



An  
Bord  
Pleanála

## Inspector's Report ABP-301872-18

### Development

The demolition of existing two storey buildings on site and the construction of 30 No. apartments, including 12 No. 1 beds, 12 No. 2 beds and 6 No. 3 beds, with associated surface car parking provision. The development will utilise the existing vehicular and pedestrian access. All with associated landscaping, boundary treatments, foul and surface water services, site works and development works.

### Location

St. Anne's Convent, Kilmacud Road Upper, Kilmacud, Stillorgan, Co. Dublin.

### Planning Authority

Dún Laoghaire Rathdown County Council

### Planning Authority Reg. Ref.

D18A/0265

### Applicant(s)

Saint Anne's Kilmacud SPV Ltd.

### Type of Application

Permission

### Planning Authority Decision

Refusal

<b>Type of Appeal</b>	First Party v. Decision
<b>Appellant(s)</b>	Saint Anne's Kilmacud SPV Ltd.
<b>Observer(s)</b>	Marsham Court Residents Association c/o Michael Nolan George & Carmel Doyle Paul & Saffron Hennigan Whately Place Management CLG Cathy Leeney & Eric Alexander Niall Clancy
<b>Date of Site Inspection</b>	30 <sup>th</sup> October, 2018
<b>Inspector</b>	Robert Speer

## 1.0 Site Location and Description

1.1. The proposed development site is located within an established residential area, approximately 800m southeast of Goatstown and 400m southwest of Stillorgan Village Shopping Centre, in the outer suburb of Kilmacud, Stillorgan, Co. Dublin, where it occupies an infill site bounded by existing housing which is accessed from Kilmacud Road Upper through adjacent residential development. The surrounding area is predominantly characterised by conventional suburban housing, including two-storey, semi-detached and terraced dwelling houses of varying designs, although the adjacent scheme known as Whately Place also encompasses three-storey duplex units to the immediate northeast / east of the application site. The site itself has a stated site area of 0.25 hectares, is generally rectangular in shape, and presently comprises the remaining grounds of the former St. Anne's Convent which are occupied by an existing two-storey, convent building. It is bounded to the west by the rear garden areas of those two-storey properties within the older estate of Marsham Court and encircled on the remaining sides by Whately Place which was developed within the original grounds of St. Anne's Convent in the early to mid-2000s.

## 2.0 Proposed Development

2.1. The proposed development consists of the demolition of the existing St. Anne's Convent building (floor area: 585m<sup>2</sup>) and the subsequent construction of a five-storey apartment structure (floor area: 3,031.1m<sup>2</sup>) comprising 12 No. one-bedroom units, 12 No. two-bedroom units and 6 No. three-bedroom units with associated surface and undercroft car parking. Access to the site will be obtained via the existing entrance arrangement onto the adjacent service road within Whately Place which extends from the Upper Kilmacud Road. Associated site development works will include landscaping, boundary treatment, and connection to the existing watermain and drainage services within Whately Place.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. On 22<sup>nd</sup> May, 2018 the Planning Authority issued a notification of a decision to refuse permission for the proposed development for the following 2 No. reasons:

- It is considered that the proposal by reason of height, scale, massing, and separation distances to boundaries and abrupt transition in scale relative to the receiving environment, would result in an incongruous and overbearing development, would interfere with the character of the surrounding urban landscape, would seriously injure the amenities and depreciate the value of property in the vicinity and would be contrary to the zoning objective which is 'to protect and or improve residential amenity', Policy RES3 'Residential Density', Section 8.2.3.4 (vii), as well as the Building Height Strategy and related Policy UD6 of the Dún Laoghaire Rathdown Development Plan 2016-2022 and therefore would be contrary to the proper planning and sustainable development of the area.
- It is the Policy of the Planning Authority as set out in the County Development Plan 2016 – 2022 that residential development is provided with adequate public and private open space in the interest of residential amenity. The proposed development is deficient in the quantum, location and quality of public open space. The proposed development would therefore not be in accordance with the Development Plan Section 8.2.8.2 (i) Residential / Housing Developments, and would seriously injure the residential amenity of future residents and would be contrary to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports:

Details the site context, planning history, and the applicable policy considerations, including that the site benefits from excellent public transport links i.e. Dublin Bus services to the City Centre and the Luas at Stillorgan. The report proceeds to state that whilst the density of the proposed development at 120 No. units / hectare is

acceptable in principle given the site location relative to public transport links, it fails to accord with the requirements of Policy RES3 of the Development Plan in that it does not achieve an adequate balance between the reasonable protection of existing residential amenities and the need for development. In this respect particular concerns are raised as regards the available separation distances given the height of the proposal and the potential for the overlooking and overshadowing of adjacent properties. It is also stated that the overall size and scale of the proposed development would be visually overbearing / incongruous, does not accord with the Building Height Strategy of the Development Plan, and would amount to an unacceptable overdevelopment of the site. The report further analyses the proposal having regard to the requirements of the '*Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities*' and states that the quality and quantity of public open space provision fails to accord with the Development Plan. Consideration is then given to the recommendations of the Transportation Planning and Drainage Planning (Municipal Services) Departments. The report subsequently concludes by recommending a refusal of permission for the reasons outlined.

### 3.2.2. Other Technical Reports:

*Housing:* States that the applicant's proposals are capable of complying with the requirements of Part V of the Planning and Development Act, 2000, as amended, the County Development Plan, and the Housing Strategy, 2016-2022, subject to agreement being reached on land values and development costs and the availability of funding. It is therefore recommended that a suitable condition pertaining to Part V be included in any decision to grant permission.

*Transportation Planning:* Recommends that further information should be sought in respect of a number of items, including the vehicular and pedestrian access arrangements, the availability of adequate sightlines onto Whately Place, the provision of adequate on-site bicycle parking facilities, a Construction Management Plan, as well as further details with regard to the car parking, servicing and street lighting proposals.

*Drainage Planning (Municipal Services Department):* Recommends that further information should be sought in respect of the surface water drainage and attenuation proposals.

### 3.3. Prescribed Bodies

- 3.3.1. *Irish Water:* Recommends that further information be sought with regard to the applicant's proposals to connect into a surface water drainage system which has not been taken in charge.

### 3.4. Third Party Observations

- 3.4.1. A total of 27 No. submissions were received from interested parties and the principle grounds of objection contained therein can be summarised as follows:

- Detrimental impact on the residential amenity of neighbouring properties by reason of overlooking, loss of privacy, overshadowing, disruption / disturbance during construction works, traffic volumes, overflow parking, health and safety etc.
- Inadequate public open space provision.
- Insufficient on-site parking and the potential for traffic congestion in the surrounding area attributable to overflow parking.
- Increased traffic volumes / congestion within neighbouring developments and along the Upper Kilmacud Road with associated public safety concerns.
- Devaluation of property.
- Concerns with regard to the nature of the tenure of the proposed units, including the likely levels of accommodation which will be available for rent.
- The excessive size, scale, height and density of the proposal is visually intrusive, out of character with the surrounding pattern of development, and amounts to an overdevelopment of the site.
- Inadequate legal interest to avail of existing services / amenities within Whately Place.

- Inaccuracies / discrepancies in the submitted particulars as regards building heights etc. & a misrepresentation of the proposed development.
- Concerns as regards the adequacy of the public notices.
- The capacity of the existing drainage network to accommodate the additional loadings consequent on the proposed development.
- The loss of the existing tree line alongside the western site boundary.
- Failure to comply with the requirements of the *'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities'*.
- No justification has been provided for the demolition of the existing convent building.

## 4.0 Planning History

### 4.1. On Site:

PA Ref. No. D15A/0706. Was refused on 13<sup>th</sup> January, 2016 refusing Willowville Limited permission for the demolition of existing buildings on site, including St. Annes Convent (585sqm), and the construction of 8 dwelling houses as follows: 2 no. house type A (4-bed, detached, 3 storey, 184sqm), 4 no. house type B (4-bed, detached, 3 storey, 166sqm), 2 no. house type C (4-bed, semi-detached, 3 storey, 176sqm). All associated site works including hard and soft landscaping, boundary treatment, foul and surface water services and associated parking provision. A revised entrance onto Whatley Place to provide for pedestrian and vehicular access.

- It is considered that the proposed development would result in an inefficient and unsustainable pattern of development on serviced zoned land in a location close to public transport links, employment and neighbourhood and district centres. The proposed development, at a density of thirty two (31.68) units per hectare, is not considered to be of a sufficiently high density as envisaged by the County Development Plan and Ministerial Guidelines at this location. The proposed development, therefore, contravenes Policy RES3 'Residential Density' of the Dún Laoghaire Rathdown County Development Plan, 2010-2016 and Section 5.8 of the Sustainable Residential Development in Urban Areas Guidelines (DoEHLG 2009). The proposed development is,

therefore, contrary to the proper planning and sustainable development of the area.

- It is the Policy of the Planning Authority as set out in the County Development Plan 2010 – 2016 that residential development is provided with adequate public and private open space in the interest of residential amenity. The proposed development is deficient in the quantum, location and quality of public open space. The proposed development would therefore not be in accordance with the Development Plan Policy DM2 and Policy DM3, and would seriously injure the residential amenity of future residents and the amenities of property in the vicinity, and would be contrary to the proper planning and sustainable development of the area.
- It is considered that the proposed development does not meet the Quantitative Standards set out in Section 16.3.2 of the County Development Plan with regard to minimum rear garden depth. It is considered that the proposed development would seriously injure the residential amenities of the neighbouring properties and depreciate the value of property in the vicinity and would, therefore, be contrary to the proper planning and sustainable development of the area.

PA Ref. No. D16A/0214 / ABP Ref. No. PL06D.246756. Was refused on appeal on 29<sup>th</sup> September, 2016 refusing Saint Anne's Kilmacud SPV Limited permission for the demolition of existing buildings on site, including St. Anne's Convent and the construction of eight number dwelling houses as follows two number type A (four-bed, detached three storey, 184 square metres), two number type B1 (three-bed, detached, three storey, 138 square metres), two number house type B2 (two-bed, detached, two storey, 108 square metres) and two number house type C (four-bed, semi-detached, three storey, 176 square metres). All associated site works including hard and soft landscaping, boundary treatment, foul and surface water services and associated parking provision. A revised entrance onto Whately Place to provide for pedestrian and vehicular access.

- Notwithstanding the residential zoning designation of the site and the small size of the site, it is considered that the proposed development, which is located on a major transport corridor within 200 metres of a bus stop along a



Quality Bus Corridor and within one kilometre of a Luas station, is at a density which represents an unsustainable use of urban land and would materially contravene policy RES3 of the Dún Laoghaire Rathdown County Development Plan 2016-2022 and be contrary to the density requirements in the Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in May, 2009. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

- The proposed development, by reason of its inadequate provision of communal open space, would conflict with the provisions of the current Development Plan for the area and with the minimum standards recommended in the Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in May, 2009 and would be contrary to the said Guidelines. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

#### 4.2. On Adjacent Sites:

PA Ref. No. D97A/0786 / ABP Ref. No. PL.06D.105367. Was granted on appeal on 14<sup>th</sup> July, 1998 permitting Jackson Properties Limited permission for the demolition of existing convent building and the erection of 44 No. duplex apartments and 26 No. houses with access from Upper Kilmacud Road on lands at Saint Michael's House, Saint Anne's Convent, Kilmacud, Co. Dublin.

PA Ref. No. D00A/0409. Was granted on 20<sup>th</sup> June, 2000 permitting Jackson Properties Ltd. permission for 6 No. two storey houses to the rear of St. Anne's Convent with access from Whately Place, Upper Kilmacud Road, Co. Dublin.

PA Ref. No. D02A/0438 / ABP Ref. No. PL06D.200272. Was granted on appeal on 10<sup>th</sup> December, 2002 permitting Bryan Cullen permission for 4 No. two-storey houses and a three-storey block containing 8 No. duplex units, demolition of existing residential block and relocation of refuse/bicycle store on lands to rear and adjacent to existing Whately Place residential development, Upper Kilmacud Road, Co. Dublin.

PA Ref. No. D04A/0203 / ABP Ref. No. PL06D.207230. Was refused on appeal on 15<sup>th</sup> September, 2004 refusing Daragh Davenport permission for the construction of dormer style dwelling house, 2.7m high boundary wall and all associated site works at The Orchard, Whately Place, Upper Kilmacud Road, Dublin (bounded by Saint Anne's Convent to the west, 4 The Orchard to the east, and private open space to the north).

## 5.0 Policy Context

### 5.1. National and Regional Policy

- 5.1.1. The '*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009*' generally encourage more sustainable urban development through the avoidance of excessive suburbanisation and through the promotion of higher densities in appropriate locations. In general, appropriate locations for such increased densities include city and town centres, 'brownfield' sites (within city or town centres), sites within public transport corridors (with particular reference to those identified in the Transport 21 programme), inner suburban / infill sites, institutional lands and outer suburban / 'greenfield' sites. The proposed development site may be categorised as an 'inner suburban / infill' site where the provision of additional dwellings, proximate to existing or due to be improved public transport corridors, has the potential to revitalise areas by utilising the capacity of existing social and physical infrastructure. In respect of infill residential development potential sites may range from small gap infill, unused or derelict land and backland areas, up to larger residual sites or sites assembled from a multiplicity of ownerships. In residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and the privacy of adjoining dwellings, the protection of established character, and the need to provide residential infill. Moreover, in order to maximise the return of investment by the State in public transport under the Transport 21 capital programme, it is important that land use planning underpin the efficiency of public transport services by sustainable settlement patterns – including higher densities – on lands within existing or planned transport corridors. Accordingly, the Guidelines recommend that increased densities should be promoted within 500 metres walking distance of a bus stop, or within 1km of a light rail stop or a rail station. The capacity

of public transport (e.g. the number of train services during peak hours) should also be taken into consideration in considering appropriate densities. In general, minimum net densities of 50 dwellings per hectare, subject to appropriate design and amenity standards, should be applied within public transport corridors, with the highest densities being located at rail stations / bus stops, and decreasing with distance away from such nodes.

- 5.1.2. The ‘*Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2018*’ (which update the ‘*Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2015*’) provide detailed guidance and policy requirements in respect of the design of new apartment developments. Where specific planning policy requirements are stated in the document, these are to take precedence over any conflicting policies and objectives of development plans, local area plans and strategic development zone planning schemes. Furthermore, these Guidelines apply to all housing developments that include apartments that may be made available for sale, whether for owner occupation or for individual lease. They also apply to housing developments that include apartments that are built specifically for rental purposes, whether as ‘build to rent’ or as ‘shared accommodation’. Unless stated otherwise, they apply to both private and public schemes. These updated guidelines aim to uphold proper standards for apartment design to meet the accommodation needs of a variety of household types. They also seek to ensure that, through the application of a nationally consistent approach, new apartment developments will be affordable to construct and that supply will be forthcoming to meet the housing needs of citizens.

## 5.2. Development Plan

### 5.2.1. *Dún Laoghaire Rathdown County Development Plan, 2016-2022:*

#### *Land Use Zoning:*

The proposed development site is located in an area zoned as ‘A’ with the stated land use zoning objective ‘*To protect and-or improve residential amenity*’.

#### *Other Relevant Sections / Policies:*

*Chapter 2: Sustainable Communities Strategy:*

## Section 2.1: Residential Development:

### *Policy RES3: Residential Density:*

It is Council policy to promote higher residential densities provided that proposals ensure a balance between the reasonable protection of existing residential amenities and the established character of areas, with the need to provide for sustainable residential development. In promoting more compact, good quality, higher density forms of residential development it is Council policy to have regard to the policies and objectives contained in the following Guidelines:

- ‘Sustainable Residential Development in Urban Areas’ (DoEHLG 2009).
- ‘Urban Design Manual - A Best Practice Guide’ (DoEHLG 2009).
- ‘Quality Housing for Sustainable Communities’ (DoEHLG 2007).
- ‘Irish Design Manual for Urban Roads and Streets’ (DTTaS and DoECLG, 2013).
- ‘National Climate Change Adaptation Framework Building Resilience to Climate Change’ (DoECLG, 2013).

### *Policy RES4: Existing Housing Stock and Densification:*

It is Council policy to improve and conserve the housing stock of the County, to densify existing built-up areas, having due regard to the amenities of existing established residential communities and to retain and improve residential amenities in established residential communities.

### *Policy RES7: Overall Housing Mix:*

It is Council policy to encourage the establishment of sustainable residential communities by ensuring that a wide variety of housing and apartment types, sizes and tenures is

provided within the County in accordance with the provisions of the Interim Housing Strategy.

*Chapter 8: Principles of Development:*

*Section 8.1: Urban Design:*

*Section 8.1.2: Urban Design at the Local Level:*

*Policy UD6: Building Height Strategy:*

It is Council policy to adhere to the recommendations and guidance set out within the Building Height Strategy for the County.

*N.B.* Please refer to Appendix 9: 'Building Height Strategy' of the Development Plan.

*Section 8.2: Development Management:*

*Section 8.2.3: Residential Development:*

*Section 8.2.3.1: Quality Residential Design*

*Section 8.2.3.3: Apartment Development*

*N.B.* The 'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2018' supersede several of the standards and specifications set out in Section 8.2.3.3 of the Development Plan as regards apartment development.

*Section 8.2.3.4: Additional Accommodation in Existing Built-up Areas: (vii) Infill:*

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.

This shall particularly apply to those areas that exemplify Victorian era to early-mid 20th century suburban 'Garden City' planned settings and estates that do not otherwise benefit from Architectural Conservation Area status or similar. (Refer also to Section 8.2.3.4 (v) corner/side garden sites for development parameters, Policy AR5, Section 6.1.3.5 and Policy AR8, Section 6.1.3.8).

*Section 8.2.3.5: Residential Development – General Requirements*

### 5.3. Natural Heritage Designations

5.3.1. The following Natura 2000 sites are located in the general vicinity of the proposed development site:

- The South Dublin Bay Special Area of Conservation (Site Code: 000210), approximately 1.8km northeast of the site.
- The South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), approximately 1.8km northeast of the site.
- The Wicklow Mountains Special Area of Conservation (Site Code: 002122), approximately 7.3km southwest of the site.
- The Wicklow Mountains Special Protection Area (Site Code: 004040), approximately 7.4km southwest of the site.
- The Dalkey Islands Special Protection Area (Site Code: 004172), approximately 7.7km east-southeast of the site.
- The North Dublin Bay Special Area of Conservation (Site Code: 000206), approximately 7.7km north-northeast of the site.
- The North Bull Island Special Protection Area (Site Code: 004006), approximately 7.7km north-northeast of the site.
- The Rockabill to Dalkey Island Special Area of Conservation (Site Code: 003000), approximately 8.0km east of the site.

*N.B.* This list is not intended to be exhaustive as there are a number of other Natura 2000 sites in excess of the aforementioned distances yet within a 15km radius of the application site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- The increased density of the proposed development at 120 No. units / hectare is considered to be acceptable given the site location and its proximity to public transport networks and local amenities.

- The proposal makes efficient use of the lands in question through the provision of apartments as opposed to individual housing units.
- The proposed building line has been set back 22m from the rear of Marsham Court whilst the recessing of the fourth-floor level increases the available separation distance to 25.6m from those properties. Consideration should also be given to the form of the neighbouring properties and the proposed development given that the existing buildings are two storeys in height with a pitched roof whereas the subject proposal utilises a flat roof construction with a recessed upper floor detail.
- All of the proposed apartments exceed the minimum standards set out in the *'Sustainable Urban Housing – Design Standards for New Apartments, 2018'* with regard to floor areas and private open space. In this respect it is submitted that the provision of apartments which are above the minimum standard is a positive design intent whilst the accessibility of the proposed balconies / private open space area from living rooms will ensure that these spaces are utilised to their full capacity by future occupants.
- In response to the Planning Authority's concerns as regards the potential impact of the proposed development on the residential amenity of neighbouring properties within Marsham Court, the Board is referred to the revised proposals appended to the grounds of appeal which detail the provision of 1.8m high opaque screens to those balcony areas within the eastern elevation of the scheme in order to prevent the overlooking of adjacent residences whilst also serving to provide increased privacy to the balconies themselves.
- With regard to the concerns raised by the case planner that the floor-to-ceiling heights of the ground floor units do not comply with the required minimum standard of 2.7m, there was a minor error on the submitted drawings as an increased floor slab for the servicing of the car park area was carried through the floor plan, however, the slab at first floor level can be reduced from 450mm to 300mm locally in order to ensure that the apartment units will have the appropriate floor-to-ceiling height of 2.7m.

- The separation distance between the proposed development and Marsham Court is considered to be appropriate with the potential for any overlooking further mitigated by the proposal to erect opaque screens to the balcony areas as detailed in the amended drawings appended to the grounds of appeal.
- The proposed development will be set back 5m from the adjacent property to the north (with an increased separation of 9.5m at fourth floor level), however, the positioning of the windows within this elevation has been carefully considered. For example, the windows at first floor level within Apartment No. 1 are located at the corner of the structure so as to avoid any direct overlooking of neighbouring property and thus face towards the street instead. It should also be noted that efforts have been made to step this elevation of the proposed building in order to reduce its massing in the context of neighbouring property whilst the gable end of the adjacent dwelling house faces towards the application site.
- A separation distance of between 16.6m and 25.5m (increasing to 26.6m and 33.5m at fourth floor level) has been achieved along the southern site boundary and in this respect it is of relevance to note that the gable ends of the neighbouring properties face onto the site.
- Along the western site boundary, separation distances of between 15.6m and 36.3m have been achieved.
- With regard to overshadowing, it should be noted that a shadow impact analysis was provided as part of the initial planning application.
- The plans and particulars submitted with the application, including the 3D-visualisations, provide for a comprehensive representation of the proposed development.
- The proposal to provide c. 12.4% of the overall site area as public open space is considered to be sufficient to serve the development whilst it is of further relevance to note that access will also be available to public open space within neighbouring developments such as Whately Place (Please refer to Reference Image No. 5).



- In response to the concerns raised by the case planner as regards the potential impact of the proposed works on those trees which are to be retained alongside the western site boundary, a Tree Management Plan may be sought as a condition of any decision to grant permission. Furthermore, in the event that the trees on site are to be removed, a landscaping plan can be agreed with the Planning Authority.
- Drg. No. 3.1.101 Rev. A (please refer to Appendix 'G' of the grounds of appeal) details an updated pedestrian entrance arrangement to the proposed development which includes a proposal to remove a section of the existing wall in order to correspond with the existing footpath along Whately Place. The existing pedestrian gate is to be retained while the sliding gates for the vehicular entrance are to be removed to allow for the free movement of cars and to mitigate against any concerns that cars may back up along Whately Place.
- In relation to the shortfall in bicycle parking identified in the report of the case planner, given that the subject application was lodged prior to the issuing of the '*Design Standards for New Apartments, Guidelines for Planning Authorities, 2018*', it was not deemed necessary to incorporate the updated standards. In any event, the number of bicycle parking spaces required by the Planning Authority can be accommodated on site as per the revised ground plan drawing (Drg. No. 3.1.101 Rev. a) included in Appendix 'G' of the grounds of appeal.
- Contrary to the report of the case planner, a street lighting layout was provided as part of the initial application documentation (an updated street lighting layout is included in Appendix 'F').
- In accordance with the requirements of Table 8.2.3: '*Residential Use – Car Parking Standards*', a total of 36 No. parking spaces have been provided at surface level within the proposed development. The specific allocation of parking spaces to individual units can be addressed as a condition of any grant of permission.

- In response to the concerns of the Transportation Department of the Local Authority, the submission of a Construction Management Plan can be required by way of condition in the event of a grant of permission.
- With regard to the various concerns raised by the Transportation and Drainage Divisions of the Local Authority, the Board is referred to the supplementary report of Molony & Millar Ltd., Consulting Civil and Structural Engineers, contained in Appendix 'F' of the grounds of appeal, the contents of which can be summarised as follows:

*Traffic & Transport Considerations:*

- Drg. No. 930-228-C01A shows the dimensions and levels of the existing site entrance which is to be retained. The sliding gate at the entrance to the site is to be removed. Tactile paving and a dropped kerb is proposed to be added to both sides of the entrance (a detail of which is shown on Drg. No. 930-228-C01A).
- Drg. No. 930-228-C01A shows the sight distance to the east of the site for 50m (measured from a point set back 2.4m from the stop line). It is considered that traffic speeds within this cul-de-sac will be low given the presence of speed ramps and, therefore, a 50m sightline is shown as a relaxation accordingly. Whilst there is an existing low wall, this does not impact on driver visibility whilst pedestrians on the footpath can clearly see any cars exiting the site.
- Drg. No. 930-228-C05A shows a detail of the standard road build-up, which will utilise impermeable materials with concrete kerbing on either side of same, to be constructed *in situ*.
- Drg. No. 930-228-C01A shows the position of the 'stop' sign and the associated road markings, which will be constructed in accordance with the Department of Transport's Road Traffic Signs Manual and positioned behind the tactile pavement crossing.
- An autotrack / swept-path analysis for a refuse truck entering, turning and exiting the site is detailed in Drg. No. 930-228-AT01A.

- Drg. No. 930-228-C01A details the layout, height and spacing of the proposed lighting columns. Any further details as regards the provision of street lighting may be sought as a condition of any grant of permission.

*Drainage Issues:*

- The proposed surface water drainage system will take water from the building and access road to the development. Any landscaped areas will infiltrate into the ground and thus any runoff from same will be minimal (please refer to Drg. No. 930-228-C02A which details the layout of the stormwater drainage network and also shows water from the undercroft area draining into the foul network).
- Rainfall values were obtained from Met Eireann and a 10% change was made to account for a predicted increase in rainfall attributable to climate change.
- Please refer to Drg. No. 930-228-C05 for a cross-section of the concrete attenuation tank.
- Please refer to Drg. No. 930-228-C02 for corrected details of the attenuation contained at 4 No. parking bays.
- Green roofs will drain into pipes between Manhole Nos. S5 and S4 via vertical rainwater pipes. This water will flow from Manhole No. S4 to the RWP diffuser box, which feeds into the attenuation under the 4 No. parking bays. From this point, stored water will discharge through a hydroaway fin drain and continue to the next stormwater tank before finally discharging to the existing stormwater pipe network via a hydrobrake manhole.
- The green roof attenuation calculations have been disregarded in the updated calculations (please refer to the accompanying Engineering Report).
- A 'Hydro-Brake Optimum' is the preferred flow control device. It has no moving parts and there is no bypass door specified. A penstock is instead specified at the entrance to the hydrobrake manhole. The manhole will be prevented from blocking as water will filter first through green roofs, and

secondly at the hydraway fin drain. The concrete attenuation tank contains a sump to allow for the trapping and clearing of silt.

- The proposal has been amended to comply with '*Appendix 16: Green Roofs Guidance Document*' of the County Development Plan.
  - Green roofs typically provide cleaning of the water through infiltration, which is deemed to be sufficient treatment of surface water. A sump is to be placed in the concrete attenuation tank which will trap silt particles and can be cleaned. Any oil leaks will spill towards the foul gulleys inside the undercroft which will then be cleaned at the oil interceptor before entering the existing foul system.
  - The inconsistencies identified by the Local Authority between the original Molony Millar Engineering Report and the drawings provided have been noted and rectified.
  - Proof of third party agreements will be sought and submitted before any construction begins. Such matters may be addressed as a condition of any decision to grant permission.
- The Planning Authority has acknowledged that 'upward modifiers' may be applied in respect of this type of site which could allow for the construction of a building in excess of four storeys in height. Further support is lent to the increased building height by reference to the acceptability of the density of the proposal, the mitigation measures to be implemented as regards the avoidance of overlooking, and the adequacy of the open space arrangements.
  - Consideration should be given to the overall height of the subject proposal relative to the surrounding pattern of development. In this respect it is submitted that the total height of adjacent two-storey housing with a pitched roof is comparable to that of a three-storey scheme whilst the subject proposal provides for a flat-roof construction with the upper floor levels recessed behind the principle building line. The utilisation of a flat-roofed construction allows for an additional storey unlike a pitched roof design.
  - To achieve a suitable density for the site and to contribute positively to the housing stock of the area, which is under considerable pressure, it is

necessary to develop buildings of a higher scale in the interests of land efficiency and to avoid a continuation of urban sprawl.

- The massing of the proposed development has been broken up through the use of setbacks along the elevations, the inclusion of protruding elements such as stair cores, and the recessing of the facades at fourth floor level. In addition, the use of different external finishes and the recessing of the balconies also serve to add visual interest and aid in breaking up the massing of the structure.
- Having regard to the overall design and layout of the proposed development, in addition to the mitigation measures detailed in the revised proposals provided with the grounds of appeal, it is submitted that the available separation distances from neighbouring properties are acceptable.
- The suggestion that the proposed development will result in the devaluation of neighbouring property is unfounded, particularly as cognisance should be taken of the current housing climate and continued house price growth.
- In reference to the second reason for refusal, it is reiterated that the proposed public open space provision is sufficient to serve the development and that residents of the scheme will also be able to access other public open space in the area.
- The subject proposal should be welcomed as it involves the redevelopment of a derelict and underutilised site which will serve to revitalise the surrounding area whilst providing much needed housing.
- A total of 24 No. (66%) of the proposed residential units will be dual aspect which considerably exceeds the minimum requirement of 50%.
- The report of the case planner has accepted that all of the proposed storage facilities, balcony sizes, and internal floor areas etc. accord with the relevant minimum standards.
- The required number of cycle spaces has been provided in the revised proposal appended to the grounds of appeal in order to comply with the applicable guidance and to encourage the use of cycling as a mode of transport.

## 6.2. Planning Authority's Response

- The introduction of the 1.8m high opaque screens does not overcome the Planning Authority's concerns.
- It is considered that the proposed building, by reason of its height, scale, massing, proximity to the site boundaries, and the abrupt transition in scale relative to the receiving environment, would give rise to an incongruous and overbearing form of development, would interfere with the character of the surrounding urban landscape, would seriously injure the amenities and depreciate the value of property in the vicinity, and would be contrary to the applicable land use zoning objective which seeks *'to protect and / or improve residential amenity'* as well as Policy RES3: *'Residential Density'*, Section 8.2.3.4(vii), Policy UD6, and the Building Height Strategy of the County Development Plan.
- In relation to the applicant's proposals as regards the provision of open space to serve the development, the County Development Plan states the following:  
*'Where any open space is to be provided on foot of a planning permission, the space in question should be well overlooked and designed and located to sympathetically complement the layout of the development and should be visible from, and accessible to, the maximum number of dwellings / units within the proposed scheme. Inaccessible, hidden or otherwise backland open space, and narrow linear strips of open space will not be acceptable.'*  
The proposed siting of the open space to the side of the block with a bin store and parking spaces sited within same, is not considered to be acceptable. The quality and quantity of the open space provision is inadequate and does not accord with the requirements of the Development Plan.
- It should be noted that a lack of open space was included as a reason for the refusal of an earlier proposal on site under PA Ref. No D16A/0214 / ABP Ref. No. PL06D.246756.
- Open space is one of the key elements in defining the quality of the residential environment and the shortfall in the subject application, when taken in

combination with the submitted design, is considered to result in a poor development proposal.

- The *'Building Height Strategy'* contained in Appendix 9 of the County Development Plan states that 2 - 3 No. storey developments will be appropriate within suburban areas and that apartment schemes of up to 4 No. storeys are also permissible at suitable locations e.g. adjacent to key public transport nodes (*N.B.* The subject site is located approximately 200m from a bus stop on QBC and is within 1 km of the Luas). In addition, upward modifiers can also be applied which permit additional building heights in excess of 4 No. storeys, subject to the proximity of public transport facilities. However, downward modifiers also apply with particular emphasis placed in the Building Height Strategy on where a *'proposed development would adversely affect residential living conditions through overlooking, overshadowing, or excessive bulk and scale'*. It is considered that the proximity of the proposed apartment block to the site boundaries, when taken in conjunction with the overall design, scale and height of the building, would adversely impact on the privacy and amenity of adjacent properties. The relationship between Whately Place is considered particularly poor. The proposed development is therefore contrary to Policy UD6: *'Building Height Strategy'* of the Development Plan.

### 6.3. Observations

#### 6.3.1. Marsham Court Residents Association c/o Michael Nolan:

- The scale, size, bulk, height and appearance of the proposed apartment block is not in keeping with the surrounding pattern of development.
- The height of the proposed development would appear to be much greater than the ridge lines of the adjacent properties in Marsham Court.
- The proposed development will result in the overlooking and overshadowing of existing dwelling houses and rear garden areas within Marsham Court.
- There are concerns as regards the proximity of the proposed development to the rear walls of adjacent housing.

- Inadequate provision has been made for public open space.
- Construction of the proposed development will have an adverse impact on the amenity of the surrounding area, with particular reference to the disturbance / disruption arising from the movement and parking of construction traffic within neighbouring housing schemes.
- The proposed development will increase traffic volumes / congestion along the Upper Kilmacud Road.
- Due to the overall height of the proposed construction, it will be visually obtrusive and unattractive when viewed from within Whately Place and Marsham Court.
- There are concerns with regard to any works to the existing sewerage network and its capacity to accommodate the additional loadings consequent on the proposed development.
- The existing trees alongside the western site boundary should be retained in order to preserve the residential amenity of those adjacent properties within Marsham Court.
- The noise and dust etc. generated during the construction works could give rise to serious health and safety concerns.

6.3.2. George & Carmel Doyle:

- The proposed development will have a detrimental impact on the residential amenity of the observers' property by reason of overlooking and overshadowing thereby resulting in the devaluation of same.

6.3.3. Paul & Saffron Hennigan:

- Both the observers and many of the other owners / occupiers within Whately Place are in support of the proposed development.
- The proposed development will provide for badly needed housing and will also serve to enhance the surrounding area as it will provide an attractive alternative to the existing convent.



#### 6.3.4. Whately Place Management CLG:

- Consideration should be given to the observer's original objection to the proposed development.
- A density of 120 No. units / hectare is not appropriate to the subject site as the proposed development will have a detrimental impact on the residential amenity of surrounding properties.
- The overall height and five-storey construction of the proposed development is completely out of character with the surrounding area which is predominantly composed of two-storey dwelling houses.
- The proposal is visually obtrusive and will have a negative impact on neighbouring properties by reason of overlooking and overshadowing.
- The upward modifiers contained in the Council's Building Height Strategy do not apply in this instance due to the impact on the residential amenity of surrounding properties.
- The recommended minimum density is 50 No. units / hectare and an appropriate density in excess of that figure could be achieved on site through the construction of a lower and smaller building.
- The available separation distances are totally inadequate and, when taken in combination with the elevated location, will give rise to a visually overbearing and obtrusive form of development.
- Having regard to the proximity of the proposed development to the northern site boundary, it is submitted that the balconies proposed on the upper floor levels will directly overlook those dwellings within Whately Place.  
Furthermore, it is considered that the separation distance of 22m between this five-storey scheme and neighbouring two-storey housing within Marsham Court is inadequate.
- The proposal to provide opaque screening to those balconies on the eastern elevation of the proposed building will not prevent overlooking of existing dwelling houses, rear gardens and amenity space within Whately Place.

- The proposal to provide opaque screening to balcony areas serves as an acknowledgement that the proposed development will result in the overlooking of adjacent properties.
- There are significant deficiencies / inaccuracies in the submitted shadow analysis which can be summarised as follows:
  - The study has been prepared at an unusual angle which makes it difficult to read whilst its submission primarily in black and white serves to hide the impact.
  - No explanation has been provided as to why 17:00 hours has been adopted as the final time in the assessment as a later time in March, June and September would show an even greater impact.
  - The assessment provides for three-hour intervals (i.e. 09:00, 12:00 & 15:00 hours) before inexplicably reverting to a two-hour interval of 17:00 hours as opposed to 18:00 hours. It is further submitted that 18:00 and 20:00 hours should have been included in the analysis.
  - The study has established that both the private open space and elevations of properties within Whately Place will be impacted by the proposed development. Moreover, the assertion that these impacts will generally be confined to open space, public roads and gable elevations is misleading and does not reflect the significance of the impacts arising.
- There will be considerable overshadowing of Whately Place to the north and east as well as of Marsham Court to the west.
- The overall size, scale, bulk and massing of the proposed development, when taken in combination with the elevated location, is inappropriate and will result in a visually obtrusive and overbearing form of development.
- The quality and quantity of the public open space provision is deficient, with particular reference to the inclusion of bin stores and car / motorcycle parking within same.
- It is unacceptable for the proposed development to place any reliance on existing open space within Whately Place. The Development Plan includes

open space standards in order to ensure that residential schemes are provided with sufficient open space to serve their future occupants.

- The open space to the immediate east of St. Anne's is a private amenity area which is currently gated. It is owned and maintained by Whately OMC for the use of the residents of Whately Place. Similarly, the open space shown to the right of the vehicular and pedestrian accesses and adjoining Marsham Court is also private property which is owned and maintained by Whately OMC (Please refer to accompanying correspondence prepared by Liston & Company Solicitors).
- The proposed development does not comply with the requirements of the '*Sustainable Urban Housing: Design Standards for New Apartments: Guidelines for Planning Authorities*', with specific reference to minimum floor to ceiling heights, the provision of communal open space, and the adequacy of the bicycle parking arrangements.
- The proposed development will result in the loss of those trees along the western site boundary whilst the submitted landscaping proposals are inadequate.
- The loss of residential amenity attributable to the proposed development will also result in the devaluation of surrounding properties.
- The applicant has no legal rights, easement or permission to connect into existing services, including the foul and surface water drainage network, within Whately Place which are privately maintained by Whately Place Management CLG.
- The 3D-visualisations provided with the application fail to show the proposed development relative to surrounding properties.
- Given the site context, reports such as a Construction Management Plan and a Tree Management Report should have been provided with the original planning application. The suggestion that these details can be provided as a condition of a grant of permission removes the potential for third party scrutiny and is effectively an abuse of process / third party rights.

- The proposal amounts to an excessively dense and ill-conceived over-development of the site.
- The proposed development will endanger public safety by reason of traffic hazard.
- The demolition of the existing convent as opposed to the reuse of this structure in line with best conservation practice has not been justified.

6.3.5. Cathy Leeney & Eric Alexander:

- The proposed development would have a detrimental impact on the residential amenity of neighbouring dwelling houses by reason of overlooking / loss of privacy with an associated devaluation of property.
- The proposal to install opaque panels alongside the balcony areas will not adequately mitigate against the projected overlooking of adjacent properties.
- Due to the depth of the excavations required to construct the proposed development and the widespread root system of those trees alongside the western site boundary, it is unlikely that this existing tree line will survive post construction.
- The information provided with the subject application as regards the existing trees on site is inadequate and fails to satisfy the usual requirements of the Planning Authority.
- The existing Leylandii Cypress trees along the western site boundary are inappropriate to the location and the frequent topping of same serves to limit their lifespan and the ability to survive post construction. Accordingly, it is submitted that these trees cannot be relied upon to mitigate any overlooking of properties within Marsham Court from the proposed development.
- The overall design, size, scale and height of the proposal is out of character with the surrounding pattern of development.
- No effort has been made to assimilate the proposed development into the existing built environment.

- The height of the existing dwelling houses in Marsham Court relative to the proposed apartment building has been misrepresented in the submitted plans and particulars.
- The proposed development would result in the overshadowing of properties in both Marsham Court and Whately Place.
- The subject application materially contravenes Policy RES3 of the Development Plan in that it fails to achieve a suitable balance between the protection of residential amenities and the promotion of higher density development.

6.3.6. Niall Clancy:

- The Board is advised that the observer seeks to reiterate the contents of his original submission as regards the proposed development.
- The proposed development is disproportionately large and overbearing, out of character with its surrounds, and seriously injurious to the amenity of adjacent properties.
- Inadequate public open space provision.
- During the development of the surrounding area in the 1970s, St. Anne's Convent expressly stipulated that only modest, two-storey, semi-detached housing should be constructed. Therefore, in light of the foregoing, the proposal to develop a five-storey building is unacceptable.
- When taken in conjunction with existing and permitted development in the wider area, there are concerns as regards traffic safety along the Upper Kilmacud Road with particular reference to vehicles entering / exiting the access junction serving Whately Place.
- It is suggested that Clause 2(b) of the Deed of Conveyance and Transfer between St. Michael's House and Jackson Properties Ltd. is neither a proper 'exception' or 'reservation' in conveyancing terms; it is simply a statement and no more. It does not identify the precise location of the right of way and only refers to roads and not footpaths etc. Therefore, on the basis that a party cannot be assigned a generic right of way, it is unclear if the applicant actually has an easement over the lands in question.

- Clause 2(c) of the Deed of Conveyance and Transfer restricted the height of development in Whately Place to three-storeys whilst building heights within that area identified in black hatching on Map No. 1 were to be limited to two-storeys. It is considered that the inclusion of the foregoing would imply that the same limits would be applied in respect of those lands occupied by the existing convent.
- It would be irresponsible to grant permission for the proposed development in the absence of some form of cost-sharing arrangement between the applicant and Whately Place Management Ltd. as regards the future maintenance, repair, renewal and replacement of the access road and contributions in respect of insurance, lighting and landscaping etc.
- There is doubt as to whether or not the applicant has a legal right of way to access the application site and it certainly has no right to use any of the footpaths, car parking spaces or recreational areas within Whately Place which are all in the private ownership of the management company.

#### 6.4. Further Responses

##### 6.4.1. Response of the Applicant to the Third Party Observation of Whately Place Management CLG:

- The contents of the observer's objection to the proposed development have been addressed in full as part of the subject appeal.
- With regard to the issue of density, cognisance should be taken of the consultation draft of the '*Urban Development and Building Heights, Guidelines for Planning Authorities*' issued by the Department of Housing, Planning and Local Government in August, 2018, which aim to build on the strategic policy framework set out in the National Planning Framework: 'Project Ireland 2040', and in this regard consideration should be given to the following:
  - There is insufficient land within Dublin City to permit a continuation of low density development and, therefore, the subject proposal aims to address the need for more compact and integrated communities.

- The subject application seeks to build to an appropriate higher density on a site which is in close proximity to public transport networks and local amenities.
- The proposal as submitted provides for the efficient use of land through the provision of apartments as opposed to individual housing units. The increased height of the proposal thus allows for the delivery of a higher density of development in line with Government policy.
- In light of the current housing crisis, the only sustainable solution is to build at a higher density and in a more compact form as supported by the National Development Plan, 2018-2027.
- The National Development Plan, 2018 and the National Planning Framework: 'Project Ireland 2040' are the overriding guidance documents in relation to density, scale and height, with further support provided by the recent publication of the '*Draft Urban Development and Building Heights, Guidelines for Planning Authorities*'. In addition, '*Rebuilding Ireland – Action Plan for Housing and Homelessness, 2016*' also states that the Government is committed to increasing overall housing supply. Accordingly, given that the aforementioned documents emphasise the need for additional housing and more compact high density development, it is submitted that the subject proposal finds support in Government policy as it provides for a higher density of development on vacant and underutilised zoned lands.
- The overall height of the proposed development aligns with the targets and strategies set out in the National Development Plan, 2018, the National Planning Framework, and the '*Draft Urban Development and Building Heights, Guidelines for Planning Authorities*'.
- With regard to the separation distances from adjacent properties, the proposed building line is located 22m from the rear of Marsham Court whilst the set back at fourth floor level increases this distance to 25.6m. In relation to the northern site boundary alongside Whately Place, the façade of the scheme includes for set backs at various levels as shown in Figure No. 2 of the original proposal.

- In respect of the dimensions shown on the submitted drawings, all the plans are to scale and the application was validated by the Planning Authority on the basis of the information provided.
- The proposed separation distances are sufficient to avoid any overlooking, however, the provision of screening to the balcony areas will further mitigate against any perception of being overlooked.
- The shadow analysis was carried out by competent professionals and the detailed information provided is considered to be more than sufficient.
- The scale and massing of the proposed development has been adequately illustrated in the application documentation and the grounds of appeal.
- With regard to open space provision, it should be noted that the County Development Plan states the following:

*‘Open Space: For all developments with a residential component – 5+ units – the requirements of 15sq.m. – 20sq.m. of open space per person shall apply based on the number of residential / housing units. For calculation purposes, open space requirements shall be based on a presumed 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’.*

*‘The Planning Authority shall require an absolute default minimum of 10% of the overall site area for all residential developments to be reserved for use as Public Open Space and / or Communal Space irrespective of the occupancy parameters set out in the previous paragraph’.*

The subject proposal provides for c. 12.4% of public open space which is considered sufficient to serve the proposed development irrespective of any open space provision within adjacent housing schemes.

- It is acknowledged that there was a minor error on the submitted drawings as an increased floor slab for servicing the car park was carried through the floor plan, however, the first-floor slab can be reduced from 450mm to 300mm locally in order to achieve the 2.7m floor-to-ceiling height for the apartments at ground floor level.



- The bicycle parking provision accords with the requirements of the *'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2018'*.
- A Tree Management Plan can be provided as a condition of any grant of permission whilst a number of methods could be investigated as part of the detailed construction stage and the Tree Management Plan to protect the existing trees as much as is practically possible.
- The accompanying correspondence prepared by Hooke & MacDonald Surveyors, Valuers & Property Consultants states that there is a strong demand for residential accommodation in the surrounding area with a particular need for a range of apartment types suitable for first-time buyers and people trading down from larger houses. Moreover, it also states that a new apartment development at this location would not adversely affect the value of existing properties.
- There is an existing connection between the convent building on site (which was constructed prior to the development of Whately Place) and the drainage network within what is stated as being in the control of Whately Place Management Ltd. The applicant's solicitors have also carried out due diligence as regards the site which has the benefit of rights granted under the 1977 Deed and confirmation contained in the Passi Declaration.
- The consulting engineer's drawings and documentation submitted with the planning application have confirmed that there is sufficient capacity in the existing drainage network to accommodate the proposed development.
- The drawings and visualisations provided with the application were validated as part of the planning process whilst other items can typically be addressed by way of condition.
- Although the proposed development site is not included in the Derelict Sites Register, the existing building has remained unused for quite some time and represents an opportunity for redevelopment. The subject proposal seeks to increase the residential density on an under-utilised site in an established built-up area which is in close proximity to quality public transport links and existing facilities / amenities. It will serve to consolidate the area and reduce

the demand for development at locations divorced from urban amenities and facilities.

6.4.2. Response of the Planning Authority to the Third Party Observation of Whately Place Management CLG:

None received.

## 7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- The principle of the proposed development
- Overall design and layout
- Impact on residential amenity
- Traffic implications
- Appropriate assessment
- Environmental impact assessment (screening)
- Other issues

These are assessed as follows:

7.2. **The Principle of the Proposed Development:**

7.2.1. With regard to the overall principle of the proposed development, it is of relevance in the first instance to note that the subject site is zoned as 'A' with the stated land use zoning objective 'To protect and-or improve residential amenity'. In addition to the foregoing, it should also be noted that the wider area is primarily residential in character and that the prevailing pattern of development in the immediate vicinity of the application site is dominated by conventional housing construction. In this respect I would suggest that the proposed development site can be considered to comprise a potential infill site situated within an established residential area where public services are available, including key public transport links i.e. Dublin Bus services to the City Centre and the Luas at Stillorgan, and that the development of

appropriately designed infill housing would typically be encouraged in such areas provided it integrates successfully with the existing pattern of development and adequate consideration is given to the need to protect the amenities of existing properties. Indeed, the *'Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009'* acknowledge the potential for infill development within established residential areas provided that a balance is struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character, and the need to provide residential infill.

7.2.2. Further support is lent to the proposal by reference to Policy RES4: *'Existing Housing Stock and Densification'* of the Development Plan, which aims to increase housing densities within existing built-up areas having due regard to the amenities of established residential communities, wherein it is stated that the Planning Authority will actively promote and facilitate the development of infill accommodation which is in harmony with existing buildings. This is similarly reflected in Policy RES3: *'Residential Density'* which seeks to promote higher residential densities, subject to ensuring a suitable balance between the reasonable protection of existing residential amenities, the established character of areas, and the need for sustainable residential development. These policy provisions are further supplemented by the guidance set out in Section 8.2.3.4: *'Additional Accommodation in Existing Built-up Areas'* of the Plan which details the criteria to be used in the assessment of proposals which involve infill development.

7.2.3. Therefore, in light of the foregoing, I am satisfied that the wider principle of the proposed development is acceptable, subject to the consideration of all other relevant planning issues, including the impact, if any, of the proposal on the amenities of neighbouring properties and the character of the surrounding area.

7.2.4. By way of further comment, and for the purposes of clarity, whilst it has been suggested by some parties that consideration should be given to the retention and reuse of the existing convent building in line with 'best conservation practice', given that the property in question is not a protected structure, is not located within an Architectural Conservation Area, has been substantially altered both internally and externally over the years, and is little significance from either an architectural or built heritage perspective (whilst further noting the applicant's assertion that it would be

more economical to demolish the building given its poor condition and to redevelop the site), I am amenable to the proposed demolition works.

### 7.3. **Overall Design and Layout:**

#### 7.3.1. **The Density of the Proposed Development:**

The proposed development site is located in an established residential area, which is characterised by considerable pressure for development arising from its location proximate to key public transport routes and the M50 Motorway, on lands which are zoned for residential purposes and where public services and other local amenities are readily available. In this regard I would draw the Board's attention to Policy RES3: '*Residential Density*' of the Development Plan which seeks to promote more compact, good quality, higher density forms of residential development by reference to the policies and objectives set out in the '*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009*'. Section 2.1.3.3 of the Development Plan proceeds to state that where a site is located within a circa 1km pedestrian catchment of a rail station, Luas line, BRT, Priority 1 Quality Bus Corridor and / or 500 metres of a Bus Priority Route, and / or 1km of a Town or District Centre, higher densities at a minimum of 50 units per hectare will be encouraged (*N.B.* It is also stated that, as a general rule, the minimum default density for new residential developments in the county (excluding lands on zoning Objectives 'GB', 'G' and 'B') will be 35 units / hectare and that although this density may not be appropriate in all instances, it will serve as a general guidance rule, particularly in relation to 'greenfield' sites or larger 'A' zoned areas). Notably, these provisions reflect the recommendations of Section 5.8 of the aforementioned guidelines which specifically state that increased densities should be promoted within 500m walking distance of a bus stop, or within 1km of a light rail stop or a rail station and that, in general, minimum net densities of 50 dwellings per hectare, subject to appropriate design and amenity standards, should be applied within public transport corridors (*N.B.* The '*Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2018*' also state that intermediate urban locations proximate to public transport are generally suitable for higher density developments that may wholly comprise apartments).

- 7.3.2. Given the site location within an approximate 200m walking distance of bus stops served by the 11, 47, 75 & 116 bus routes, and the proximity of the Luas Green line and Stillorgan Luas 'park and ride' facility (c. 1km walking distance away), it is clear that the proposed development site can be considered to be located within a public transport corridor pursuant to the definitions contained in both the Development Plan and the '*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009*'. Accordingly, higher densities at a minimum of 50 units per hectare are to be encouraged on site, subject to appropriate design and adherence to relevant amenity standards.
- 7.3.3. Following a review of the available information, and having conducted a site inspection, in my opinion, given the site context, there is sufficient scope for a suitably designed proposal to achieve the minimum density requirements of 50 dwelling units per hectare on site (i.e. 12.5 units) whilst also adhering to the relevant development standards (e.g. car parking, open space, etc.) and avoiding any undue detrimental impact on residential amenity. In this regard I would concur with the previous reporting inspector in their assessment of ABP Ref. No. PL06D.246756 that an increased density of development on the subject lands would be in keeping with the adjoining development of Whately Place (which includes a combination of semi-detached and terraced houses as well as three-storey duplex units), notwithstanding the mix of housing densities evident in the wider area.
- 7.3.4. The subject proposal involves the development of 30 units within a site area of 0.25 hectares which equates to a net density of 120 units per hectare. Clearly, this is considerably in excess of the minimum requirements of both the Development Plan and national guidance. Moreover, it would appear to be in direct response to the previous refusal of ABP Ref. No. PL06D.246756 on the basis that a density of 32 units per hectare represented an unsustainable use of the subject site which would materially contravene the Development Plan.
- 7.3.5. Whilst the high density of the development proposed is clearly feasible within the application site, in my opinion, it is entirely inappropriate when taken in context. Indeed, whilst I would acknowledge that the increased density of the subject proposal would seem to derive from the previous refusal of ABP Ref. No. PL06D.246756, I am unconvinced that the effective quadrupling of the density of development proposed has taken sufficient cognisance of the limitations of the site

context. In this respect I would advise the Board that the subject site amounts to an infill plot bounded on all sides by conventional suburban housing which includes two-storey, semi-detached and terraced dwelling houses of varying designs in addition to a series of three-storey blocks comprising duplex units within Whately Place. The net density of these adjacent developments is significantly less than that proposed and is attributable to the selected housing type / design and, more particularly, the two / three-storey building heights. Accordingly, constraints arise as regards the need to satisfactorily preserve the amenity and privacy of neighbouring properties and to ensure a suitable transition between differing building heights and types whilst protecting the established character of the area. It is my opinion that the introduction of such a high density of development would be significantly at odds with the prevailing pattern of development and would amount to an unacceptable overdevelopment of the site given the limited separation distances from neighbouring properties and the potential detrimental impact on the amenity and privacy of surrounding residences (as will be examined in further detail elsewhere in this report).

#### 7.3.6. Building Height:

In terms of building height, the proposed development involves the construction of a five-storey apartment block with an overall ridge height of 15.68m in an area which is predominantly characterised by conventional two / three-storey housing. In this respect it is of relevance to note that the site perimeter is bounded by two-storey, semi-detached and terraced dwelling houses of varying designs to the north, south and west (with particular reference to the typically suburban, semi-detached, two-storey properties within Marsham Court alongside the entirety of the western site boundary) whilst the adjacent lands to the immediate east / northeast are occupied by three-storey duplex units.

In the subject instance, the applicant has sought to emphasise that in order to achieve a suitable density for the site and to contribute positively to the housing stock of the area, it is necessary to develop buildings of a higher scale in the interests of land efficiency and to avoid a continuation of urban sprawl. Moreover, reference has been made to Section 4.8 of Appendix 9: '*Building Height Strategy*' of the Development Plan as regards '*Residual Suburban Areas not included within Cumulative Areas of Control*' wherein it is stated that apartment schemes of up to 3-

4 storeys in height may be permitted at appropriate locations, including at large redevelopment sites or adjacent to key public transport nodes, provided they have no detrimental effect on existing character and residential amenity. It is further noted that in certain circumstances 'upward modifiers' in excess of the maximum height of 3-4 storeys may be applied such as in instances where the built environment or topography would permit higher development without damaging the appearance or character of the area, the proposal would contribute to the promotion of higher densities in areas with exceptional public transport accessibility whilst retaining and enhancing high quality residential environments, or the size of a site, e.g. 0.5ha or more, could set its own context for development and may have potential for greater building height away from boundaries with existing residential development. However, as a caveat to the foregoing, the Building Height Strategy also states that the overall positive benefits of a development proposal would need to be of such significance as to clearly demonstrate to the satisfaction of the Planning Authority that the additional height is justified whilst it will be necessary for a development proposal to meet more than one of the 'Upward Modifier' criteria.

In an effort to justify the increased height of the subject proposal relative to neighbouring properties, the applicant has referenced the density of the proposal, the measures to be implemented as regards the avoidance of overlooking, the available separation distances, and the design of the proposal (including the use of setbacks, differing external finishes and recessed balconies to break up the massing of the structure as well as the recessing of the facades at fourth floor level).

However, in response to the grounds of appeal, whilst acknowledging the proximity of the site to public transport facilities (i.e. a bus stop on a Quality Bus Corridor and the Luas line) and the potential application of 'upward modifiers', the Planning Authority has asserted that 'downward modifiers' also apply in instances where a *'proposed development would adversely affect residential living conditions through overlooking, overshadowing, or excessive bulk and scale'*. In this respect it has been submitted that in light of the proximity of the proposed development to the site boundaries, when taken in conjunction with the overall design, scale and height of the construction proposed, the proposal would adversely impact on the privacy and amenity of adjacent properties and thus is contrary to Policy UD6: *'Building Height Strategy'* of the Development Plan.

Having reviewed the submitted details, and following a site inspection, I would have serious reservations as regards the suitability of the subject site for a development of the overall scale and height proposed. In this regard I would advise the Board at the outset that Section 4.8 of the Building Height Strategy clearly acknowledges the overtly suburban nature of Kilmacud before stating that '*a general recommended height of two storeys*' should apply in such areas.

Although the site itself is located within a reasonable proximity of accessible public transport, considering the prevailing pattern of low density and low scale development adjoining the site, the specifics of the site context (including its infill nature, limited size, and relationship with neighbouring properties) and noting the available separation distances, in my opinion, the subject proposal would be out of character with the surrounding area and would likely have a significant detrimental impact on the residential amenity of adjacent housing, with particular reference to those dwellings within Marsham Court to the west, by reason of overlooking and an excessively overbearing appearance. Accordingly, I am unconvinced that the proposed development can be held to satisfy the qualifying criteria for an 'upwards modifier'.

In support of the foregoing, I would suggest that notwithstanding the various design measures which have sought to reduce the overall scale and massing of the proposal, such as the recessing of the uppermost floor level etc., the introduction of a five-storey development of the size and scale proposed would give rise to an excessively abrupt transition in building height and form relative to the neighbouring conventional two / three storey housing given the site context and its associated constraints, including the limited separation distances and spacing available.

*N.B.* With regard to my concerns in relation to the potential impact on residential amenity, these issues are given further consideration elsewhere in this report.

#### **7.3.7. Compliance with the Design Standards for New Apartments:**

It is necessary to consider the detailed design of the proposed apartment units having regard to the requirements of both local planning policy and the '*Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2018*'. In this respect it is of particular relevance to note that where specific planning policy requirements are stated in the Guidelines, these are to take



precedence over any conflicting policies or objectives contained in the development plan. Therefore, in accordance with Section 3.0 of the Guidelines I propose to assess the subject scheme as regards compliance with the relevant planning policy requirements set out in the Guidelines in relation to the following:

- Apartment mix within apartment schemes
- Apartment floor areas
- Dual aspect ratios
- Floor to ceiling height
- Apartments to stair / lift core ratios
- Storage spaces
- Amenity spaces
- Aggregate floor areas / dimensions for certain rooms

**7.3.8. Apartment Mix within Apartment Schemes:**

The proposed development provides for the construction of 12 No. one-bedroom units, 12 No. two-bedroom units and 6 No. three-bedroom units, and in this respect I am satisfied that the subject proposal achieves a suitable mix of unit sizes / types in accordance with Specific Planning Policy Requirement Nos. 1 & 2 of the Guidelines.

**7.3.9. Apartment Floor Areas:**

It is a specific planning policy requirement of the Guidelines that the minimum apartment floor areas previously specified in the '*Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2007*' continue to apply as follows:

- 1 bedroom apartment      Minimum 45m<sup>2</sup>
- 2 bedroom apartment      Minimum 73m<sup>2</sup>
- 3 bedroom apartment      Minimum 90m<sup>2</sup>

In this respect I would advise the Board that each of the proposed apartments has a stated floor area which exceeds the minimum requirements of the Guidelines.

Furthermore, in the interest of safeguarding higher standards of accommodation by ensuring that apartment schemes do not provide for units being built down to a

minimum standard (in reference to Section 3.8 of the Guidelines which states that the majority of all apartments in any proposed scheme of 10 or more apartments should exceed the minimum floor area standard for any combination of the relevant 1, 2 or 3 bedroom unit types by a minimum of 10%), from a review of the submitted details, I am satisfied that the subject proposal accords with the applicable requirements.

#### *7.3.10. Dual Aspect Ratios:*

The amount of sunlight reaching an apartment significantly affects the amenity of its occupants and therefore it is a specific planning policy requirement of the Guidelines that in more central and accessible urban locations the minimum number of dual aspect apartments to be provided in any single apartment scheme will be 33% (where it is necessary to achieve a quality design in response to the subject site characteristics and ensure good street frontage where appropriate), whereas in suburban or intermediate locations the foregoing requirement is increased to 50% whilst a further relaxation may be permissible for building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25 hectares.

Having regard to the specifics of the site context, including its suburban location proximate to public transport services, and the infill nature of the proposed development within a site area of 0.25 hectares, it is my opinion that the proposed development accords with Specific Planning Policy Requirement 4 of the Guidelines.

#### *7.3.11. Floor to Ceiling Height:*

The Guidelines state that floor-to-ceiling height affects the internal amenities of apartments (in terms of sunlight / daylight, storage space, and ventilation) and that this is of most significance at ground level where the potential for overshadowing is greatest, although it is also noted that ground level floor to ceiling height will also influence the future adaptability of individual apartments for potential alternative uses, depending on location. Whilst it is acknowledged that the Building Regulations suggest a minimum floor to ceiling height of 2.4m, the Guidelines also state that from a planning and amenity perspective, applicants and their designers may consider the potential for increasing the minimum apartment floor-to-ceiling height to 2.7 metres where height restrictions would not otherwise necessitate a reduction in the number

of floors. It is also a specific planning policy requirement that ground level apartment floor to ceiling heights should be a minimum of 2.7m.

From a review of the submitted drawings, it is apparent that the floor-to-ceiling height of 2.61m within each of the first, second, third and fourth floor apartment units exceeds the minimum requirements and thus accords with the recommendations of the Guidelines.

With regard to the ground floor apartments, it is apparent from a review of the submitted drawings that the proposed floor-to-ceiling height of 2.61m within these units fails to comply with the policy requirement set out in the Guidelines that ground level apartment floor-to-ceiling heights should be a minimum of 2.7m, although Specific Planning Policy Requirement 5 does permit planning authorities to exercise some discretion on a case-by-case basis, subject to overall design quality, as regards proposals for urban infill schemes on sites of up to 0.25ha (as would be the case in the subject instance). However, it has since been clarified in the grounds of appeal that the submitted drawings included a minor error in that the increased depth of the first floor slab over the car park area was carried through the floor plans to the apartments. Accordingly, it has been submitted that the minimum floor-to-ceiling height within the ground floor apartments can be achieved by reducing the depth of the first floor slab over same from 450mm to 300mm.

Therefore, on the basis of the modifications referenced in the grounds of appeal, each of the proposed apartments can achieve the required minimum floor to ceiling height without any significant redesign of the wider proposal.

#### *7.3.12. Apartments to Stair / Lift Core Ratios:*

Given the scale of the development proposed, the subject proposal satisfies the requirements of the Guidelines in this regard.

#### *7.3.13. Storage Spaces:*

#### *7.3.14. Internal Storage:*

The Guidelines state that apartment developments should include adequate provision for general storage and utility requirements in order to accommodate household utility functions such as clothes washing and the storage of bulky

personal or household items. In this regard I would refer the Board to the minimum requirements for storage areas set out in Appendix 1 of the Guidelines as follows:

- One-bedroom apartment: 3m<sup>2</sup>
- Two-bedroom (3 No. person) apartment: 5m<sup>2</sup>
- Two-bedroom (4 No. person) apartment: 6m<sup>2</sup>
- Three-bedroom (or more) apartment: 9m<sup>2</sup>

Notably, this storage provision is to be in addition to kitchen presses and bedroom furniture (although it may be partly provided within these rooms provided it is also in addition to the minimum aggregate living/dining/kitchen or bedroom floor areas). The Guidelines also state that no individual storage room within an apartment should exceed 3.5m<sup>2</sup>.

From a review of the available information, including the floor plans and the schedule of floor areas provided with the application, adequate internal storage space has been provided within each of the proposed apartment units to satisfy the requirements of the guidelines (*N.B.* Whilst there are a number of instances where the floor areas of some individual storage spaces will measure 3.6m<sup>2</sup> thereby exceeding the permissible maximum of 3.5m<sup>2</sup>, I would suggest that these minor exceedances are of little consequence).

#### 7.3.15. Additional Storage:

Section 3.32 of the Guidelines states that apartment schemes should provide for the storage of bulky items outside of individual units (i.e. at ground or basement level) given that secure, ground floor storage space allocated to individual apartments and located close to the entrance to the apartment block or building is particularly useful as it may be used for equipment such as bicycles, children's outdoor toys or buggies. However, whilst planning authorities are to be encouraged to seek the provision of such space in addition to the minimum apartment storage requirements, this would not appear to be mandatory, particularly as storage requirements may be relaxed in part, on a case-by-case basis (and subject to overall design quality), for building refurbishment schemes on sites of any size and for urban infill schemes on sites of up to 0.25ha.

Regrettably, the subject proposal does not include for any additional ground level storage areas for the individual apartments, save for the provision of a communal refuse / bin storage area located in an entirely separate, free-standing structure. In my opinion, the absence of any such additional storage space does not warrant a refusal of permission in this instance and I would suggest that any concerns in this regard could potentially be addressed by way of condition in the event the Board were considering approval of the proposal.

7.3.16. *Amenity Spaces:*

7.3.17. Private Amenity Space:

It is a policy requirement of the Guidelines that adequate private amenity space be provided in the form of gardens or patios / terraces for ground floor apartments and balconies at upper levels. In this respect I would advise the Board that a one-bedroom apartment is required to be provided with a minimum amenity area of 5m<sup>2</sup> whilst two-bedroom (3 No. persons) & two-bedroom (4 No. persons) apartments are to be provided with 6m<sup>2</sup> and 7m<sup>2</sup> of private amenity space respectively. Three-bedroom apartments require a minimum of 9m<sup>2</sup> of private amenity space.

Consideration must also be given to certain qualitative criteria including the privacy and security of the space in question in addition to the need to optimise solar orientation and to minimise the potential for overshadowing and overlooking.

From a review of the submitted drawings, it can be confirmed that the overall private open space provision for each of the apartment units exceeds the minimum requirements of the Guidelines.

7.3.18. Communal Amenity Space:

The Guidelines state that the provision and proper future maintenance of well-designed communal amenity space is critical in meeting the amenity needs of residents, with a particular emphasis being placed on the importance of accessible, secure and usable outdoor space for families with young children and for less mobile older people, and in this respect the minimum requirements set out in Appendix 1 of the guidance are as follows:

- One-bedroom apartment: 5m<sup>2</sup>
- Two-bedroom (3 No. person) apartment: 6m<sup>2</sup>

- Two-bedroom (4 No. person) apartment: 7m<sup>2</sup>
- Three-bedroom apartment: 9m<sup>2</sup>

Accordingly, on the basis of the foregoing, the proposed development would necessitate the provision of 198m<sup>2</sup> of communal open space to satisfy the minimum requirements of the Guidelines. However, in accordance with Section 8.2.8.2: *‘Public/Communal Open Space – Quantity: (i) Residential / Housing Developments’* of the Development Plan, the proposed development would necessitate the provision of between 855m<sup>2</sup> and 1,140m<sup>2</sup> of public / communal open space based on an occupancy rate of 57 No. persons and the provision of 15-20m<sup>2</sup> of open space per person (*N.B.* An absolute default minimum of 10% of the overall site area for all residential development is required to be reserved for use as public open and/or communal space irrespective of the occupancy parameters, which would equate to 250m<sup>2</sup> in the subject instance).

Communal open space to serve the proposed apartment units is detailed on the site layout plan as purportedly amounting to 12.4% of site area (312m<sup>2</sup>) and comprising two principle areas of amenity space located at ground level to the immediate west and south of the apartment building. In this respect I would advise the Board that it is somewhat unclear as to how the applicant has calculated this figure as a crude measurement from the submitted drawings would suggest a moderately greater provision of open space in the region of approximately 365m<sup>2</sup> (excluding that area to the west and northwest of the apartment building which is likely to be of limited amenity value / usability given its narrow dimension and potential to be overshadowed by either the apartments or the existing tree line alongside the western site boundary, assuming this can be retained). Nevertheless, it is clear that the overall provision of communal open space to serve the proposed development, whilst satisfying the minimum requirement of the *‘Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2018’* and the ‘absolute default minimum’ of 10% of the overall site area set by Development Plan, is significantly below what would normally be considered the accepted development standard. In my opinion, this shortfall is of such significance as to be unable to be addressed by way of a development contribution in lieu of the provision of suitable amenity space and, therefore, I would concur with the

assessment of the Planning Authority as regards the overall deficiency in the quality and quantity of open space proposed on site.

With regard to the suggestion that any shortfall in open space could be offset by reference to the availability of amenity areas within the adjacent development of Whately Place, it is my understanding that the communal spaces within Whately Place have not been taken in charge and are maintained by a private management company. Therefore, I would have reservations as regards placing any overt reliance on the usage of same by the occupants of the proposed development. Moreover, it is apparent from a review of ABP Ref. No. PL06D.207230 that not all of the communal open space approved as part of the Whately Place under PA Ref. No. D02A/0438 / ABP Ref. No. PL06D.200272 was ultimately provided.

*7.3.19. Aggregate Floor Areas / Dimensions for Certain Rooms:*

Having reviewed the submitted drawings, I am satisfied that the overall design of the proposed apartment units generally accords with the required minimum floor areas and standards (including the dimensions of certain rooms) as appended to the Guidelines.

*7.3.20. Overall Design of the Proposed Apartment Scheme:*

On the basis of the foregoing, it is my opinion that the design of the submitted proposal generally accords with the minimum requirements of the '*Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2018*' and provides for a satisfactory level of residential amenity for the future occupants of the proposed apartment units.

However, I would reiterate my concerns as regards the overall height and density of the development proposed as well as the deficiencies in communal open space provision by way of non-compliance with the requirements of the Development Plan.

**7.4. Impact on Residential Amenity:**

- 7.4.1. Given the site context, including its location within a built-up urban area, concerns have been raised that the proposed development may have a detrimental impact on the residential amenity of neighbouring properties by reason of overlooking and overshadowing. In this respect, I would suggest that particular consideration needs to be given to the overall design, orientation and positioning of the proposed

apartment units relative to the adjacent housing within Marsham Court to the immediate west.

7.4.2. The principle dimension of the proposed five-storey construction will be aligned along a north-south axis and thus its western elevation will face directly towards the rear of the existing two-storey properties within Marsham Court. Notably, this elevation includes a multitude of balcony areas at first, second and third floor levels, which will serve as private open space for individual apartment units, and although efforts have been made through the setting back of these floor levels behind the ground floor building line in order to increase the separation distance from the western site boundary and neighbouring dwellings, I would have serious concerns as regards the potential for the proposal to result in significant overlooking of adjacent housing with an associated loss of privacy / amenity. In this regard I would advise the Board that the aforementioned balcony areas will be located within 7m of the western site boundary and thus will have clear views over the rear garden areas and private amenity space of neighbouring residences. Moreover, there will only be a separation distance of approximately 20m between these balcony areas and the rear elevations of the existing dwellings within Marsham Court with the separation from the principle western elevation of the apartment block only increasing to c. 22m (*N.B.* Due to the recessed design of the fourth floor level, the equivalent separation distance extends to c. 26m whilst it should also be noted that the balconies serving this floor of accommodation face eastwards to overlook semi-private open space within Whately Place).

7.4.3. Considering that a separation distance of 22m between directly opposing first floor windows is generally accepted as the norm in residential design whilst previous guidance has suggested that a separation of 35m or more should be considered in the case of overlooking balconies, it is clear that the available separation between the proposed development and the existing dwellings within Marsham Court is deficient. In support of the foregoing, whilst I would acknowledge that Section 8.2.3.3: *'Apartment Development: (iv) Separation between Blocks'* of the Development Plan states that a minimum clearance distance of c. 22m between opposing windows will normally apply in the case of apartments up to three storeys in height, in my opinion, this would not seem to take sufficient account of the potential overlooking arising from balcony areas. It is of further relevance to note that



the Plan also states that in the case of taller apartment blocks, a greater separation distance may be prescribed having regard to the development layout, size and design.

- 7.4.4. With regard to the proposals appended to the grounds of appeal which detail the provision of 1.8m high opaque screens to those balcony areas within the eastern elevation of the scheme in order to prevent the overlooking of adjacent residences, I am unconvinced as to the merits of same given that any such screening will not extend across the full width of the balconies and will also infringe on the usage of those areas. Accordingly, the inclusion of any similar screening measures within the western elevation of the apartment block is unlikely to satisfactorily address the overlooking of Marsham Court.
- 7.4.5. By way of further clarity, I would advise the Board that although significant screening is presently provided alongside the western site boundary by an existing coniferous tree line, this would likely have to be removed in order to facilitate the construction of the proposed development. Moreover, it is probable that the excavation works associated with the proposed construction would undermine the stability / growth of these specimens whilst their retention (if feasible) would likely significantly undermine the level of amenity enjoyed by the future occupants of those apartments within the western elevation of the scheme by reason of overshadowing and a poor visual aspect / outlook.
- 7.4.6. Therefore, on balance, whilst I would accept that any overlooking of those properties to the immediate north and south of the proposed development will be somewhat limited given the fewer instances of directly opposing windows and the possibility that screening could be used to enclose the ends of those balconies from where undue overlooking of neighbouring property may occur, in my opinion, the significant overlooking of those properties to the immediate west of the site in Marsham Place (and to a lesser extent within Whately Place) would have a considerable negative impact on the residential amenity of same.
- 7.4.7. In relation to the potential for overshadowing, I note that the subject application has been accompanied by a series of drawings which purportedly illustrate the shadow impact of the proposed development on neighbouring lands. Whilst I would have a number of reservations as regards the veracity of the details provided and the

absence of a more in-depth analysis, in my opinion, it is clear that the overall height of the proposal will result in significantly increased overshadowing of those properties to the immediate east and west of the site. Although this would appear to be limited to the rear garden areas of those properties to the west within Marsham Court, the submitted details also illustrate a considerable increase in the shading / overshadowing of rooms within those dwellings to the east and northeast consequent on the proposed development.

7.4.8. From a visual perspective, I am further satisfied that the overall scale, height and massing of the proposed construction would give rise to an excessively overbearing appearance when viewed from within neighbouring properties and that this is supported by the visualisations provided with the application.

7.4.9. With regard to the potential impact of the construction of the proposed development on the residential amenities of surrounding property, whilst I would acknowledge that the proposed development site is located within an established residential area and that any construction traffic routed through same could give rise to the disturbance / inconvenience of local residents, given the limited scale of the development proposed, and as any constructional impacts arising will be of an interim nature, I am inclined to conclude that such matters can be satisfactorily mitigated by way of condition.

7.4.10. Accordingly, on the basis of the available information, and having conducted a site inspection, it is my opinion that the proposed development will have a significant detrimental impact on the residential and visual amenity of neighbouring property by reason of overlooking, overshadowing, and an overbearing appearance.

#### 7.5. **Traffic Implications:**

##### 7.5.1. **The Proposed Access Arrangements:**

The proposed development will be accessed via an existing entrance arrangement onto the service road which extends from Kilmacud Road Upper through the adjacent Whately Place housing scheme. In this respect, whilst I would acknowledge the concerns of local residents, having regard to the limited scale of development proposed, the likely traffic volumes and speeds along this section of roadway, and the adequacy of the existing junction arrangement at Whately Place / Kilmacud Road Upper, it is my opinion that the surrounding road network has sufficient capacity to

accommodate the additional traffic volumes consequent on the proposed development and that the subject proposal does not pose a risk to traffic / public safety.

With regard to the provision of adequate bicycle parking and street lighting etc., I would suggest that such matters can be addressed by way of condition in the event of a grant of permission. I would also refer the Board to the amended pedestrian access arrangements etc. detailed on Drg. No. C01-Rev. A as provided with the grounds of appeal.

#### 7.5.2. Car Parking Provision:

In accordance with Table 8.2.3: '*Residential Land Use - Car Parking Standards*' of the Development Plan, car parking for apartment units is to be provided at the following rates (depending on design and location):

- 1 space per 1-bed unit
- 1.5 spaces per 2-bed unit
- 2 spaces per 3-bed unit+

*N.B.* The car parking standards set out for residential land uses in Table 8.2.3 are generally to be regarded as 'standard' parking provision and include for both residents and visitors parking (although there should be a clear distinction between the two types of parking).

Therefore, on the basis that the proposed development comprises 12 No. one-bedroom units, 12 No. two-bedroom units and 6 No. three-bedroom apartments, it would typically generate a demand for 42 No. parking spaces, although consideration may be given to a reduced parking requirement depending on a number of factors such as the proximity of the proposed development to public transport.

The proposed development provides for a total of 36 No. spaces by way of a combination of surface level and undercroft car parking and thus there is a moderate shortfall in the general parking requirement. Whilst I would normally be amenable to a relaxation in the applicable parking standards given the proximity of the site to a Quality Bus Corridor and the Luas line, it would appear that there are already difficulties as regards the adequacy of the existing parking arrangements within the

adjacent Whately Place development (through which the proposed development will be accessed) and, therefore, I would have some concerns that any shortfall in on-site parking for the subject proposal may serve to exacerbate instances of haphazard parking and associated traffic congestion within Whately Place.

Accordingly, I am inclined to suggest that it would be preferable in this instance if sufficient parking could be provided on site to satisfy the demands of the proposed development (*N.B.* This could be achieved by way of a reduction in the overall scale of the development proposed or through the submission of a revised site layout, although the latter option would likely result in the partial loss of the already limited open space provision).

7.6. **Appropriate Assessment:**

- 7.6.1. Having regard to the nature and scale of the proposed development, the availability of public services, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

7.7. **Environmental Impact Assessment (Screening):**

- 7.7.1. Having regard to the nature and scale of the development proposed, the site location outside of any protected site and the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination.

7.8. **Other Issues:**

7.8.1. **Land Ownership / Legal Matters:**

With regard to the concerns that the applicant has no legal right, easement or permission to avail of, or connect into, any of the existing services, including the foul and surface water drainage network, within the adjacent Whately Place development on the basis that the services in question have not been taken in charge by the Local Authority and are instead privately managed by Whately Place Management CLG, in

my opinion, it would be preferable if clarity could be provided on this matter, although I would concede that there are likely to be established rights associated with the existing property on site.

In any event, it is not the function of the Board to adjudicate on property disputes and, therefore, any alleged interference with private property is essentially a civil matter for resolution between the parties concerned. In this respect I would refer the Board to Section 34(13) of the Planning and Development Act, 2000, as amended, which states that *'A person shall not be entitled solely by reason of a permission under this section to carry out any development'* and, therefore, any grant of permission for the subject proposal would not in itself confer any right over private property.

## 8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be refused for the proposed development for the reasons and considerations set out below:

## 9.0 Reasons and Considerations

1. Notwithstanding the residential zoning designation of the site, which is located on a major transport corridor within 200 metres of a bus stop along a Quality Bus Corridor and within one kilometre of a Luas station, it is considered that the proposed density of the scheme is excessive in the context of adjoining development, would result in an inadequate amount of communal open space to serve the proposed development, and would seriously injure the residential amenities and depreciate the value of adjoining properties by reason of overlooking, overshadowing, visual obtrusion and overbearing impact. The proposed development would, therefore, constitute overdevelopment of the site and would be contrary to the proper planning and sustainable development of the area.
2. The proposed development, by reason of its design, scale, bulk, height, and proximity to the site boundaries, would result in an abrupt transition in scale relative to the receiving environment, would be out of character with the

existing residential properties in the vicinity, and would seriously injure the residential amenities and depreciate the value of adjoining properties by reason of overlooking, overshadowing, visual obtrusion and overbearing impact. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3. Having regard to the design and scale of the proposed development, it is considered that the proposed development by reason of its inadequate provision of communal open space, would conflict with the provisions of the current Development Plan for the area, would offer a poor standard of residential amenity in terms of quality open space provision for the apartments, and would be contrary to the 'Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities' issued by the Department of the Environment, Heritage and Local Government in May, 2009. The proposed development would, therefore, constitute overdevelopment of the site and would be contrary to the proper planning and sustainable development of the area.

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Robert Speer  
Planning Inspector

24<sup>th</sup> January, 2019