



An
Bord
Pleanála

Inspector's Report 301087-18

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| Development | Mixed use development comprising 1 x restaurant, 4 x apartments, circulation areas & relocated access. |
| Location | Clonsilla Road, Clonsilla Village, Dublin 15. |
| Planning Authority | Fingal County Council |
| Planning Authority Reg. Ref. | FW17A/0120 |
| Applicant(s) | Ian Cunningham |
| Type of Application | Appeal |
| Planning Authority Decision | Grant |
| Type of Appeal | First & Third Party |
| Appellant(s) | Lambourn Residents Association |
| Observer(s) | None |
| Date of Site Inspection | 13 th July 2018 |
| Inspector | Karla Mc Bride |

1.0 Site Location and Description

- 1.1. The appeal site is located in Clonsilla on the W side of Dublin and the surrounding area is predominantly residential in character with some commercial uses. The site is located on the S side of Clonsilla Road and it is bound to the N, S and E by residential housing estates and to the W by commercial uses including an Applegreen service station which is owned by the applicant. The site boundaries are defined by a low wall with railings to the N and a c.2m high wall to the S, and there are several mature trees along the SW and SE boundaries. The site was previously occupied by a detached house, there is a vacant site to the NE and a bus stop to the immediate N which is served by Dublin Bus.
- 1.2. Photographs and maps in Appendix 1 describe the site and surroundings in detail.

2.0 Proposed Development

- 2.1. Permission is being sought to construct a 671sq.m. building on the 0.0904ha site.
- The 3-storey building would have a 2nd floor set back & contemporary design.
 - The building would be c.20m wide, 17.5m deep and 8.5m to 10.2m high.
 - The mixed-use development would comprise: -
 - 1 x restaurant & takeaway (161sq.m.) at ground level
 - 4 x apartments (510sq.m) at 1st & 2nd floor level
 - Relocated vehicular & pedestrian access & all site works.

3.0 Planning Authority Decision

3.1. Further information

Further Information was requested and received in relation to: -

- Omission of the takeaway & submission of revised rear elevational details.
- Submission of a tree survey & landscape plan.
- Proposals pedestrian movement & the possible relocation of the bus stop.

3.2. **Decision**

Following the receipt of FI the planning authority decided to grant planning permission subject to 28 standard conditions.

- Condition no.2 confirmed that the takeaway element was not permitted.
- Condition no.3 required an additional balcony screen at apartment unit no.4.
- Condition no.7 required the submission of landscaping details.
- Condition no.8 required archaeological monitoring.

3.3. **Planning Authority Reports**

3.3.1. **Planning Reports**

The reports of the planning officer requested Further Information and recommended a grant of planning permission.

3.3.2. **Other Technical Reports**

Transportation: No objection subject to compliance with conditions.

Water Services: No objection subject to compliance with conditions.

EHO: No objection subject to compliance with conditions.

Archaeology: No objection subject to compliance with conditions.

Parks: FI in relation to a tree survey, landscaping & open space.

3.4. **Prescribed Bodies**

Irish Water: No objections subject to conditions.

3.5. **Third Party Observations**

Several letters of objection from local residents, resident's associations and a local councillor who raised concerns in relation to:

- Design, streetscape & loss of mature trees
- Traffic generation, congestion & hazard

- Insufficient car parking & proximity to junction
- Overlooking, overshadowing, noise & odours
- Proliferation of takeaways & antisocial behaviour
- Overdevelopment & no need for more retail

4.0 Planning History

None attached.

5.0 Policy Context

5.1. Fingal County Development Plan 2017 to 2023

Zoning:

The appeal site is located within an area covered by the TC zoning objective which seeks to “Protect and enhance the special physical and social character of town and district centres and provide and/or improve urban facilities.” Residential, restaurant and hot food takeaways are acceptable in principle.

Policies & objectives:

Objective PM36: seeks to encourage appropriate residential, social & community uses in town & village centres in order to enhance their vitality & viability and recognising diversity of communities & actively promote these uses in existing under-utilised or vacant building stock as a mechanism to combat vacancy in town centres.

Objective DMS40: states that new infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/gateways, trees, landscaping, and fencing or railings.

Objective CLONSILLA 1: seeks to prepare an Urban Framework Plan to guide and inform future development; and to include measures to improve and promote the public realm of the village, in addition to traffic calming measures along the main street from St Mary's Church of Ireland to St Mochta's National School.

Objective CLONSILLA 1: seeks to develop key sites within the village for mixed use including a residential component to enhance the viability and vitality of the village while ensuring new developments do not exceed three storeys.

Objective DMS107: states that proposals for fast food/takeaways will be strictly controlled and all such proposals are required to address the following:

- The cumulative effect of fast food outlets on the amenities of an area.
- The effect of the proposal on the existing mix of uses & activities in an area.
- Opening/operational hours of the facility.
- The location of vents and other external services and their impact on adjoining amenities in terms of noise/smell/visual impact.

Development standards:

Building lines: seek to ensure that development is not carried out in front of established building lines, or in a position that would be in conflict with a building line.

Shopfronts: DMS006 to DMS10 require a high standards of shop front design.

Trees: DMS77 to DMS86 deal with protection, planting, replacement & management

Car parking: (Table 12.8)

- Apartments - 1.5 to 2 spaces for 2 and 3 x bed units
- Restaurant - 1 space per 15sq.m. GFA
- Takeaways - 1 space per 30sq.m. GFA

Bicycle parking: (Table 12.9)

- Apartments - 1 space per bedroom
- Restaurant - 1 space per 150sq.m. GFA

Apartment developments: should be of high quality design & site layout having due regard to the character & amenities of the area, dual aspect units are encouraged and a mix of units to cater for different size households should be provided.

Apartment standards: (Table 12.2)

| Type | Minimum Gross floor area | Aggregate living area | Aggregate bedroom area | Storage area |
|---------|--------------------------|-----------------------|------------------------|--------------|
| 3 x bed | 90 | 34 | 31.5 | 9 |
| 2 x bed | 73 | 30 | 24.4 | 6 |

Room sizes & widths: (Table 12.3)

- Living room - 3.3m, 3.6m to 3.8m wide (for 1, 2 & 3 x bed units)
- Single bedroom - 7.1sq.m & 2.1m wide
- Double bedroom - 11.4sq.m. & 2.8m wide
- Double & en-suite - 13.0sq.m. & 2.8m wide

Separation distances: 22m between opposing first floor rear windows normally required with a 11m long rear gardens (larger separation for 3+ storeys).

Gable separation: 2.3m normally required

Private open space: (Table 12.6)

- 2 x bed - 7sq.m. of private & 7sq.m. of communal space required
- 3 x bed - 9sq.m. of private & 9sq.m. of communal space required

Public open space: 2.5 hectares per 1000 population & 10% of site area.

Objectives PM52 & DMS57: require minimum public open space provision of 2.5 hectares per 1000 population. For the purposes of this calculation, public open space requirements are to be based on residential units with an agreed occupancy rate of 3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms.

Objective PM53 requires an equivalent financial contribution in lieu of open space provision in smaller developments where the open space generated by the development would be so small as not to be viable.

Objective DMS58: requires an equivalent financial contribution in lieu of open space provision in smaller developments of less than three units where the open space

generated by the development would be so small as not to be viable. Where the Council accepts financial contribution in lieu of open space, the contribution shall be calculated on the basis of 25% Class 2 and 75% Class 1.

Built Heritage:

- St. Marys Church (DU013-017) to W of site
- Kellystown Mount (DU013-018) to SW of site

5.2. Natural Heritage Designations

None in vicinity.

6.0 The Appeal

6.1. Grounds of Third Party Appeal

Lambourn Residents Association raised the following concerns.

- Inaccurate site description, it comprises a brownfield site that previously contained a house and is bound to the W the applicant's petrol filling station.
- TC zoning objective, Objective PM36 and Objective Clonsilla 2 apply.
- Clonsilla has always had 2 centres comprising the 1940's upper village and the 1960s lower village, the intervening lands comprise single storey houses, & the central section was developed in the 1970s for houses & petrol station.
- The adjoining streetscape includes an entrance to Lambourn, a hedgerow a dormer cottage & vacant site to the E of the appeal site.
- Inappropriate form of development because of the restaurant use, but welcome omission of the takeaway & no demand in area for this use.
- The 3-storey height is out of character with the surrounding area & the PA has refused permission for other tall buildings in the vicinity.

- Adverse impacts on residential amenity, by way of overlooking & overshadowing (shadow study attached) but welcome FI amendments.
- Insufficient details in relation to waste management and fire safety access.
- The relocated bus stop would be in close proximity to the neighbouring house.
- Potential adverse impact on mature trees.
- Inaccuracies in the planning application in relation to the postal address, number of units, notification of 3rd parties, infringe on property rights of neighbouring houses, and noise disturbance & anti-social activities.
- The applicant's adjacent petrol filling station could be extended into the site to provide a restaurant with no impact on established heights in the area.

6.2. Grounds of First Party Appeal

Condition no.25 requires the payment of E17,608 in lieu of open space provision towards the cost of amenity works in the area based on a shortfall of 300sq.m.

Request the removal of this condition:

- The Board removed a similar condition under PL06F.249188 which was considered to amount to “double accounting” by the Inspector & paragraphs 7.18 & 7.19 of the Inspector's report are relevant.
- They state that the Development Contribution Scheme already includes as part of its overall calculation of the projected costs of the provision of public infrastructure development a figure of E17.51 per sq.m. of residential development for Community Parks & Facilities, and this figure is already included in condition 33.... and the additional cost is not covered by any Special Contribution Scheme but has been imposed under the Development Contribution Scheme.
- Thus, the adopted Development Contribution Scheme already includes as part of its overall calculation of the projected costs of the provision of public infrastructure in condition no.28 of the decision to grant permission.

Modification of calculation (if the Board do not concur with the above):

- The total planning application site area is 906sq.m.
- The plans refer to an area of landscaped open space as totalling 91sq.m. in the N section which is greater than the 10% requirement.
- Condition no.25 refers to an open space shortfall of 300sq.m.
- The PA calculated that there are 12 bedspaces (3 units x 3.5 persons & 1 unit x 1.5 persons), the Plan requires 25sq.m. per person & 300 sq.m. is required.
- Condition 25 does not take account of the 91sq.m. which should be subtracted from the 300sq.m. and 209sq.m. is therefore required.
- The 91sq.m. is well located, designed, landscaped & overlooked by the 4 units in accordance with section 12.7 of the Plan, and it complements the private terraced open spaces.

6.3. Applicant Response

General:

- Planner's report provides an accurate description of the site & policy context.
- Proposal complies with the Town Centre zoning for the site & adjoining lands.
- Complies with Objective Clonsilla 2 which seeks to develop key sites for mixed uses including a residential component... while ensuring that new developments do not exceed 3-stories.
- Located along Clonsilla road, next to a bus stop and close to a train station.
- Several 3-storey building have been recently granted permission in the area.
- FW09A/007 was located in a residential zone & covered by a previous Plan.

Shadows:

- The Appellant's Shadow Study is not objective or substantiated and the proposed building is located entirely to the N of the neighbouring houses.

- Applicant's Shadow Impact Analysis (attached) demonstrates the extent of the shadows cast at 9am, noon and 3pm on the Spring Equinox & Winter Solstice & Summer Solstice with no overshadowing predicted.
- Shadows are already cast by the existing boundaries & trees.
- No adverse impact predicted under the worst-case scenario (7pm on 21/06).

Anomalies in application:

- Postal address is correct & acknowledge typo in Qu.14.

Overlooking:

- Proposal complies with all standards with no overlooking predicted.
- Adequate separation between opposing windows.
- Over 41m setback from the upper floor windows of houses to the direct S.
- Potential for non-direct lateral views addressed in FI response, additional screening in the SE corner upper floor balconies will prevent overlooking of neighbouring rear gardens, and windows on the E side elevation omitted.

Enjoyment of property rights/perception of nuisance:

- No basis for nuisance complaints.
- Residential and restaurant use are compatible with residential areas and acceptable within the TC zone, and the site is self-contained.
- Kitchen extracts are shown located to the SW on a secondary elevation on the service station and away from the neighbouring houses, there is a fully fenced off waste storage area, and the restaurant will comply with EHO standards and planning conditions (nos. 9-14).
- Condition no.15 requires that a Management Agreement for the proper planning & control of the site must be agreed with the PA.
- The bus stop relocation was addressed in the FI response with no objections from the Roads Dept. & a Fire Safety Cert will be sought.

6.4. Planning Authority Response

Third Party appeal:

- Proposal does not exceed 3-stories and is acceptable within the TC zone; no comparison with FW09A/007; the structure creates a bookend to this part of the village and helps create a streetscape within the town centre location.
- No undue overshadowing having regard to the 7m set back from the E boundary and design & height of the structure.
- Restaurant use is compatible with TC zone, no objection to a community use subject to a clear understanding of how & by whom it would be maintained.
- No concerns in relation to waste management, fire safety access or bus stop.
- The application contained sufficient detail in order for it to be validated & fully assessed, and appellant's concerns were addressed in the Planner's report.
- Overlooking concerns mitigated by way of FI response & Condition no.3; and design & layout will not attract anti-social behaviour.

First Party appeal against Condition no.25:

- Condition no.25 requires E17,608 for shortfall of 300sq.m. of open space.
- Do not accept the "double-accounting" assertion, and notwithstanding PL06F.249188, the PA must continue to have regard to the adopted Development Contribution Scheme 2016-2020.
- Article 9 sets out the level of contribution to be paid (except for Exemptions or Reductions) and it lists the different classes of public infrastructure & facilities, and the site is not covered by the Article 10 Exemptions or Reductions.
- Scheme makes a distinction between Class 1 & 11 Open Space & provides respective rates; the contributions will be used for the provision of open spaces, recreational & community services & landscaping works identified within Appendix 2; the nearest park is Beech Park/Shackleton Gardens.
- Conditions no.25 & 28 were applied correctly and are not "double accounting."

- DMS58 requires a financial contribution in lieu of open space on the basis of 25% Class 2 & 75% Class 1; and 12 bedspaces x 25sq.m. of open space per bedspace equals 300sq.m.
- Hard surfacing in front of the proposed takeaway is not considered open space but a setback which takes account of the building line which does not provide useful levels of amenity for residents; and no open space has been provided.
- Request the Board to retain conditions nos.25 & 28.

6.5. Further correspondence

The Applicant raised the following concerns in relation to the Planning Authority response submission:

- The restaurant use is appropriate within the TC zone whereas a community use would not be appropriate on this privately-owned site as it could have a negative impact on the commercial viability of the development.

The Appellant raised the following concerns in relation to the Planning Authority response submission:

- The retail areas in the village are adequately served with restaurants & takeaways and some have closed as there is little demand for restaurants.
- Welcome the possible development of a community facility but it should not be at the expense of the infringement of property rights.
- Inadequate notification to make a submission.
- Little of merit in the PA submission.
- Original concerns in relation to property rights & potential nuisance remain.

6.6. Observations & Prescribed Bodies

No submissions received.

7.0 Assessment

The main issues arising in this case related to the following:

- Principle of development
- Design, layout & visual amenity
- Residential amenity
- Movement & access
- Other issues
- Condition no.25 (Financial contribution)

7.1. Principle of development

The proposed development would be located within the “TC” zoning objective which seeks to “Protect and enhance the special physical and social character of town and district centres and provide and/or improve urban facilities” and residential, restaurant and hot food takeaway uses are acceptable in principle. The proposed takeaway use was omitted by way of the Further Information response, although it still appears in the cross-section drawings (Drawing no. PL-300), however this could be addressed by way of a planning condition which clarifies that the takeaway use has been omitted. It is also noted that the suggested possible use of the ground floor as a community facility instead of a restaurant would be unacceptable to the applicant, and that this use would lie outside the remit of the application and appeal.

7.2. Design, layout, and visual amenity

Site context:

The proposed development would be located in Clonsilla Village which comprises 2 distinct town centre areas on the E and W of sides of the village along Clonsilla Road. The main town centre area to the E comprises a mix of retail and commercial uses whilst the smaller town centre area to the W comprises a Funeral Home, an Applegreen service station and the appeal site which was originally occupied by a detached house and gardens. The N and S sides of Clonsilla Road are mainly

characterised by detached single and 2-storey houses of various designs and styles that front on to the main road with more recently constructed 2-storey housing estates beyond.

The roadside boundaries in the vicinity of the site are defined by mature trees and hedgerows and there are several mature trees within the site. Although there is no established pattern of development in the surrounding area, all of the buildings are set back from the roadside boundary and under Objective DMS58 new development within the town centre zone should not exceed 3 stories. The site and surrounding area is not covered by any sensitive heritage designations and there are no Protected Structures in the immediate vicinity.

Design and layout:

The proposed 3-storey building would have a 2nd floor set back and it would be 8.5m to 10.2m high and 17.5m deep. The building would be c.11m to c.14m wide at ground floor level and c.17m to c.20m wide at 1st and 2nd floor levels. The 2nd floor would be set back c.2.5m from the N & S elevations and c. 0.75m from the E elevation.

The entire structure would be set back c.6m from the boundary with Clonsilla Road to the N which would be approximately in line with the Funeral Home to the W and the nearest detached house to the E. The building would be set back c.1m from the site boundary to the W with the petrol filling station (which is owned by the applicant) and c.18-22m from the site rear site boundary to the S with Lambourn Avenue. The ground floor section would be set back c.7m and the 1st & 2nd floor sections would be set back c.1m from the E site boundaries with the adjoining vacant site to the NE and the N section of the neighbouring garden to the rear the 2-storey house at no.1 Lambourn Avenue to the SE.

The proposed flat roofed building would have a contemporary design with recessed balconies/external terraces and aluminium windows. It would have a mix of finishes including plain cast render, timber and limestone cladding and the recessed 2nd floor level would metal clad.

The contemporary design and use of external materials combined with the 3-storey height, set-backs from the site boundaries, and the observation of the established building line along Clonsilla Road are considered acceptable in terms of visual amenity. The design and layout of the proposed development would also be compatible with the Development Plan objectives for the area, particularly in relation to the 3-storey height. I am satisfied that the proposed development would not injure the visual amenities of the surrounding area, subject to the signage details for the restaurant been agreed in writing with the planning authority before development commence. This could be addressed by way of a planning condition.

Landscaping & trees:

There are several mature trees on the site and the Applicant was requested to submit a tree survey and landscape plan by way of Further Information.

According to the Tree Survey report, most of the trees surveyed are clustered in the SW and SE corners of the site and they are located in very close proximity to each other. The most dominant trees are single Monterey cypress, Douglas fir and Aspen trees along with a cluster of cherry trees. Most of the trees are in good condition. The report recommended that the deadwood be removed from the Monterey cypress and that attendant ivy should be cut back from the Douglas Fir and cherry trees and it advised on protection measures in the event that the trees are retained.

The Arboricultural Impact report confirmed that the proposed layout would require the removal of all existing trees on the site. The Monterey cypress, Douglas fir and Aspen trees would be difficult to incorporate into an urban infill scheme because of their large size and the tendency of Monterey cypress to shed branches during storms. The report concluded that the impact would not be significant as the surrounding area is well wooded and that new and more suitable trees would be planted. The report and its recommendations are noted. I am satisfied that the removal of trees from the site would be justified subject to the replanting of suitable replacement species in the interest of visual amenity, biodiversity and to ensure the continued screening of neighbouring houses.

Drawing no. 1724-1 of the FI response submission contains tree planting and landscaping details and it is proposed to plant new street trees along the N site boundary with Clonsilla road, and trees, shrubs and hedges along the remaining boundaries. Although several species of tree have been suggested and an outline landscape plan has been provided, the final species selection and landscaping details (hard and soft) would have to be agreed with the planning authority before development commences. This could be addressed by way of a planning condition.

7.3. Residential amenity - Proposed apartments

General amenity:

The proposed development, as amended by way of FI, would comprise a total of 4 apartments. Two 3 x bed units (106sq.m. & 115sq.m.) would be located on the 1st floor and one 3 x bed unit (105sq.m.) and 1 x 2-bed unit (90sq.m.) would be located on the 2nd floor. The proposed apartments would be dual aspect with front and rear external terraces ranging in size from c.6sq.m. to c.21sq.m. The units would provide for an acceptable level of residential amenity in relation to floor area, room size, orientation, storage and private amenity space in line with national and local requirements which is considered acceptable in terms of residential amenity.

Public open space & open space:

The proposed development would comprise a hard landscaped area to the front/N of the building in the vicinity of the public footpath, an internal access road along the E site boundary and a surface car parking to the rear/S of the building, however it would not provide for any useable, functional or viable public open space/open space within the scheme.

In relation to public open space, Objectives PM52 & DMS57 require a minimum provision of 2.5 hectares per 1000 population. For the purposes of this calculation, public open space requirements are based on residential units with an agreed occupancy rate of 3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms. This standard would equate to 25sq.m. per bedspace, the units would have a combined total of 12 bedspaces ((3.5 x 3 + 1.5) x 25) and 300sq.m. of public open space is required.

In relation to open space, Objective PM53 requires an equivalent financial contribution in lieu of open space provision in smaller developments where the open space generated by the development would be so small as not to be viable and DMS58 has a similar requirement for smaller developments of less than three units.

This shortfall in open space was addressed by the planning authority under Condition no.25 of the decision to grant planning permission where a financial contribution in lieu of 300sq.m. of open space was required. However, the Applicant has appealed this condition and issues relating to this matter are assessed in section 7.7 below.

7.4. Residential amenity - neighbouring houses

The proposed 3-storey building, as amended by way of Further Information, would be located to the N and NW of the existing 2-storey houses at Lambourn Avenue. The building dimensions and its relationship with the neighbouring site boundaries are described in detail in section 7.2 above (Design and Layout). The proposed building would not contain any windows in the E elevation however it would contain balconies/external terraces with patio doors in the S and N facing elevations which would extend to the SE and NE corner of the building.

Relationship to S:

The proposed rear/S elevation would contain 2 external terraces at 1st floor level that would extend to the full width of the building, and 2 external terraces at 2nd floor level which would be c.7m wide. The proposed building would be set back from the S site boundary with Lambourn Avenue by between c.19m and c.22m and from the front elevations of the neighbouring 2-storey houses by between c.41m and c.44m. This separation distance exceeds the minimum Development Plan requirement of 22m and the neighbouring houses would not be overlooked to any significant extent, experience a loss of privacy or sense of overbearance. The proposed 3-storey building would not overshadow the neighbouring houses to the S having regard to its orientation to the immediate N of the houses.

Relationship to SE (overlooking):

There would be no windows in the E facing elevation at 1st and 2nd floor levels however the N and S facing balconies/external terraces would extend as far as the NE and SE corners of the building. The E edge of the proposed terraces would be defined by solid walls at 1st floor level and by a solid wall to the SE and a screen to the NE at 2nd floor level.

The 1st and 2nd floor terraces at the NE corner of the building would be located c.13m and c.25 (diagonally) from the rear garden boundary and rear elevation of the neighbouring house to the SE at 1 Lambourn Avenue which not be overlooked to any significant extent of experience a loss of privacy, having regard to the extent of the separation distances and the use of a solid wall at 1st floor level.

The 1st and 2nd floor terraces at the SE corner of the building would be located c.1m and c.9.5 (diagonally) from the N section of the rear garden boundary and rear elevation of the neighbouring house to the SE at 1 Lambourn Avenue, which could give rise to overlooking and a loss of privacy at this residential property. However, the E sections of the 1st and 2nd floor terraces would be defined by a solid metal clad screen wall and the SE section of the 1st and 2nd floor terraces would be defined by a full height 1.5m wide opaque glazed screen that would extend from the solid wall at this level. The combined full height walls and screens at the SE corners of the terraces would be c.2.5m deep and c.2.5m wide which would be sufficient to protect the residential amenities of the neighbouring house from overlooking and loss of privacy.

It is noted that Condition no.3 of the planning authority's decision to grant planning permission required an additional solid metal screen to be located on the E/SE corner of the balcony associated with unit no.4. in the interest of residential amenity, which is considered acceptable.

Relationship to SE (overshadowing):

The Appellant raised concerns in relation to overshadowing at the neighbouring houses to the SE and both the Appellant and Applicant submitted Shadow Studies.

The proposed 3-storey building would be located to the NW of no.1 Lambourn Avenue and its neighbouring 2-storey houses to the E. The proposed structure would extend for c.2.5m along the NW section of the boundary wall with the rear garden of no.1 Lambourn Avenue and it would be set back by between 0.75m and c.2m from this wall. There would be a c.9.5m diagonal separation between the SE corner of the proposed structure and the NW corner of the neighbouring house. Having regard to the orientation of the proposed building to the NW of the existing house, I am satisfied the proposed structure would not overshadow the neighbouring house at no.1 Lambourn Avenue to the SE to any significant extent in the morning, midday and evening, and although a shadow could be cast over the rear garden in the late evening during the summer months, the impact on neighbouring amenity would not be prolonged or significant.

Conclusion:

Having regard to foregoing, including the design, layout and height of the proposed building, the separation distances, orientation and relationship to the neighbouring residential sites, I am satisfied that the proposed development would not have any significant adverse impacts on the residential amenities of properties in the vicinity.

7.5. Movement and access

Vehicular access:

The proposed vehicular access to the rear car park would be off Clonsilla Road to the N via a new entrance located in the NE section of the site and along a c.5m wide access road that would run parallel to the E site boundary. The sightlines along Clonsilla Road are adequate in either direction and the proposed arrangements are considered acceptable, subject to the implementation of the amendments submitted by way of Further Information in relation to the footpath crossover and the relocated bus stop.

Car and bicycle parking:

The proposed development, as amended by way of Further Information, would provide a total of 9 car parking spaces in the rear car park which would contain 4 residential spaces and 5 commercial spaces (including 1 accessible car parking space).

According to Table 12.8 of the Development Plan, 1.5 to 2 car parking spaces are normally required for 2 and 3 bed apartment units along with 1 visitor parking space, thus c.8 spaces would be required. Table 12.8 also requires the provision of 1 car parking space per 15sq.m. of gross floor area, the proposed restaurant use would be 161sq.m. and 10.5 spaces would be required. Therefore, a total of 18.5 spaces would be required and 9 are proposed.

However, it is noted that the Council's Transportation Department has no objection to the proposed level of provision as the standards are based on a maximum level of provision and a reduced level of parking is considered acceptable depending on the nature of the development and the locational circumstances.

Furthermore, having regard to the proximity of the proposed development to the surrounding residential areas, a Dublin Bus stop and Clonsilla train station, I am satisfied with the proposed level of provision is acceptable for this location. The proposed development would not give rise to overspill car parking on the surrounding road network.

Bicycle parking would be provided in the NW corner of the site at the front of the building in the vicinity of Clonsilla Road which is acceptable provided that the works do not interfere with the proposed tree planting. This issue could be addressed by way of a planning condition.

Public transport & bus stop:

The proposed development would be located along Clonsilla Road which is served by two Dublin Bus routes (39 & 239) and a short distance to the E of Clonsilla train station which is acceptable in terms of public transport accessibility. The proposed relocation of the bus stop from outside the appeal site further to the E along Clonsilla Road is considered acceptable.

Conclusions:

Having regard to the foregoing, I am satisfied that the proposed development would not give rise to excessive traffic generation, overspill car parking or a traffic hazard and it would not obstruct or endanger the safety of other road users.

7.6. Other issues

Archaeology: There would be two Recorded Monuments to the NW and SW of the site at St. Marys Church (DU013-017) and Kellystown Mount (DU013-018) and the standard archaeological monitoring condition should be attached.

Appropriate Assessment: The site is located a substantial distance from any European Sites. Having regard to the small scale of the proposed works, which would be located on a serviced and long established suburban site, and the absence of a direct connection between the works any designated site, I am satisfied that Screening for Appropriate Assessment is not required.

Built heritage: The site and immediately surrounding area are not covered by any sensitive built heritage designations and the proposed development would have no adverse impacts on the Protected Structures to the far W of the site.

Environmental services: The proposed development would be located within a serviced and established suburban area, and the proposed drainage and water supply arrangements are considered acceptable.

Restaurant use: The vents and extractor for the restaurant would be located on the W side of the building in the vicinity of the service station site which is acceptable. A condition should be attached which sets out the operational and delivery hours for the restaurant in the interest of residential amenity and orderly development.

Signage: All proposed restaurant signage details should be submitted to the planning authority for written agreement before development commences.

Supplementary Development Scheme: The attachment of a financial contribution condition in respect of the Clonsilla to Dunboyne (Pace) Railway Line is acceptable.

7.7. Condition no.25 (financial contribution)

Background:

The First Party Appellant has raised concerns in relation to the financial contribution conditions set out under Condition no.25 and Condition no.28 of the authority's decision to grant planning permission. They submit that the 2 conditions amount to "double accounting" as they both relate to open space. The Board is requested to omit Condition no.25 as the required contribution in relation to an open space shortfall is already covered by Condition no.28 in relation to public infrastructure and facilities, with respect to the adopted Section 48 Development Contribution Scheme. The applicant also cites a recent Board decision which omitted Condition no. 31 of the planning authority's decision to grant permission, which also required a contribution in relation to an open space shortfall.

Relevant conditions:

Condition no.25:

That a financial contribution in the sum of E17,608 be paid by the applicant to the Fingal County Council in lieu of open space provision towards the cost of amenity works in the area of the proposed development in accordance with the requirements of the Fingal Development Plan based on a shortfall of 300sq.m. of open space.

Reason: The provision of such services in the area by the Council will facilitate the proposed development. It is considered reasonable that the developer should contribute towards the cost of providing the services.

Condition no.28:

The developer shall pay the sum of E55,029 to the planning authority as a contribution towards expenditure that was/or that is proposed to be incurred by the planning authority in respect of public infrastructure and facilities benefiting development in the area of the Authority, as provided for in the Contribution Scheme for Fingal County made by the Council.

Reason: It is considered reasonable that the payment of a contribution be required in respect of the public infrastructure and facilities benefiting development in the area of the planning authority and which is provided, or which is intended to be provided by, on behalf of the Local Authority.

Policy context and calculations:

Objectives PM52 & DMS57 of the Development Plan require minimum public open space provision of 2.5 hectares per 1000 population. For the purposes of this calculation, public open space requirements are to be based on residential units with an agreed occupancy rate of 3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms.

Objective PM53 requires an equivalent financial contribution in lieu of open space provision in smaller developments where the open space generated by the development would be so small as not to be viable.

Objective DMS58 requires an equivalent financial contribution in lieu of open space provision in smaller developments of less than three units where the open space generated by the development would be so small as not to be viable. Where the Council accepts financial contribution in lieu of open space, the contribution shall be calculated on the basis of 25% Class 2 and 75% Class 1.

Section 7.2 of this report deals with public open space/open space requirements in some detail. The shortfall was calculated by the planning authority as 300sq.m. and I would concur with this calculation based on the provision of 3 x 3 bed units and 1 x 2-bed unit with an occupancy rate of 12 persons multiplied by 25 sq.m. per person.

Fingal County Council Development Contribution Scheme 2016 - 2020 (under Section 48, Planning and Development Act, 2000, as amended)

Sections 1 to 8 set the legal context for the Development Contribution Scheme.

Section 9 sets out the level of contribution.

Section 10 sets out exemptions and reductions.

Appendix 1 deals with costs (Table 1) and projected development (Table 2).

Appendix 2 lists the benefiting projects

Section 9: Level of contribution:

Section 9 (a) of the Scheme sets out the levels of contribution for the following classes and Table 1 of Appendix 1 sets out the percentage of contribution allocated to each Class.

| | | |
|----------|--|-------|
| Class1: | Roads Infrastructure & facilities | (70%) |
| Class 2: | Surface water | (7%) |
| Class 3: | Community & Parks facilities & amenities | (23%) |

The rates of contributions effective from 1st January 2018 are as follows:

Residential: €85.94 per sq.m.

Non-residential: €67.11 per sq.m.

Condition no. 28 requires a financial contribution of E55,029 towards the cost of public infrastructure and facilities benefiting development and this includes Class 3 (Community & Parks facilities & amenities).

Section 9 (b) of the Scheme states that the Fingal Development Plan provides the discretion to the Council to determine a financial contribution in lieu of all or part of the open space requirement for a particular development.

This contribution in lieu of open space will be levied at the following rates;

1. Class I Open Space - €100,000 per acre to purchase land based on the value of amenity land, plus €100,000 per acre for development costs.
2. Class II Open Space - €250,000 per acre to purchase land in residential areas, plus €100,000 per acre for development costs.

The Scheme states that these rates may be reviewed by the Council from time to time having regard to market conditions. The contributions collected will be used for the provision of open spaces, recreational and community facilities and amenities and landscaping works in a list of parks contained in Appendix 2 of the Scheme.

Condition no.25 requires a financial contribution of E17,608 based on the 300sq.m. shortfall towards the cost of amenity works in the area. The planning authority's response submission clarified that the closest park identified within Appendix 2 of the Scheme is Beech Park/Shackleton Gardens.

Discussion:

Sections 9 (a) of the Scheme allows for the levying of a general contribution towards the cost of public infrastructure and facilities benefiting development which includes Community & Parks facilities & amenities (Class 3). Section 9 (b) provides discretion to the Council to determine a financial contribution in lieu of the open space requirement for a particular development with respect to Class 1 and Class 11 open space, towards the cost of purchasing land and for development costs. This would apply in cases where there is an identified shortfall in the provision of open space within a development. Objectives PM53 and DMS58 of the Development Plan require an equivalent financial contribution in lieu of open space provision in smaller residential developments where the open space generated by the development would be so small as not to be viable.

The proposed development would not provide any public open space. The planning authority, having had regard to Objectives PM53 and DMS58 of the Development Plan, has availed of the discretion afforded to it under section 9(b) of the Scheme to require an additional contribution in lieu of this shortfall. This would be over and above the general contribution in relation to the provision of public infrastructure and facilities. I am satisfied that there is no overlap between Condition no.25 and Condition no.28 and that Condition no.25 does not give rise to "double accounting." Furthermore, the contribution requirements are clearly stated in the adopted Section 48 Development Contribution Scheme and it would be outside the Board's remit to alter the terms and conditions of the Scheme. I am therefore satisfied that Condition no.25 should be retained.

The applicant also referred to a recent decision by the Board under PL06F.249188 in relation to a similar matter whereby Condition no. 31 of the planning authority's decision to grant permission under FW16A/0176 for a residential development in Clonsilla was omitted from the Board's Direction. Condition no.31 of FW16A/0176 required a financial contribution in lieu of open space in addition to the general contribution required under Condition no.33 in relation to public infrastructure and facilities. However, it is noted that in this particular case, although the open space provision fell short of the required 2.5 hectares per 1000 population, the level of provision greatly exceeded the minimum 10% requirement specified under the heading "Quantity" in section 3.5 (Open Space) of the Development Plan (page 76).

The concerns raised by the Applicant in relation to the space located to the fore of the proposed building along the roadside boundary are noted. This issue was assessed in section 7.3 above. I would not agree that this space would constitute a useable, functional or viable area of open space in terms of residential amenity, and it should not be used to re-calculate the open space shortfall.

Conclusion & recommendation

Condition no.25 should be retained and the wording amended to include a reference to the relevant Development Plan objectives and the adopted Section 48 Development Contribution Scheme, in the interest of clarity and transparency.

8.0 Recommendation

Arising from my assessment of this appeal case I recommend that planning permission should be granted for the proposed development for the reasons and considerations set down below and subject to the following conditions.

9.0 Reasons and Considerations

Having regard to the provisions of the Fingal County Development Plan 2017 to 2023, and to the nature, and scale of the proposed development, it is considered that subject to compliance with the following conditions, the proposed development would not seriously injure the amenities of the area or of property in the vicinity or give rise to a traffic hazard. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the Further Information that was received by the planning authority on the 18th day of January 2018, 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. For the avoidance of doubt:
 - (a) One restaurant at ground floor level and four apartments at first and second floor levels are permitted.
 - (b) The hot food takeaway is not permitted.

Reason: In the interest of residential and visual amenity.

3. The developer shall provide an additional full height solid metal screen located on the east facing south east corner of the balcony associated with apartment no 4. Details shall be agreed in writing with the planning authority before development commences.

Reason: In the interest of residential amenity.

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

Reason: In the interest of visual amenity.

5. Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.

Reason:

To protect the visual amenities of the area

6. The developer shall comply with the following landscape requirements:
 - (a) Prior to the commencement of development the applicant shall submit for the written agreement of the Planning Authority full details of the final species selection (trees, hedges, shrubs and plants) and final landscaping details (hard and soft) for the development.
 - (b) Prior to the commencement of development the applicant shall submit for the written agreement of the Planning Authority full details and specifications of the proposed constructed tree pits i.e. clearly show if a structural growing medium or a crate systems/cell systems will be used.
 - (c) Whatever the under-pavement system is adopted, some means for air and moisture to reach the growing media shall be provided to sustain soil life and to maintain moisture levels. Below-ground irrigation and aeration systems shall be installed in all hard surfaced areas.

- (d) A root barrier shall be installed in the vicinity of boundary walls and services.
- (e) The developer shall facilitate the inspection by the planning authority of the constructed tree pits/trench to assess the depth and conditions of drainage layers, backfill materials, presence of compaction, anaerobic conditions or waterlogging.
- (f) Trees shall be planted along the road front shall be standard 20-25cm girth rootballed *Corylus columna*.
- (g) The proposed bike stands shall not be located under any street trees and shall be relocated to a more suitable location, details of this location shall be agreed in writing with the Planning Authority prior to the commencement of development.
- (h) All tree felling work as per Arboricultural Impact Drawing no. 102 shall be carried out by qualified and experienced tree surgery contractor before commencement of any other site operations and shall be in accordance with BS3998 (2010) Tree Work – Recommendations.
- (i) The landscape plan and details submitted on the 18/01/18 shall be carried out in full no later than the first planting season after the first occupation of the first unit (residential or restaurant.).
- (j) All hard and soft landscape works shall be completed in full accordance with the approved Landscape Plan.
- (k) All trees, shrubs and hedge plants supplied shall comply with the requirements of BS: 3936, Specification for Nursery Stock.
- (l) New tree planting shall be planned, designed, sourced, planted and managed in accordance with 'BS 8545:2014 Trees: from nursery to independence in the landscape – Recommendations'.
- (m) Any tree, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within three years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.

Reason: In the interest of visual amenity and orderly development.

7. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and
- (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

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

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works. In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

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

8. The restaurant shall only open between 08.00am to 11.00pm Monday to Saturday and between 10.00am to 10.00pm on Sundays and Bank Holidays. Deliveries to the restaurant shall only occur between 8.00am and 11.00am Monday to Saturday and not at all on Sundays and Bank Holidays, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of clarity and residential amenity.

9. A plan containing details for the management of waste within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials shall be submitted to, and agreed in writing with, the planning authority before development commences. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste in the interest of protecting the environment.

10. The developer shall control odour emissions from the premises in accordance with measures including extract duct details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of public health and to protect the amenities of the area.

11. The development shall be managed in accordance with a management scheme which shall be submitted to, and agreed in writing with, the planning authority, prior to the occupation of the development. This scheme shall provide adequate measures relating to the future maintenance of the development; including landscaping, roads, paths, parking areas, lighting, waste storage facilities and sanitary services together with management responsibilities and maintenance schedules

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

12. Water supply and drainage arrangements, including the disposal of surface water and internal basement drainage, shall comply with the requirements of Irish Water and the planning authority for such works and services as appropriate.

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

13. The developer shall comply with the following transportation requirements:
- (a) The relocation of the bus stop shall be agreed in writing with the planning authority prior to construction and all works shall be carried out at the expense of the developer.
 - (b) The four residential parking spaces shall be permanently designated to each unit and signed and lined appropriately.
 - (c) The residential car parking spaces shall remain in the charge of the relevant management company.
 - (d) The access road shall be constructed to taking in charge standards.
 - (e) All the above works shall be carried out at the expense of the developer to the specifications and conditions of the Council.

Reason: In the interests of orderly development and road safety.

14. The site development and construction works shall be carried out such a manner as to ensure that the adjoining streets are kept clear of debris, soil and other material and cleaning works shall be carried on the adjoining public roads by the developer and at the developer's expense on a daily basis.

Reason: To protect the residential amenities of property in the vicinity.

15. The site works and building works required to implement the development shall only be carried out between 7.00 hours and 18.00 hours, Monday to Friday and between 08.00hours and 14.00 hours on Saturdays and not at all on Sundays or Bank Holidays.

Reason: To safeguard the residential amenities of adjacent dwellings.

16. The developer shall pay to the planning authority a financial contribution of seventeen thousand, six hundred and eight euro (E17,608) in respect of the shortfall of open space, in accordance with the requirements of Objectives PM52, PM53, DMS57 and DMS58 of the Fingal Development Plan 2017 to 2023 (based on a shortfall of 300sq.m.), and the terms of section 9(b) 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. The application of any indexation required by this condition 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.

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.

17. The developer shall pay to the planning authority a financial contribution of twenty-one thousand, four hundred and thirty-three euro (E21, 433) respect of the Clonsilla to Dunboyne (Pace) Railway Line in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 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. The application of any indexation required by this condition 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.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

18. The developer shall pay to the planning authority a financial contribution of fifty-five thousand, and twenty-nine euro (E55,029) 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. The application of any indexation required by this condition 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.

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.

19. 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 roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion 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.

Karla Mc Bride
Planning Inspector
18th July 2018