport networks and Blackrock village.
- 11.8.5. Overall, I would consider that the proposed development would have a low to minimal impact on established traffic flow on Frascati Road and in general the concerns raised in the appeal submissions relates to inadequate car parking provision and the potential for greater car parking demand on adjoining housing estates.
- 11.8.6. In considering car parking standards a relevant consideration is the proximity of the appeal site to Blackrock village and to high capacity public transportation. The

subject site is located within 500m of Blackrock dart station. Furthermore, it is important to note Policy NOP 13 of the National Planning Framework (2018) which has an objective to '*relax car parking / building heights to achieve well-designed high-quality outcomes*'.

11.8.7. Overall having regard to the location of the proposed development I would consider the proposed car parking provision acceptable.

### 11.9. **Appropriate Assessment Screening**

11.9.1. The Board will note that activities, plans and projects can only be permitted where it has been ascertained that there would be no adverse effect on the integrity of a Natura 2000 site, apart from in exceptional circumstances.

11.9.2. The Department of Environment, Heritage and Local Government Guidelines on 'Appropriate Assessment of Plans and Projects in Ireland, 2009,' recommend that the first step in assessing the likely impact of a plan or project is to conduct an Appropriate Assessment Screening to determine, on the basis of a preliminary assessment and objective criteria, whether a plan or project, alone or in combination with other plans or projects, could have significant effects on a Natura 2000 site in view of the site's conservation objectives. The Guidelines recommend that if the effects of the screening process are 'significant, potentially significant, or uncertain' then an appropriate assessment must be undertaken.

11.9.3. The submitted AA Screening, which accompanied the planning application, assessed potential impacts of the proposed development on existing Natura 2000 Sites. The subject site is not actually located within a designated site, however there is an SAC (South Dublin Bay SAC, site code 000210) and an SPA (South Dublin Bay and Tolka Estuary SPA, site code 004024) located approximately 220m to the east of the appeal site. The qualifying interests for the SAC include mudflats and sandflats, annual vegetation of drift lines, Salicornia and other annuals colonising mud and sand and shifting dunes. The qualifying interests for the SPA include 14

birds. I would note from the documentation on the file that there is no direct connectivity from the appeal site to the designated sites referred to above as there are established land-uses and a Dart line separating the appeal site from the Natura 2000 sites. The proposed development will be served by the public water mains and the public waste water drainage. There is potential that run-off surface water will drain towards the designated sites.

11.9.4. It is proposed that foul wastewater from the proposed development will be pumped to the wastewater treatment plant at Ringsend in Dublin. The AA documentation outlines that currently there is no attenuation of rain water from the subject site and rain water enters public sewers leading to the nearby Prior Stream. The proposed development will include additional Suds measures such a new green roof, which will contribute towards a reduced run-off rate.

11.9.5. I would consider that it is reasonable to conclude that based on the information on the file, which I consider adequate to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any European Sites, i.e. site code 000210 and site code 004042, in view of the sites conservation objectives and a stage 2 AA is therefore not required.

#### 11.10. Landscaping / Trees

11.10.1. The submitted landscape drawing (drawing no. 17-466-PD-01) indicates the planting and landscaping proposals for the residential development. The landscape drawing also indicates established planting around the perimeter of the subject site.

11.10.2. I would note, based on the submitted drawings and a visual observation of the area, that there are established mature trees situated along the boundary of the site adjoining rear gardens of George's Avenue and Frascati Park. This mature planting is deciduous in nature. The landscaping plan includes evergreen (holly) sporadically throughout the site.

11.10.3. The applicant's response to the appeal submissions included additional planting to prevent any overlooking from the apartments and from the first-floor car parking area. This proposal includes no. 384 holly's and no. 384 bay laurels along the entire length to the boundary with George's Avenue. The Landscape report outlines that this will provide a dense evergreen screen that would be expected to attain a height of 3.5m after 5 years and approximately 5m in height after 7 – 10 years. The proposals also include evergreen planting, in the form of bay laurels, around the perimeter of the proposed first floor car parking area. This is an attempt to address the appellants concerns in relation to noise and air pollution associated with the first-floor car parking proposal and prevent potential overlooking from the first-floor car parking area.

11.10.4. I would consider that the landscaping proposals form an integral part of the overall design and play a role in protecting established residential amenities.

#### 11.11. **Other Issues**

11.11.1. It is submitted by the appellant that the applicant has insufficient legal interest to provide for the proposed development.

11.11.2. The applicant, in their response submission, includes a solicitor's letter confirming that they are the site owners.

11.11.3. I would also acknowledge the advice by the Development Management Guidelines, 2007, in relation to separate codes, i.e. the Planning and Development Act, should not be used to enforce other codes.

11.11.4. The Board will also acknowledge that Section 34(13) of the Planning and Development Act 2000, as amended, is an important consideration as this section states 'A person shall not be entitled solely by reason of permission under this

section to carry out any development'. Therefore, if planning permission were obtained, the applicant must ensure that they have adequate legal interest to proceed with the proposed development.

- 11.11.5. Overall, I would consider that the applicant has adequately demonstrated that they have sufficient legal interest to proceed with the proposed development should permission be granted.

## 12.0 Recommendation

- 12.1. I have read the submissions on the file, visited the site, had due regard to the County Development Plan, and all other matters arising. I recommend that planning permission be granted for the reasons set out below.

## 13.0 Reasons and Considerations

Having regard to the zoning objective for the site as set out in the Dun Laoighaire Rathdown County Council, 2016 – 2022, the National Planning Framework, 2018 – 2040, the Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities (2009) and the overall scale, design and height of the proposed development it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual or residential amenities of the area or of property in the vicinity, and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 14.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, and as amended by plans and submitted to An Bord Pleanála Dun Laoighaire Rathdown County Council on 26<sup>th</sup> February 2018, and except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the

planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

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

2. The proposed development shall be modified as follows:

- a. The boundary screen to the south facing balconies on the proposed second floor level (apartments no. 201 – 205 inclusive) and the south facing balconies on the third-floor level (apartments no. 301 – 305 inclusive) shall be 1.5m in height and shall be finished in obscure glazing.

Revised drawings showing compliance with the above requirements shall be submitted to the planning authority for written agreement prior to the commencement of development.

**Reason:** In the interest of protecting established residential amenities.

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

**Reason:** In the interest of visual amenity.

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

**Reason:** In the interest of public health and to ensure a proper standard of development.

5. That all necessary measures be taken by the contractor to prevent spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.

**Reason:** To protect the amenities of the area.

6. Proposals for an apartment numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house/apartment numbers, shall be provided in accordance with the agreed scheme. No advertisements/marketing signage relating to the names of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed names.

**Reason:** In the interest of urban legibility.

7. The applicant shall ensure that the car parking spaces for the residential units must be sold off with the units and not sold separately, or let, to avoid non- take up by residents. The applicant shall also give an understanding in this respect, in writing, to be submitted to the Planning Authority.

**Reason;** In the interest of public safety and the proper planning and sustainable development of the area.

8. The remainder of flat roof areas, e.g. around the proposed 'roof terrace' and roof 'plant' enclosures, shall not be used as balconies, roof terraces or similar amenity areas, and shall be accessed for maintenance purposes only.

**Reason:** In the interests of residential amenity.



9. Each proposed apartment unit shall be used as a single dwelling unit and shall not be subdivided in any manner or used as two or more separate habitable units.

**Reason:** To prevent unauthorised development.

10. Prior to the commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company or such other security as may be accepted in writing by the planning authority, to secure the protection of the trees on site and to make good any damage caused during the construction period, coupled with an agreement empowering the planning authority to apply such security, or part thereof, to the satisfactory protection of any tree or trees on the site or the replacement of any such trees which die, are removed or become seriously damaged or diseased within a period of 3 years from the substantial completion of the development with others of similar size and species. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To secure the protection of the fine trees on the site

11. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interests of public safety and residential amenity.

12. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

**Reason:** In the interest of sustainable waste management

13. (a) The communal open spaces, including hard and soft landscaping, car parking areas and access ways, communal refuse/bin storage and all areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company (b) Details of the management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.

**Reason:** To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

14. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section

97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

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

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

**Reason:** To ensure the satisfactory completion and maintenance of the development until taken in charge.

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

agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

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Kenneth Moloney

Planning Inspector

8<sup>th</sup> August 2018