



An  
Bord  
Pleanála

## Inspector's Report ABP 302738-18.

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<b>Development</b>	Residential Development in Nine Dwellings comprising six semi-detached and three detached three storey houses. New vehicular and pedestrian entrances, parking boundary treatment pedestrian walkway, hard and soft landscaping, change in levels and site works above and below ground.
<b>Location</b>	Rear of No 11 Park Avenue, Sandymount, Dublin 4.
<b>Planning Authority</b>	Dublin City Council
<b>P. A. Reg. Ref.</b>	3137/18
<b>Applicant</b>	The Park Avenue Partnership.
<b>Decision</b>	Grant Permission.
<b>Appellant (1)</b>	Robert Barry and Aisling Campbell
<b>Appellant (2)</b>	John and Elaine Fogarty.
<b>Observers</b>	(1) Susan and Paul Lynch. (2) Colm and Jeanne Whelan (3) Leah Bools (4) Eithne McDermott
<b>Date of Site Inspection</b>	8 <sup>th</sup> and 11 <sup>th</sup> January, 2019.
<b>Inspector</b>	Jane Dennehy

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## 1.0 Site Location and Description

1.1. The site of the proposed development has a stated area of 4,380 square metres and is an irregular shaped, backland site formed from grounds at the rear of No 11 Park Avenue a two-storey detached nineteenth century house located at the junction with Gilford Drive in Sandymount which is in the applicant's ownership. The site area also includes lands at the rear of No 13 Park Avenue. The lands to be retained with the house and which are in the ownership of the applicant have a stated area of 557 square metres. A wall and a small historic glass structure is located between the rear building line of the house to the south side boundary with No 13 Park Avenue and a single storey structure is located to the north side boundary with Gilford Avenue. Cast iron entrance gates set between two stone piers are located at the corner of Park Avenue and Gilford Drive. The site enclosed by rubble stone walls at the rear of residential properties which have frontage at the end of a *cul de sac* on Wilford Park to the west along part of the north along the boundary with residential properties on Gilford Drive. Along the remainder of the northern boundary and along the southern boundary with a two-storey apartment development at Kirkwood there are trees and hedgerows. The grounds within the site are overgrown, uneven and contain several mature trees, overgrown vegetation and significant wildlife.

## 2.0 Proposed Development

2.1. The application lodged with the planning authority indicates proposals for a development comprising:

Removal of garden and boundary structures.

Nine three storey houses, three of which are detached and six of which are semi-detached.

Eighteen on site carparking spaces (two per unit.)

New pedestrian and vehicular access from Park Avenue (30 metres south of the junction with Gilford Avenue.) to the south side of the existing entrance which is to be restricted to inwards access only for the existing dwelling.

Egress for this property is to be via the proposed inwards and outwards

entrance. A swept path analysis is included to demonstrate capacity for services vehicles within the site curtilage.

- 2.2. The application is accompanied by: A Design Statement, Planning Statement, Computer Graphic Images (CGIs) Transportation and Traffic Assessment, Flood Risk Assessment, Site Services Report Landscape Design Report, Tree Survey, assessment and protection plan and report, a lighting strategy and an appropriate assessment screening statement.
- 2.3. A further information submission was lodged on 24<sup>th</sup> August in response to a request for additional information in which a revised flood risk assessment was requested in which minimum provision is made for a 3000 mm freeboard ( 20% Climate change factor) and surface water management plan incorporating revised calculations and SUDS arrangements with the landscaping and revisions to design for Dwelling Nos 6 and 9 to address potential adverse impact on residential amenities at adjoining properties on Gilford Drive. The submission included a surface water management plan, revisions to the storm and foul drainage layout, a revised landscape plan, provision for a twenty percent climate change factor in design for increased attenuation storage capacity in a reinforced concrete tank, and layout revisions to include substitution of two storey dwellings for three storey dwellings for House Nos 6 and 9, to address concerns as to adverse impact caused by massing and scale on residential amenities at properties on Gilford Drive.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

By order dated, 20<sup>th</sup> September, 2018, the planning authority, further to receipt of the further information submission, decided to grant permission subject to conditions generally of a standard nature including the following requirements.

Condition No 3: Lodgement of a security bond.

Condition No 9: A detailed landscaping scheme prepared by a suitably qualified person to be submitted and agreed with the planning authority prior to the commencement of the development.

Condition No 10: Landscaping scheme to be implemented within first planting season following commencement of the construction.

Condition No 13: A detailed construction management plan to be submitted and agreed with the planning authority. Designation of two parking spaces each for the dwellings with no subletting. Road layout and junction design to accord with Design Manual for Urban Roads and Streets. (DMURS)

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

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

The planning officer indicated satisfaction with the proposed development further to review of the further information submission of 24th August, 2018.

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The supplementary report of the drainage division indicated satisfaction with the proposed development, further to review of the further information submissions and subject to conditions of a standard nature. (Condition Nos 5 and 12 attached to the decision to grant permission refer.)

The report of the Roads Traffic Planning Division indicates satisfaction with the proposed development subject to requirements to be addressed by condition. Condition No 13 attached to the decision to grant permission refers.

### **3.3. Third Party Observations**

Submissions were received from eleven parties who indicate concern about:

Impact on adjoining residential properties.

Changes in ground levels within the site,

Proximity of new dwellings and proposed dwelling height and mass adjacent to boundaries

Negative visual and overbearing impact on adjoining properties,

Overlooking,

Noise and light pollution,  
potential destruction of existing walls.  
Excessive density, excessive massing,  
Excessive destruction of trees and,  
Concerns about the existing abundant wildlife in the site and ecology  
Exacerbation of existing hazardous vehicular traffic and pedestrian conditions  
on public road and footpath where the proposed entrance is close to a bend.

#### 4.0 **Planning History**

There is no record of planning history for the application site. In the written submission accompanying the application, it is noted that Permission was granted under P. A Reg. Ref. 3034/13 for demolition of a sheltered housing development and construction of a replacement sheltered housing scheme and to a grant of permission further to appeal under P. A. Reg. Ref. 2016/13 for demolition of a two storey house and construction of twenty seven dwellings at Sandymount Castle Park. (PL 242169 refers.)

#### 5.0 **Policy Context**

##### 5.1. **Development Plan**

The operative development plan is the Dublin City Development Plan 2016-2022 (CDP) according to which the site is within primarily within an area subject to the zoning objective: Z1 *“Sustainable Residential Neighbourhoods: to protect, provide for and or improve residential amenities”*. The area at the eastern edge of the site and adjacent to the remaining lands to be retained with the existing dwelling is subject to the zoning objective Z2: *“Residential Neighbourhoods (Conservation Areas)”*.

The indicative site coverage for ‘Z1’ zoned lands is 45-60 percent and 45 per cent for ‘Z2’ zoned lands whereas an indicative plot ratio is 0.5 -2.0 is applicable to ‘Z1’ and ‘Z2’ zoned lands.

A minimum area of 10 square metres private open space per bed space will normally be applicable and, within the city for rear garden space ranging from sixty to seventy square metres is generally regarded as sufficient. For public open space an area representing ten percent of the site area should be designated as public open space, but a financial contribution may be acceptable in lieu in some circumstances. (Section 16.3.4 refers.)

According to Table 1.0 and section 16.7.2 on the building height policies the Sandymount area inclusive of the site location is categorised as “low rise” and within “Outer City” and a maximum height for development of sixteen metres for commercial or residential development is therefore applicable to the site location.

The location is within Zone 2 of Zones 1-3 and according to Table 16.1 there is a requirement for provision of one space per dwelling.

## **6.0 The Appeals**

### **6.1. Barry and Aisling Campbell, No 20 Wilford Park**

An appeal was received from Marston Planning on behalf of the appellants who reside at 20 Wilford Park in which it is requested that the planning authority decision to grant permission be overturned. The appellant party considers that the proposed development would have profound adverse impact on the amenities of their property which has been extended into the rear garden to meet special accommodation needs, including a physio therapy room for a daughter who has cerebral palsy and a sensory garden has been provided. It is stated that there are differentials in ground levels at the boundary and, other than a small shed there are no structures in the corner of the garden adjacent to the site.

- The proposed development will be visually obtrusive and overbearing in views from the appellant’s property. The increase in ground level, development height and removal of screen planting results in profound negative impact.
- The removal of the large number of trees is not justified and will alter the outlook and privacy and amenities of the appellant’s property. Tree Nos 48, 50, 51, 52 and 56 appear to be suitable for retention. The sylvan character

will be destroyed and replaced by an incongruous development at the boundary with the appellants property.

- It is questionable as to whether adequate sightlines can be achieved on the north side of the proposed entrance and whether traffic will adhere to the maximum 30 kph speed limit. The proposed twenty-three metres sightlines at the entrance are inadequate because the speed of traffic exceeds this limit.
- Overlooking will occur, towards the physio therapy room from which there is a separation distance of 20.5 metres to the upper floor windows. A greater separation distance than twenty-two metres between opposing windows is required due to the three-storey form. Overlooking of the sensory garden will reduce the usability of the garden especially given the special needs of the appellant. and there are no proposals for obscure glazing for en-suite bathrooms.
- Dwelling Nos 7 8 and 9 will negatively affect the setting of Nos 11 and 13 Park Avenue with are within the area zoned Z2 (residential conservation area)
- There is insufficient provision for private open space to the rear of Unit Nos 2, 3 and 4 which have capacity to be five-bedroom dwellings. This in conflict with section 16.10.2 standard of 10 square metres per bed space.
- The above units are within ten metres of the boundary wall and on raised ground so that are incongruous and overbearing. Units could be setback further from the west boundary or, reduced in scale so that the standard could be achieved.
- Carparking provision is excessive as the maximum standard in the CDP is one space per dwelling and there are no circumstances that justify doubling the maximum allowable. It results in loss of amenity to the surrounding area and there is good public transport availability.
- The proposed development will not contribute to the identity of the area and to place making. A design led approach has not been demonstrated. The development is contrary to section 16.4 of the CDP. There is overlooking of the western boundary, no communal or public open space and the density at twenty unit per hectare is questionably low given the location close to public



transport and Sandymount. It is questioned whether density, loss of trees, impact on residential amenities of adjoining properties and residential conservation areas, visual impact.

- The change in levels and amount of excavation close to the boundary wall will affect the structural integrity of adjoining structures and residential amenity and this is compounded by the proposed finished floor level of 2.1m AOD. If permission is granted a condition with a requirement for a structural survey of the boundary wall and of the appellant party's property be undertaken prior to construction. The proposed development would devalue the appellant's property.

It is requested that permission be refused but that if permission is granted inclusion of a condition omitting the second-floor element of House Nos 1-6 is requested. The top floors should also be redesigned with all top floor windows being fitted with opaque glazing and all planter boxes / terraces should not be made accessible.

## 6.2. **John and Elaine Fogarty,**

6.3. An appeal was received from John and Elaine Fogarty, on their own behalf on 11<sup>th</sup> October, 2018. They reside at No 11 Gilford Drive and photographs of the rear garden and the rear of their house and rear extension are included. According to the appeal:

- The revisions to the design for Unit No 9 shown in the further information submission are welcomed but they are not sufficient. The remarks in the planning officer report as to significantly greater mass and height than that of existing housing.
- With regard to section 16.10.8 of the CDP on back land development the proposed development would cause as loss of amenity to existing properties including loss of privacy, overlooking, noise nuisance and loss of mature vegetation and screening.
- A sun study if available would show that at the two-storey unit at No 9 would affect the garden of the appellant property. The 14.7 metres dimension does not take into account the rear garden extension to the appellant's house.

- If a bin store is located adjacent to the boundary there is potential for odours and vermin problems. It is requested that it and any heat pumps or air conditioning units be relocated.

#### 6.4. Applicant Response

A submission containing the applicant's response to the two appeals was received from the applicant's agent on, 9th November, 2018.

- An assessment of sunlight impact on the rear garden of No 11 Gilford Drive is enclosed and it demonstrates sunlight levels well above minimum standards in BRE guidance and no significant loss at the property of sunlight can be anticipated.
- Each of the nine units is allocated individual bin stores in which the wheelie bins can be stored and heat pumps in the rear gardens so there is no concern about noise and odour at adjoining properties.
- The applicant is sympathetic to the medical condition of the daughter of the appellant party resident at No 20 Wilford Park. However, the lands are zoned for residential development so there is an expectation that the site will be developed. Appropriate separation distances from boundaries are achieved. At present there is not an entire privacy at No 20 Wilford Park due to existing development on its north and south sides.
- The statement as to insufficient density seems at odds and in conflict with the assertions about lack of privacy at no 20 Wilford Park. A higher density development, namely an apartment development would have greater impact on privacy at adjoining properties. The proposed development responds to the back-land site's capacity, adjoining residential development and the conservation status of the section of land at the front.
- The existing site levels preclude development and the ground level needs to be raised to provide for underground servicing necessitating tree loss. Notable pre-existing and sustainability issues were identified in the tree survey and arboriculture report. Tree Nos 48, 50, 51, 52 and 56 are to be removed because substantial fill is required in this area to provide for the proposed finished floor level. The ground level being increased from as low

as 1.20 m to 2.10 m. A design led planting scheme is employed introducing a new tree and shrub planting scheme suitable to the proposed development. Mature trees on the boundaries that are damaged will be replaced with large specimens to ensure mature vegetation and screening. It is in the interest of the applicant to ensure high privacy levels from adjoining properties.

- Rear garden space of 68 to 315 square metres are provided for in the scheme along with additional private open space at second floor terrace levels ranging from 5.5 to 17 square metres. This is fully compliant with section 16.10.2 of the CDP which states that generally 60 to 70 square metres of rear garden area is sufficient for houses in the city.
- Nos. 11 and 13 Park Avenue are not on the record of protected structures but are subject to the 'Z2' zoning objective in which residential development is permissible. The proposed contemporary scheme, although screened from public urban context will enhance the architectural quality of the area and has due regard to the 'Z2' zoning objective.
- The assertion that the proposed development is monotonous, incongruous, overbearing and visually dominant as viewed from No 20 Wilfield Park is rejected. The scale and massing were reduced and there are three distinct blocks with relief in between them and in sections in the elevations and the heights do not exceed predominant heights of surrounding development. (RFI Drawing No 1801 L (--) 108\* refers.
- The rear elevations of six of the houses will have a brick finish which is a high-quality finish for rear elevations and reduces the visual impact in views from No 20 Wilfield Park.
- There are generous separation distances from site boundaries and between the houses. The distance between rear elevation windows at the first floor of No 20 Wilfield Park is 25.9 metres. The physiotherapy room at No 20 Wilfield Park is at ground floor level in an extension and not subject to a requirement for twenty-two metres separation distance. Boundary treatment will protect the privacy of this room and the proposed dwellings have minimum rear garden depths of eleven metres.

- While the eighteen surface parking spaces proposed exceed the maximum CDP standard it is acknowledged by the planning authority that some overspill will occur, and this can be taken into consideration according to the CDP. The proposal was discussed with the planning authority which accepted that there are extenuating circumstances justifying the provision of two spaces per dwelling so that overspill is addressed, due to lack of facilities on Gilford Drive and the local road network. The access gate will be setback 39 metres from the Park avenue entrance to prevent illegal parking and the proposed arrangements are acceptable to the Road and Traffic Department.
- Sightlines in each direction at the entrance concur with DMURS standards. (23 metres x 2.0 metres x 23 metres within the 30 kph maximum speed limit). These proposals shown in Figure 4.8 of the traffic impact assessment are acceptable to the Road and Traffic Department.
- Submission of a structural survey is not necessary. The proposed development is sufficiently setback from the boundary wall with No 20 Wilford Park

#### 6.5. **Planning Authority Response**

There is no submission from the planning authority on file.

#### 6.6. **Observations**

##### 6.6.1. Submissions were received from the following parties.

Susan and Paul Lynch, No 7 Gilford Drive.

Colm and Jeanne Whelan, No 18 Wilfield Park

Leah Bools, No 19 Gilford Drive

Eithne McDermott, No15 Gilford Drive

The contents of their submissions are outlined below.

**6.6.2. Susan and Paul Lynch. No 7 Gilford Drive**

A submission was received on 6<sup>th</sup> November, 2018 from Susan and Paul Lynch on their own behalf in which it is stated that there is a dispute over the boundary with the application site.

6.6.3. In the submission modifications to the proposed development are requested. It is requested that the applicant be required to provide a shadow/light impact survey and that the development should be modified so that the separation distance between House No 6 and No 7 Gilford Drive is increased.

6.6.4. It is stated that the applicant's measurement of the distance between No 7 Gilford Drive and Unit No 6 is 11.65 metres but it is incorrect and should be reduced because the living room/conservatory is not taken into consideration. The house will have major impact on the residential amenities of No 7 Gilford Drive. There is no study to show that there is no loss of sunlight or solar gain to the conservatory. Although House Nos 6 and 9 are reduced to two storey houses but the massing will reduce daylight at No 7 Gilford Drive especially during winter time in that the house would be cast in shadow between sunrise and sunset on 20<sup>th</sup> December. An illustration is provided.

**6.6.5. Colm and Jeanne Whelan, No 18 Wilfield Park**

A submission as received from Colm and Jeanne Whelan, on their own behalf on 5<sup>th</sup> November, 2018 according to which the proposed development would:

- have significant adverse impact on the existing visual and residential amenities at No 18 Wilford Park which is to the west of the application site. The three storey houses at Nos 1-6 especially Nos 4-6 which are too close to the boundary will overlook the living space and gardens at No 18 Wilfield Park. Units 3, 4 and 5 within ten metres of the boundary with No 18 Wilford Park on raised ground levels will be incongruous and overbearing. The architect's statement that the neighbouring dwellings are fully respected in the proposal is totally rejected it being contended that their residential amenities have been disregarded.
- The planter boxes at No 5 and 6 could be used as balconies and the sedum green roofs could also be used as balconies. The site will be raised because

the existing ground level is 1.2 to 1.4 OD but the ground level in the houses will be 2.1 m OD which compounds the concerns about overlooking. The statement in the design statement that the houses are of similar height to the surrounding development is misleading. The habitable are height of the proposed three storey flat roof dwelling far exceeds that of the existing dwellings leading to the overlooking issues. eight of the pitched roofs.

- Almost all trees are to be removed although the design statement indicates intention to retain as many trees as possible. The retention of the trees on the boundaries would mitigate some of the overlooking issues.
- Living rooms shown at second floor level in Unit 5 an first floor level in Units 3 and 4 are likely to be used as bedrooms so the houses would be five-bedroom units. Insufficient private open space will be provided if the standard of 10 square metres per bed space provided for in section 16.10.2 of the CDP is applied.

It is requested that the setback from the boundary for Units 1-6 be increased, that the scale and form of the units be reduced and that carparking be communal and restricted to one space per unit and an increase improved rear garden space would improved

#### **6.6.6. Leah Bools, No 19 Gilford Drive**

Ms Bools in her submission received on 23<sup>rd</sup> October 2018 refers to the Arborist's report and states that Tree No 19 which hangs over into her garden is in excellent condition and provides cover for wildlife through the year. She believes that trees will be removed unnecessarily without regard for the contribution to the landscape or nature. Tree No 19 is described as "distorted, and unkempt, arising from broader shrubby mass Arborist report, with a recommendation to, "review regarding retention context".

#### **6.6.7. Eithne McDermott, No15 Gilford Drive.**

A submission was received from Ms McDermott on her own behalf on 12<sup>th</sup> November, 2018. According to the submission.

- There will be considerable loss of residential amenity at the properties on Gilford Drive due to loss of privacy, overlooking, noise disturbance and loss of mature vegetation and lack of landscape screening.
- The scale of the development is excessive and inappropriate to the existing character of development in the area. The revisions in the further information are insufficient to address the effect on the rear garden and living room rear bedrooms of No 15 Gilford Drive. Unit No 9 should be omitted because it is too close to the boundary with No 15 Gilford Drive.
- The lack of a sunlight assessment is unacceptable. It would show the impact of the proposed development, especially Unit No 9 on the rear garden of No 15 Gilford Drive.
- Bin storage and air condition equipment appears to be located close to the western boundary and it should be relocated so that noise and odour does not affect the rear garden of No 15 Gilford Drive

## **6.7. Applicant's Response to the Observer Submissions**

- 6.7.1. A submission containing the applicant's response to the observer submission of Susan and Paul Lynch of No 7 Gilford Drive was received from the applicant's agent on, 26th November, 2018 according to which:
- 6.7.2. The red line boundary shown in the application is accurate, but reliance can be placed on Section 34. (13) of the Planning and Development Act 2000 as amended whereby an applicant must have legal control to implement of grant of permission.
- 6.7.3. The conservatory, (not shown on the application drawings) is not on OS Ireland Data. For it to have been surveyed and included, access to the appellant's property would have been necessary.
- 6.7.4. The separation distance between Unit 6 is circa twelve metres at ground floor level and 13.8 at first floor level which is appropriate especially as the northern elevation of Unit 6 has no upper level windows. The planning officer's report on the initial application indicated concerns about separation distances and scale and mass referred to in the submission were addressed in the further information reason and submission in which Unit Nos 6 and 9 were reduced in height to eight metres which

the planning officer considered satisfactory. The residential amenities of No 7 Gilford Drive are protected.

- 6.7.5. The conclusion in the shadow diagram included in the Observer submission is exaggerated, does not include the months of March and June when impact would be less given the orientation and, no source has not been provided. A robust assessment of March, (for which two hours average sunlight to private amenity space is necessary to establish if BRE standards are achieved. The orientation of No 7 Gilford Drive is similar to No 11 Gilford Drive relative to the subject development and it is therefore reasonable to assume that no significant loss or impact can be anticipated.

## **6.8. Further Responses of the Appellants.**

- 6.8.1. A further submission was received from Marston Planning on behalf Robert Barry and Aishling Campbell of 20 Wilfield Park on 3<sup>rd</sup> December, 2018 in which Permission should be refused and in which they reiterate that:

- The critical importance of the privacy and residential amenity of the rear garden and house at No 20 Wilford Park is unequivocal to the Appellants due to their daughter's medical condition and it is submitted that the need to uphold the visual and residential amenities at the property is unique
- For Units 2, 3 and 4 the top floor rooms will be used as bedrooms and that private open space provision will be deficient also because of the change in levels, loss of trees and rear garden length.
- The layout impinges of the Z2 zoned lands and affects the setting of No 9 Park Avenue.
- A monotonous three storey flat roof development, compounded by the change in levels will be overbearing on the appellant's property will replace the almost total privacy and existing visual amenity of the sylvan character enjoyed at No 20 Wilford Park.
- The separation distances are not sufficient to maintain residential amenity of the sensory garden and physio therapy room at No 20 Wilford Park. There will be serious negative impact on residential amenity.



- There are no exceptional circumstances to justify overprovision of on-site carparking.
- A structural survey of the boundary wall with the appellant's property is necessary.
- The proposed development would set undesirable precedent.

## 7.0 **Assessment**

7.1. There are two third party appeals and four observer submissions in which several issues of objection in which there is considerable overlap have been raised. The appellants and observer parties are occupants of properties on Gilford Avenue adjacent to the northern boundary and on Wilford Park adjacent to the eastern boundary of the site. The assessment, which is based on the revised and modified proposal in the further information submission is set out below.

### 7.2. **Impact on Properties at No 18 and No 20 Wilford Park.**

7.2.1. These two properties are located to the west side of the appeal site. No 18 is the property of an observer party, No. 20 is the property of one of the Appellants, (Campbell.) The appellant party's property, (No 20) is a detached house which has been upgraded and extended into the original gardens to the side and to the rear. The observer's property is a detached two storey house with gardens to the rear and gardens and off-street parking to the front. The extensions to the Appellant's property include a physiotherapy room for use by a daughter with cerebral palsy which opens onto the gardens part of which have been adapted to facilitate her use for circulation and outdoor activity. There is no doubt that the special accommodation and facilities that have been provided at this property significantly enhance her quality of life. There is one tree within the garden. There are no trees or screen planting on the inner side of the boundary walling with the application site.

### 7.2.2. **Private Open Space Provision.**

Notwithstanding the contention in the appeal and observer submissions as to potential for use of additional rooms as bedrooms at a future date within the proposed development there is no objection in principle to reliance of the CDP provisions which allow for acceptance of an area of sixty to seventy square metres

private open space to the rear of the proposed dwellings where sufficient quality and amenity potential is demonstrated. For this reason, it is considered that side passage space should not be included in the calculations. With the exception of dwelling No 2 the private open space to the rear of the dwellings is considered acceptable in configuration and in total area.

7.2.3. It is estimated that the total area of private open space provision to the rear of Unit 2 is fifty-four square metres as opposed to the stated area of seventy square metres and that the depth falls short of the standard requirement of ten to eleven metres. The deficiencies can be adequately addressed by omission of the projecting element at ground floor level and by removal of exempt development entitlements should permission be granted. The depth across the width would reach ten metres and the total area sixty square metres. With the recommended amendment in place for Unit No 2 the site coverage and separation distances achieved would be more than adequate in terms of protection of residential amenities of adjoining properties.

7.2.4. The case made in one of the appeals as to reduction and /or omission of on-site carparking space so that the proposed units could be repositioned forward of the proposed footprints so that separation distances and rear private open space could be increased is unwarranted.

7.2.5. **Overlooking**

With regard to the potential for overlooking from the second-floor bedroom rear elevation bedroom windows, towards the properties on Wilford Park, it is considered that a reasonable separation distance is achieved at twenty-six metres to the building line of No 20 and twenty to the rear physiotherapy room extension. The rear elevation rooms in the proposed units are for bedrooms and bathrooms, not the main living accommodation. Given the angle of vision at second level height to the ground floor level, a partial view to the interior may only be attainable by an individual standing directly at the rear elevation window. The boundary walling would screen part of the gardens from view.

7.2.6. There is no justification on grounds of overlooking, for omission of one of the floors within the proposed units. There is also no justification for the purposes of screening and the visual amenities of the outlook from private properties on Wilford Park towards the trees and woodland character of the application site for prevention of

removal of the trees and hedgerows. The design, dwelling mass and heights and the layout of the scheme satisfies planning standards for urban areas. for separation distances, overshadowing and overlooking of adjoining properties.

7.2.7. The contentions that occupants would access the external space at the upper levels is not accepted. It is not agreed that the flat roofs would be used as terraces or balconies There is no potential for access at second floor level and at first floor level, not all units would have flat roof projections at ground floor level. A condition can be included confining the glazing in the rear elevations to windows only with full length or patio doors being excluded.

7.2.8. **Overshadowing.**

The proposed development which is on a site to the east of the Wilford Park properties would not give rise to significant change to attainable sunlight and daylight access at these properties.

7.3. **Impact on Properties on Gilford Drive.**

7.3.1. One of the Appellant parties, (Fogarty) resides at No 11 Gilford Drive and the three observer parties reside at Nos 7, 15 and 19 Gilford Drive. Unit Nos 6 and 9, which were reduced from three to two storey units in the further information submission are to be positioned parallel to the boundaries with Gilford Drive with the upper floor at a setback above the ground floor and there is no fenestration in the southern elevations.

7.3.2. Layout, scale, height and form and impact on Properties on Gilford Drive.

Further to review of the further information it has been concluded that the layout and building form and height of proposed development does not give rise to undue adverse impact on standards of attainable residential amenity at the properties on Gilford Drive in respect of separation distances, overbearing impact, overshadowing or overlooking, noise and odours as discussed below. The inclusion in the footprint of conservatory at the rear of No 7 Gilford Park has been taken into consideration.

7.3.3. **Daylight and sunlight Impact.**

Unit Nos 6 and 9 which were modified from three to two storey units with the element closest to the boundaries being single storey only. Further to review of the sunlight and daylight study submitted on behalf of the applicant with the assessment of the impact on No 11 Gilford Drive it is agreed that the predicted impact is acceptable. It is satisfactorily demonstrated in the submitted study that while there is a reduction in sunlight access at the rear garden, there is no undue diminution and the attainable levels remain well above BRE minimum standards.

**7.3.4. Location of Refuse and Air-conditioning equipment.**

There is no indication on the plans as to a communal bin storage area or air-conditioning units adjacent to the boundaries with Gilford Park and it is confirmed in the submissions of the applicant that each individual unit would have individual arrangements. This is fully acceptable for a suburban location and there is no question of undue noise and odour and consequential adverse impact on the residential amenities of adjoining properties.

**7.3.5. Tree removal and wildlife habitat.**

The concerns about significant loss of the trees and the woodland character and the wildlife habitat that is supported within the site is fully appreciated and it is agreed that the extent of the proposed tree removal is radical.

7.3.6. It is noted that in the tree survey a tree the root and crown spread of which is shown substantially outside the site boundary and inside the boundary of the property at No 9 Gilford Drive. Any intervention may be subject to the agreement of the third party if it cannot be demonstrated that the applicant has sufficient legal interest to implement proposals for alteration to or removal of the tree. In the event that the applicant has insufficient legal interest in this regard, reliance can be placed on the provisions of Section 34 (13) as to legal entitlement to carry out development.

7.3.7. It is fully appreciated that the proposed development of the site would result in a radical change to the environs of and outlook from these properties bearing in mind that the site which comprises the former grounds at the rear of the Georgian houses on Park Avenue has remained undeveloped to date. It has a woodland character and wildlife habitat of considerable amenity value to the occupants of adjoining Gilford Drive properties. The woodlands and wildlife within the site are addressed in further detail below.

#### **7.4. Impact on Apartment Development - Kirkwood**

7.4.1. This apartment development adjoining the southern boundary of the site is laid out in low profile blocks within communal open space along with on-site surface carparking. The northern boundary adjoins dense trees and vegetation along and close to the southern boundary of the appeal site. The north facing outlook from the apartments would be radically altered by the development of the site as proposed and the removal of trees and vegetation. Nevertheless, it is considered that no issue would arise regarding standards of attainable residential amenity within the apartment units subject to satisfactory completion of the proposed development having regard to scale and height, separation distances, elevations and overlooking. Nevertheless, the proposed development in replacing the undeveloped woodland and wildlife habitat in the site entails radical change in the immediate environs of the apartments.

#### **7.4.2. Impact on Nos 11 and 13 Park Avenue / Residential Conservation Area**

Both the existing dwelling within the applicant's ownership and the adjoining dwelling are fine Georgian houses of historic architectural interest both as individual structures and in the context of their contribution to the historic interest and character of the "Z2" zoned residential conservation area within which they are located. While the area of the site that might be regarded historically as 'attendant grounds' to an urban townhouse is to be severed, the immediate curtilage and setting to the fronts and sides is satisfactorily retained. Separately, by way of severance of a historic plot for a Georgian Townhouse, it should be acknowledged that the characteristics and features of the layout and character are altered and affected. However, a reasonable outcome is achieved in facilitating development on the zoned lands forming the site of the proposed development

7.4.3. It should be noted that the house at No 11 Park Avenue is not positioned directly against a backdrop of mature trees so a woodland setting in views from the public realm is not at issue in this instance. In views from the public realm there is no potential for adverse impact on the amenities, character and setting of the two period houses by way of the layout, height and form of the proposed development. Unit Nos 8 and 9 which are two and three-storey with rear gardens adjoining the boundary would not come into view from the public road.

#### **7.4.4. Site Level alterations /Structural Stability of Existing Boundary wall**

Existing levels within the site are lower than the levels within adjoining properties and the applicant's agent has made a persuasive explanation and rationale for the introduction of fill to raise the ground levels and facilitate the installation underground services. The increase in the level relative to the levels in adjoining lands and the finished floor levels for the proposed dwellings are acceptable. Attachment of a condition with a requirement for a structural survey of the rubble stone walling on boundaries with adjoining properties is reasonable so that it can be ensured that there are appropriate measures, if necessary for stabilisation during ground works and construction of the project.

#### **7.4.5. Traffic and Pedestrian Safety and Convenience at the Entrance.**

Park Avenue is an inner suburban road within the local road network which has no strategic status or function. It services a suburban and primarily residential area in which the 30 kph maximum speed limit applies. It is considered that it has been demonstrated in the application that the standards for sightlines in either direction are achieved having regard to the recommended standards set out in DMURS for locations within areas subject to the 30kph maximum speed limit. An existing telegraph pole is to be moved and the only other structure within the sightline to the south is a public lighting standard a short distance to the south of the entrance at No 13 Park Avenue the effect of which is immaterial. Therefore, the view as to potential obstruction of traffic and risk to public safety by additional traffic and turning movements that would be generated by the nine units in addition to the existing dwelling indicated by some third parties is not accepted due to low levels of trip generation. The submitted swept path analysis also satisfactorily demonstrates capacity for access and egress by large vehicles. The proposed entrance arrangements are considered acceptable.

#### **7.4.6. On-site Parking.**

The proposed provision for two parking space per unit, one space only being recommended in the standards for Area 2 in Table16.1 of the CDP is considered reasonable for a low-density development. Pay and display on-street parking is available along Gilford Avenue and some of the surrounding local roads where most of the dwellings have front curtilage off street parking. It is not immediately

apparent that there is a shortage of public parking and good public transportation facilities are available in the area. The comments made to this end by two of the third parties are reasonable and are accepted.

7.4.7. The layout of the proposed development is such that the on-site parking provision is not dominant or detrimental to the attainable overall amenities of the scheme. As previously stated revisions to the layout to increase private open space provision are unwarranted and there is little for a major reduction in tree removal through modification to the layout. The oversupply of on-site parking relative to development plan standards is acknowledged, but it should ameliorate demand for on street parking by future residents and visitors reducing availability for all road users.

7.4.8. **Woodlands and wildlife within the site.**

The tree survey and accompanying documentation included in the application indicates a range of trees which are diverse regarding relative significance and interests as species. Some of the species appear to be of merit in terms of desirability of retention whereas other mostly larger specimens, for example, mature cypress giant redwood and silver birch appear be of significant interest. Many are recorded as in need of some maintenance and/or as warranting review regarding retention. It does appear that justification for tree removal on grounds of poor condition and non-viability is very much the exception rather than the rule and that the proposed removals are generally required to facilitate the development. However, all trees, except for two at the south western corner of the site and those to be retained within the retained area at the existing house in the applicant's ownership are to be removed to facilitate the development. Several of the trees' root and crown spreads come well within or close to the footprints of the proposed dwellings.

7.4.9. The site has the benefit of zoning for residential development, is within an inner urban area of the city for which the national strategic objectives for densification and consolidation would apply. It is not subject to any special designations for ecological protection relating to the habitats and wildlife, or trees and vegetation. It does appear that the scope for achievement of a development of the site in multiple dwelling units as proposed is very limited without significant tree removal. Alternative

options, such as a smaller more centralised footprint might allow for facilitate greater tree retention, most especially close to the southern and western boundaries.

- 7.4.10. Ms Mc Dermott's concern about the loss of wildlife associated with the site clearance and tree removal is fully accepted and appreciated. With satisfactory implementation of an appropriate landscaping and planting scheme re-emergence of a wildlife habitat should be facilitated.

#### **7.5. Environmental Impact Assessment Screening.**

- 7.5.1. Having regard to the nature of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

#### **7.6. Appropriate Assessment Screening.**

A "Screening Report for Appropriate Assessment" was provided with the application which has been consulted for screening purposes.

- 7.6.1. The site which is 4,380 square metres in area is on lands covered in densely vegetation, a relatively diverse range of tree species and is a wildlife habitat within a mature suburban area enclosed on all sides by residential development.
- 7.6.2. The project is a residential development of nine houses along with a new entrance, internal road, hard and soft landscaping and services and it includes an increase in the ground levels to facilitate underground servicing. The scheme is to be connected to public sewer network and the storm water drainage system incorporates SUDS measures.
- 7.6.3. The nearest European sites are the South Dublin Bay Special Area of Conservation. (000210) and the South Dublin Bay and River Tolka Estuary Special Protection Area (004024) which are circa four hundred and fifty metres to the west of the site location. The qualifying interests of the SAC are mudflats and sandflats, an intertidal



habitat of 'intermediate' status. Several bird species are features of interest within the SPA. There are no direct pathways to these sites from the site of the proposed development other than via the public sewer network and Ringsend Treatment Plant.

The additional loading to the Ringsend Treatment Plant through discharges of wastewater and surface water would be insignificant at operational stage and escape of sediment at construction stage would be not likely to be a risk to sensitive receptors.

Having regard to the nature of the proposed development and, to the serviced inner urban location, no Appropriate Assessment issues proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

- 8.1. In view of the foregoing it is recommended that the planning authority decision to grant permission be upheld with some minor amendments and addition to the requirements of the conditions.

## 9.0 Reasons and Considerations

Having regard to the Dublin City Development Plan, 2016-2021 according to which the site is within primarily within an area subject to the zoning objective: Z1 "*Sustainable Residential Neighbourhoods*": to protect, provide for and or improve residential amenities", to the layout, design, scale form and heights and density of the proposed development, to the established pattern and character existing development adjacent to and within the surrounding area it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual and residential amenities of the area including the existing historic houses at No 11 and 13 Park Avenue within the area subject to the zoning objective, Z2: "Residential Neighbourhoods – Conservation Area"), would be

acceptable terms of traffic safety and convenience and would be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on 24<sup>th</sup> August, 2018 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

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

2. The private open space and rear garden depth between the rear of the building line of the house and the rear boundary at Unit No 2 shall be increased by omission of the kitchen dining room projection at ground floor. The amended ground floor footprint shall match that of Units Nos 3 and 4. Prior to the commencement of the development the applicant shall submit and agree revised plan and elevation drawings with the planning authority.

**Reason:** To provide adequate standards in size and configuration of private open space and residential amenity and the proper planning and sustainable development of the area.

3. The landscaping scheme shown submitted to the planning with the application shall be implemented fully within the first planting season following substantial completion of the development. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of three from the completion of the development or until the development is taken in charge by the local authority, whichever is the sooner, shall be replaced within the next planting

season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

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

4. Details of the following requirements shall be submitted to and agreed in writing with the planning authority prior to the commencement of the development:
  - Materials, colours and textures of all the external finishes. Roof tiles shall be in dark grey, blue black or black.

**Reason:** In the interests of visual and residential amenities of the area.

5. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

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

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

**Reason:** In the interest of public health.

7. The construction of the development shall be managed in accordance with a Construction and Waste and Construction Traffic Management Plan, which, on appointment of a contractor, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:

(a) Location of the site and materials compounds including areas identified for the storage of construction refuse; areas for construction site offices and staff facilities; site security fencing and hoardings; and on-site car parking facilities for site workers during construction;

(b) The timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site; measures to obviate queuing of construction traffic on the adjoining road network; and measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;

(c) Details of the implementation of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels. Noises levels shall be managed to accord with the standards in BS 5228: *Noise Control on Construction and Open Sites Part 1 Code of Practice for Basic Information and procedures for noise control*".

(d) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;

(e) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

(f) A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

**Reason:** In the interest of amenities, public health, safety and sustainable development.

8. Construction and demolition waste shall be managed in accordance with a construction waste management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "*Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects*", published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall

include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

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

9. Proposals for a naming and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all signs, and numbers shall be provided in accordance with the agreed scheme.

**Reason:** In the interest of amenity and the proper planning and sustainable development of the area.

10. Hours of work shall be confined to 0700 to 1900 Mondays to Fridays inclusive, excluding bank holidays and 0800 to 1400 hours on Saturdays. Deviation from these times will only be allowed in exceptional circumstances subject to the prior written agreement of the planning authority.

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

11. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

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

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

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

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

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

**Jane Dennehy**  
Senior Planning Inspector  
17<sup>th</sup> January 2019.