



An  
Bord  
Pleanála

## Inspector's Report ABP-303279-18

<b>Development</b>	Demolition of 'Maple Tree House' and provide 26 no. residential units consisting of 19 no. apartments and 7 no. 2 – 3 storey houses.
<b>Location</b>	'Yonder', Ulverton Road, and 'Maple Tree House', Bullock Harbour, Dalkey, Co. Dublin.
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D18A/0929
<b>Applicant(s)</b>	Bartra Property Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	As above
<b>Observer(s)</b>	<ul style="list-style-type: none"><li>- Donal McBrinn</li><li>- Pat &amp; Kathy Kenny</li><li>- Frank and Stephanie Keane</li><li>- Peter &amp; Kerri Cullen and Others</li></ul>

- Doctor Niels van Antwerpen
- Tom Palmer & Elke Ullmann
- Susan & Frank Nowlan
- Dalkey Community Council
- Gerry and Barbara Murtagh

**Date of Site Inspection**

20<sup>th</sup> & 31<sup>st</sup> May 2019

**Inspector**

Kenneth Moloney

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## 1.0 Site Location and Description

- 1.1. The appeal site is in Dalkey, Co. Dublin.
- 1.2. The site in question is located between Harbour Road and Ulverton Road which is within close proximity of Bulloch Harbour.
- 1.3. The appeal site is effectively 2 no. amalgamated sites. The smaller site has access onto Ulverton Road whereas the larger site has access onto an access lane to the immediate east. The appeal site has a narrow plot frontage onto Ulverton Road which is located to the west of the subject site and has a larger frontage onto an access lane which is located to the east of the appeal site. This access lane takes its access from Harbour Road.
- 1.4. A significant feature of the appeal site is the steep fall in levels from the part of the site adjoining Ulverton Road towards the east of the subject site.
- 1.5. The overall size of the appeal site is 0.6 ha (1.4 acres) and the shape of the site is irregular.
- 1.6. There is an existing vacant two-storey house on the appeal site, i.e. Maple Tree House.
- 1.7. The southern end of the appeal site is enclosed by the established residential amenities as such this part of the appeal site is characteristic of an infill site.

## 2.0 Proposed Development

- 2.1. The proposed development involves the demolition of an existing detached house, i.e. 'Maple Tree House' and the redevelopment of the subject site for 26 no. residential units.
- 2.2. The floor area of Maple Tree house is 289 sq. metres.
- 2.3. The proposed residential development is comprised as follows;
  - 19 no. apartments
  - 5 no. 3-bed terraced houses
  - 2 no. 2-bed semi-detached dwellings
  - 3 no. duplex units

- 2.4. The proposed apartments are within Block A and Block B situated to the north of the subject site. The proposed apartments within Block A and Block B are comprised as follows;
- 4 no. 1-beds
  - 14 no. 2-beds
  - 1 no. 3-bed
- 2.5. The proposed vehicular access for Block A is onto Ulverton Road. The proposed vehicular access for the remainder of the development is onto the existing access road onto the east of the appeal site.
- 2.6. The proposed 5 no. 2-3 storey terraced houses are located centrally within the subject site.
- 2.7. The primary public open space provision is provided to the east of the subject site.
- 2.8. The proposal includes surface car parking provision.
- 2.9. The proposal includes bicycle parking primarily situated to the north of the proposed adjacent to the site boundary.
- 2.10. The proposed landscaping includes the removal of existing trees and the retention of some trees on the site.

### 3.0 Planning Authority Decision

Dun Laoghaire-Rathdown County Council decided to **refuse** planning permission for the following reasons;

1. It is considered that the height, bulk and scale of the proposed apartment Block A, given its proximity to and extent along the north and south site boundaries, would appear visually overbearing as viewed from both adjoining sites and would result in overshadowing of the adjoining site to the north of the proposed apartment Block A. Furthermore, the proposed bulk, height and scale of the proposed apartment Block B relative to the adjoining site to the north, would result in overshadowing and would appear visually dominant as viewed from the amenity space of the adjoining dwelling to the north of the

proposed apartment Block B. The proposed development would therefore, be seriously injurious to the residential and visual amenity of these adjoining sites and, if permitted, would set an undesirable precedent for similar development in the vicinity. The proposed development would therefore, be contrary to the proper planning and sustainable development of the area.

2. It is considered that the extent of the proposed fenestration and terraces / balconies to the rear (east) elevation of the proposed apartment Block A, and the site level difference, that the proposed apartment Block A would result overlooking of adjoining residential lands to the northeast of the site at 'The Wave'. As a result, the proposed development would seriously injure the residential amenities and depreciate the value of property in the vicinity and would thereby, be contrary to the proper planning and sustainable development of the area.

### 3.1. Planning Authority Reports

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

#### Planner's Report

- The existing property on the site is not worthy of protection.
- The principle of the proposed development is acceptable.
- The proposed density is acceptable.
- The mix of house units proposed is appropriate.
- The proposal by virtue of scale, height and massing would be visually dominant and overbearing as viewed from north and south of proposed apartment Block A and north of proposed apartment Block B.
- The floor areas of the proposed units are acceptable.
- The proposed apartment Block A as viewed from the rear is acceptable.
- The proposed Block B would cause some overshadowing of the adjoining site to the north. The proposed Block A would cause some overshadowing on the site to the north.

- Private open space provision acceptable.
- Poor relationship between Unit no. 5 and Unit no. 6.
- Public open space provision exceeds minimum requirements.
- Proposal will not impact significantly on Natura 2000 site.

3.1.2. Housing Department; - The on-site proposal is capable of achieving Part V requirements subject to agreements on land values and construction costs.

3.1.3. Public Lighting; - The lighting proposals and tree layout are not compatible.

3.1.4. Surface Water Drainage; - Additional information sought.

3.1.5. Parks and Landscape Services – Additional information sought for the following (a) Arboriculture Assessment, (b) Landscape Design and Maintenance, (c) Play provision.

3.1.6. Transportation Planning; - Additional information sought.

### 3.2. **Submissions**

- There is a submission from Irish Water who have no objections.
- There is a submission from the Department of Culture, Heritage and the Gaeltacht who recommend additional information requiring the submission of a Badger Conservation Plan.
- There is a submission from the Department of Culture, Heritage and the Gaeltacht which recommends archaeological monitoring conditions as the proposed development is located within the vicinity of a Zone of Archaeological Interest.

### 3.3. Third Party Observations

There were 17 no. third party submissions and the issues have been noted and considered. The issues raised are broadly similar to those issues raised in the observations submitted to the Board.

### 4.0 Planning History

- L.A Ref. D08A/0655 – Planning permission refused for demolition of existing 2 storey dormer style dwelling and provision of a detached 2-storey over basement house. The refusal reason was in relation to design.
- Appeal ref. 224371 – Planning permission granted by An Bord Pleanala and the Local Authority (L.A. Ref. D07A/0035) for the demolition of an existing house and the construction of 2 no. detached part 2-storey, part 3-storey house with separate vehicular access onto Ulverton Road.

### 5.0 Policy Context

#### 5.1. Development Plan

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

The following designations are related specifically to the appeal site

- The subject site is zoned Objective A ‘To protect and / or improve residential amenity’.

The following County Development Plan provisions are relevant;

#### Residential

Policy RES3 – Residential Density

Policy RES4 – Existing Housing Stock and Densification

Policy RES7 – Overall Housing Mix



Development Management

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

## 6.0 National Policy

### 6.1. National Planning Framework, 2018

The National Planning Framework, 2018 – 2040, recommends compact and sustainable towns / cities, brownfield development and densification of urban sites and policy objective NPO 35 recommends increasing residential density in settlements including infill development schemes and increasing building heights.

Some other relevant policies from the NPF include the following;

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

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

The Guidelines promote higher densities in appropriate locations. A series of urban design criteria is set out, for the consideration of planning applications and appeals. Quantitative and qualitative standards for public open space are recommended. In general, increased densities are to be encouraged on residentially zoned lands,

particularly city and town centres, significant 'brownfield' sites within city and town centres, close to public transport corridors, infill development at inner suburban locations, institutional lands and outer suburban/greenfield sites. Higher densities must be accompanied in all cases by high qualitative standards of design and layout. Chapter 6 sets out guidance for residential development in small towns and villages. Appendix A of this document sets out guidance for measuring residential density.

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

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

## 7.0 **The Appeal**

The following is the summary of a first party appeal submitted by the applicant's agent;

### 7.1.1. **Refusal Reason no. 1**

#### Overshadowing

- The applicant submitted a daylight and sunlight analysis prepared in accordance with BRE guidance.
- This report concluded that;
  - All the assessed gardens are within acceptable levels.
  - All windows assessed have met BRE guidelines.
- It is considered that the conclusions of the Planner's report which ignores the conclusions of the overshadowing report are unreasonable and unsubstantiated.
- Section 3.2 of the Building Height Guidelines advises Local Authority and An Bord Pleanala to use their discretion in cases where the proposal will not fully meet the requirements of the daylight provision.

- It is contended that the Board should dismiss the claims in relation to overshadowing having regard to national policy.

### Visual Impacts

- The heights of the proposed apartment blocks are modest, i.e. 2 and 4 storeys.
- It is submitted that increased height is supported by NPF National Planning Objectives 3a, 11 and 33 and the policies of the Urban Development and Building Height Guidelines for Planning Authorities, 2018.
- Block A is only 2-storeys facing Ulverton Road similar in height to established properties on Ulverton Road. The rear elevation of Block A is 3-storeys due to a drop-in level.
- These heights integrate with the existing building scales.
- The gable elevation of proposed Block A is a blank wall and will not introduce overlooking to no. 62 Ulverton Road.
- The rear building line of proposed Block A is different than existing building lines however there is no established rear building line.
- The gable wall of Block A will reflect sunlight to the rear garden of no. 62 Ulverton Road.
- The northern gable wall of Block A will appear 2 & 3 storeys in height and will not be visually overbearing to the property to the north 'Shelsbury'.
- The visual massing of the gable is broken up with a vertical element of panelling where the WC windows are located.
- The overall visual impact is considered reasonable giving the varying site levels.
- Block B is 3-storeys facing the residential property to north, i.e. 'The Wave'. The proposed north facing balconies are screened to avoid overlooking Block B.

- The proposed 3-storey northern gable facing 'The Wave' is only 11m deep. The 3-storey townhouse (Type C) are 8.45m deep. The 'Wave' itself has a gable elevation of over 21m depth adjoining the next property.
- It is concluded that the Local Authority grounds of refusal which states that the proposal is visually overbearing or will result in overshadowing are unsubstantiated.

#### 7.1.2. **Refusal Reason no. 2**

- There is established overlooking locally from Ulverton Road to Harbour Road.
- Having regard to existing site levels the adjoining property 'Shelsbury' overlooks 'The Wave' and 'Maple Tree House'.
- The issue of overlooking from Block A to Block B has been addressed in the planner's report which states that overlooking will not occur due to an adequate separation distance. The subject design will ensure no overlooking occurs.
- It is submitted that the proposed screens will prevent overlooking towards 'The Wave' and 'Shelsbury'.
- It is submitted that angled windows will prevent overlooking and are consistent with the Guidelines on Sustainable Residential Development in Urban Areas, 2009.
- The height of Block A at 3-storeys is lower than many of the existing properties on Ulverton Road.
- The provision of screens either side of the balconies on the eastern elevation at ground and first floor level would prevent overlooking.
- It is submitted that should the Board consider to condition additional screening to the balconies this revised design option is included in the submission from DMOD Architects.

### 7.1.3. **Other Considerations**

#### Private Open Space for Unit 6

- It is submitted that the height of the gable wall of unit no. 5 will not adversely impact on the adjoining House Type D as the gable wall will be located due north resulting in no overshadowing.
- The side gable has no windows, so no overlooking will occur.
- Unit no. 6 is situated on higher ground level than ground level unit 5. As such the 3-storey height of unit 5 only appears as slightly higher than 2 storeys.
- The gable elevation of Unit no. 5 will reflect sunlight.

#### Apartment Block B and Unit 1 (Type C)

- There is a 3.6m difference between the ground level of Block B and the rear garden of the proposed Unit 1.
- A 2m high boundary wall separates Unit 1 from Block B.
- Given the difference in ground levels and the high-level windows in Block B will not visually overbear on Unit no. 1.
- The residential amenities of Unit no. 1 will not be impacted upon.

#### Roof Terrace of Duplex Unit H

- It is contended that the roof terrace is enclosed with high level screening to prevent overlooking.

#### Landscape and Arboriculture

- It is submitted that the landscape and arboriculture plan and reports address Local Authority concerns in relation to landscaping, open spaces and biodiversity.
- A revised plan submitted to the Board illustrates a revised public lighting plan which ensures no conflict with trees and services.

### Water Services & Traffic

- Local Authority concerns in relation to services and transportation are addressed in a summary report submitted by CS Consulting Engineers.

### Badger

- A conservation plan is submitted to address the existing badger sett on the site.

#### 7.1.4. **Suggested Amendments**

- The proposed development is sustainable achieving high density.
- It is contended that the two reasons for refusal are unreasonable.
- Should the Board have any concerns revised drawings are submitted by DMOD Architects to address concerns.
- The revised drawings include the following;
  - Block B is moved further south from the northern boundary.
  - One Type C House is removed.
  - The separation distance has now increased.
  - The upper floors of Block A have been recessed to reduce massing.
  - Additional screening proposed to the eastern elevation of Block B to prevent overlooking.
  - Car parking to the east of Block B has been redesigned to provide additional open space area.

## 8.0 **Observations**

The following section includes a summary of observations submitted by the following parties;

- Donal McBrinn

- Pat & Kathy Kenny
- Frank and Stephanie Keane
- Peter & Kerri Cullen and Others
- Doctor Niels van Antwerpen
- Tom Palmer & Elke Ullmann
- Susan & Frank Nowlan
- Dalkey Community Council
- Gerry and Barbara Murtagh

I have set out the name of the observer party followed by a summary of the relevant points in their respective submission.

### **Gerry and Barbara Murtagh – Luckington House**

#### **General Issues**

- The Local Authority did not adequately consider the architectural merit of neighbouring properties.
- The Local Authority did not adequately consider access and nature conservation.
- The proposal is inconsistent with Section 8.2.3.4 (v) 'Infill Development' and Section 8.2.3.1 'Quality Residential Design' of the County Development Plan.

#### **Access**

- The width of the laneway is 4.6m wide. There is only footpath provision on one side and there is no public lighting.
- The legal title of the laneway is questioned.
- This issue arose in appeal ref. ABP-224371.
- It is submitted that the laneway is an inappropriate size to accommodate the level of trucks required for the construction phase, i.e. 20 no. trucks in each direction per hour. This level of traffic will result in safety concerns for young children.

### Traffic

- It is contended that the width of the access road is inadequate for the level of traffic.
- The inadequate provision of on-site parking would result in kerbside parking.
- It is contended that the proposed access is contrary to the Irish Design Manual for Urban Roads and Streets (2013).
- During construction phase access along the laneway will be difficult.
- During the operational phase the proposed development will double the amount of houses (currently 10) using the laneway.

### Procedural Issues

- It is contended that the site notice is contradictory as it refers to two residential properties on the subject site.
- It is submitted that further statutory notices should be sought given the material revision of the proposal.

### Boundary

- It is submitted that the applicant has significantly altered the western boundary and as such Luckington House is exposed to the proposed development.
- The proposed House Type D is located within 1m of Luckington House.

### Landscaping

- The proposal, given the proximity to the boundary, would result in the loss of matures trees within the property of Luckington House.
- The western boundary of the appeal site adjoins Luckington House. The boundary comprises of a retaining wall and the observer is concerned with the



implications for this retaining wall given the proximity of the proposed development to the retaining wall.

- There will be a narrow linear strip along the western boundary which will mainly be dark and damp and not suitable for planting.

### Visual Impact

- It is submitted that the proposed development adjacent to the western boundary will be visually overbearing on the established amenities of Luckington House given the proximity and scale of the proposed development.
- The roof terraces on Block G/H will have an adverse impact on established amenities.

### Development Plan implementation

- It is contended that the existing zoning objective 'A' provides to protect residential amenity however the proposed development would not protect residential amenities.

### First Party Submission

- It is submitted that the revised drawings are material.

### **Doctor Niels van Antwerpen**

#### Overlooking

- Montpelier is situated 3 – 4 metres below the southern end of the proposed development however there are no elevations submitted demonstrating the difference in height.
- It is contended that mature planting illustrated on drawings does not exist.

- The developer intends to remove the existing boundary hedge, and this will leave the site at Montpelier exposed.
- The proposed 3-storey block is 16m away from Montpelier.
- It is submitted that the large front opening of the duplex terrace and the front windows of the duplex terrace will look directly into small garden of Montpelier.

### Overshadowing

- The proposed Block B will deprive the residents of Montpelier of privacy and sunlight.
- No overshadowing impact analysis was carried out for the properties 'Montpelier' and 'The Anchorage'.
- It is evident from submitted photomontages that house number 5 Block C will have an overbearing impact on 'Montpelier'.

### Badgers

- The submitted conservation plan identifies exclusion zone.
- The proposed exclusion zone does not take account of the Wildlife Act 1976 which restrict works within 50m of active setts.
- The Conservation Plan shows a green line which would allow badgers move freely through the site.
- The minimum distance for such a corridor is 3m wide and this would have implications for the duplex unit at the southern end of the site and would also push Block D back towards Ulverton Road.

## **Donal Brinn 60 / 61 Ulverton Road**

### **Block A**

- The form, scale and massing of Block A will obliterate sea views, limit sky views and appear completely visually incongruous and out of scale with the local setting.
- The proposal will detract from the amenity space and run contrary to the zoning objective.
- The proposal will devalue property.
- The application does not address visitor car parking spaces.
- It is contended that 2 no. proposed houses in lieu of Block A would have less adverse implications on residential amenities.

### **Block B**

- Block B is dominant due to its scale, massing, height and form.
- The poor form is exacerbated by reversing the brick finish to the front of the Block.
- It is submitted that the existing leylandii trees misguide the impact of the overshadowing impact.

### **Appeal Option**

- The appeal option is a material change and should not be considered.
- It is contended that in the appeal option the revised Block A would pose an even greater infringement on the observer's property relative to the original proposal as there are 4 no. additional windows. The revised block would abut the appellant's property.
- The revised Block B would be visually more dominant over the rear gardens of neighbouring houses to the south.

### **Dalkey Community Council**

- Block A will have an overbearing impact on properties on Ulverton Road.
- Inadequate separation distance between Block A and Block B.
- Proposed Block A will overlook Block B.
- Block B will overlook the open space of Block A, which is exacerbated by site levels.
- Block A is overdevelopment of the site resulting in the loss of amenities for neighbouring properties.
- Access to open space is narrow and is disconnected from the apartments in Block A.
- The frontage of Block A will be overbearing onto Ulverton Road.
- Lack of connection between the upper and lower sites.
- Height, scale and massing of Block B is a concern relative to the properties to the north.
- Inadequate provision of private open space for the 3-storey terrace properties.
- The proposed terrace will dominate views from Harbour Road to Ulverton Road.
- The proximity of the duplex block to the site boundary necessitates a wooden screening finish which is inappropriate in design terms.
- Access and congestion and traffic hazards are concerns.
- Refuse bins will have to be brought from the site to the end of the laneway for collection.
- Inadequate car parking provision.
- No indication of car parking provision for construction workers.

### **Frank and Stephanie Keane – Roancarrig**

- The appeal drawings are materially different.

- There is a flood risk as the site was formerly a quarry site. This will result in the removal of vegetation from a non-porous surface.
- The access lane is narrow and not wide enough for two cars to pass at the same time.
- The narrow lane given the traffic generated will result in a traffic hazard.
- It is submitted that it is not the role of An Bord Pleanála to redesign proposals or consider alternative proposals that address refusal reasons.
- The height is inappropriate from the private lane and will be views are available from the private lane.
- The construction plan fails to acknowledge the restrictions on access and dangers to residents and the significant rock blasting and the transport of granite from the site.
- It is questionable whether the proposed sewer has sufficient capacity for the proposed development.
- The access lane is narrow ranging in width from 3.3m – 4.8m.
- The access from the access road to Harbour Road is a hazard.
- The proposed development with other permitted development would significantly increase traffic locally.
- The site is impermeable and this makes access to the dart station longer than 1.3 km.
- The Board are requested to clarify the legal ownership of the laneway and rights to access for the proposed future occupants.

### **Tom Palmer & Elke Ullmann – South Winds**

- The submitted conservation plan identifies an exclusion zone.
- The observer is concerned with the height of proposed duplexes in Blocks G & H and their effect on the observer's privacy.
- The impact that excavation will have on the observer's property is a concern.
- The negative impact that drilling of the old quarry will have on local amenities.

- The hazard that the access road will present.
- Lack of legal title for the access road.

### **Susan & Frank Nowlan – Tradewinds**

- The subject site was a former quarry, and this was not noted on the application form.
- The legality of the access road is questioned for the applicant.
- The laneway is narrow and there is a footpath on one side only.
- No public lighting on the laneway.
- It is contended that construction access onto Ulverton Road could reduce the impacts of construction traffic locally.
- Waste collection is difficult as waste collection companies do not travel up the access lane.
- There is no provision for construction traffic on Harbour Road.
- There is inadequate provision of visitor car parking in the proposed development.
- The junction of Harbour Road and Ulverton Road / Breffii Road is on a steep incline and dangerous with limited sightline provisions.
- The sewer network is inadequate to accommodate the proposed development.
- It is submitted that construction traffic would travel within metres of an old lime mortared stone retaining party wall which is fragile.
- The proposed development represents over densification of the site.
- The submitted plans show no reasonable elevation illustrating the visual impact of Blocks A and B on the observer's property 'Tradewinds'. The impacts of mass and height are unknown.

### **Pat & Kathy Kenny – The Anchorage**

- The level difference between 'The Anchorage' and the proposed 2-storey building will result in overshadowing / overlooking for 'The Anchorage'.
- Given the 3-metre site difference the proposed 2-storey building will effectively be a 3-storey building.
- The Board are requested to examine submitted graphics which demonstrate damaging effect on our light and privacy.
- Graphic B illustrates that a person standing on the proposed roof terrace has a direct view downwards into the observer's bedroom, dining room, sitting room and garden.
- View no. 1 and View no. 2 illustrates the impact of the proposal on the observer's property.
- Views 3 – 10 all illustrate the impact that the proposal will have properties to the east in terms of overshadowing, overbearing, overlooking and scale.
- The overshadowing analysis does not clearly illustrate the impacts of overshadowing on properties to the east of the subject site.
- It is contended that the surface water drainage issue has not been adequately addressed. It is submitted that the site is former quarry and that the proposed elimination of sockage above The Anchorage will result in flooding problems.
- There is no consideration of the development of Charleville which will result in the elimination of a sockage.
- Vehicular access and car parking have not been adequately addressed.
- The separation distance from the proposed duplex units and The Anchorage is 15.6m and the distance from Block D to Montpelier is 16 metres. This separation distance is not referred to in the applicant's documentation.
- Of the 68 trees on site only 15 are due to remain.
- The provision of a badger protection corridor will necessitate a major layout change. This issue is not addressed.
- The largest public open space provision is surrounded by car parking.

### **Peter & Kerri Cullen and Others**

The following submission represents some of the observer's listed above and therefore, raises issues previously submitted. The following is a summary of the relevant issues;

- The submitted conservation plan identifies an exclusion zone.
- Inadequate access given the width of lane and footpath and poor sightline provision.
- The proposal represents overdevelopment of the site.
- The proposal includes a copy of a submission from traffic consultants (Trafficwise) outlining their objection to the proposed development.
- The applicant has insufficient legal interest in the laneway.
- The applicant's proposal to accommodate two-way traffic along the laneway includes the use of a lay-by at the entrance to the Bloyke units. However, the applicant has no owners consent for use of this lay-by.
- The proximity of the proposed 2 no. apartment blocks will result in overlooking.
- The mature trees in the rear garden of 'Kilderry' on Ulverton Road will overshadow the rear amenity spaces of proposed houses no. 4 & 5.
- The internal road for Block D is reduced to 4m in width and the private open space serving no. 6 is compromised.
- Given the differencing site levels between the appeal site and 'The Anchorage' the proposal will seriously injure residential amenities.
- Potential adverse impacts on the stability of retaining wall / boundary wall with Luckington House.
- The proposed height of Block A & B is inconsistent with building height policy.
- The proposal will result in additional overshadowing on both properties to the north of the subject site at March 21st.



- The absence of elevations from the south and north fail to demonstrate that the proposal will have an adverse impact on adjoining amenities.
- The appeal site is a challenging infill site with established housing located on all sides.
- It is contended that the building height guidelines are not intended to override proper planning considerations.
- It is contended that the submitted Figures 4 & 5 in the appeal submission do not adequately demonstrate the footprint of Block A or the overall depth of same.
- The proposed gable elevation of Block A would seriously injure the residential amenities of the neighbouring property on Ulverton Road.
- The proposed Block A is not comparable to a large two-storey house.
- The scale and proximity of the northern elevation to the site boundary presents a visually dominant and overbearing feature for neighbouring residential amenities.
- In relation to refusal reason no. 2 it is accepted that rear elevations of 'Shelsbury' look towards 'The Wave' however there is a significant separation distance to mitigate overlooking concerns. However, Block A proposed is located much closer to the amenities of 'The Wave'.

#### Other Considerations

- The rear garden space of Unit no. 6 in Block C offers a poor amenity space.
- The relationship between Unit 1, Block C and Block B is not satisfactory.
- Block G & H offer poor separation distances to neighbouring properties to the east.
- Block D offers poor separation distance to Luckington House.
- The application has not fully addressed issues in relation to Landscape and Arboriculture and Badger.

- There is no correspondence from Irish Water on the file confirming the agreement as reported by the applicant.
- Traffic and access have not been adequately addressed.
- In relation to car parking provision it is submitted that the proposed apartment is marketed at empty nesters however this population cohort will not walk 1.3km to the Dart station and will therefore require car parking spaces.
- Having regard to the changes to the car parking and access to the front of Block A the applicant should be invited to demonstrate that vehicles can be manoeuvred safely in and out of each of the car parking spaces in the revised site layout.

#### Suggested Amendments

- The submitted amendments do not address the material shortcomings in the proposed development.
- It is also considered that the proposed development should be refused on traffic hazard and public safety grounds.

#### Miscellaneous Planning Considerations

- It is submitted that the appeal site is a former quarry and that rock is present at shallow depths. There are concerns that the disposal of surface water will become a major problem due to the ground conditions.

## 9.0 Response

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

- The revised drawings included the relocating of Block B further south from the northern boundary. The revisions also include the omission of House Type C which is an improvement.
- The proposed relocation for Block B will allow for a greater separation with the adjoining property 'The Wave'.

- The omission of the proposed house Type C will allow for a better transition between the proposed apartment Block B and the adjoining terraced dwellings, i.e. C and C1.
- The recessing of the upper floors of Block A will reduce the visual massing of the gables.
- The revised drawings will allow for a greater separation between Block A and Block B.
- The additional screening along the eastern elevation of Block A will eliminate overlooking potential to the north-west.
- The redesigned car park and introduction of public open space is welcomed.
- An Bord Pleanála are advised to take note of the concerns outlined in the report by Transportation Planning in particular point no. 1.
- It is submitted that the site contextual assessment is limited by the drawings submitted. This site context assessment is relevant for the adjoining sites to the east.
- An Bord Pleanála are recommended to request detailed contextual elevations and site sections of the proposed development relevant to the site to the east.

## 10.0 Observers responses to Planning Authority submission

10.1.1. The following is the summary of the relevant issues raised in the observer's submissions;

- The proposed access lane is inadequate during construction and operation.
- No available elevations for the southern end of the subject site.
- The impact of the proposal on a former quarry site is unknown.
- The proposal has not adequately considered impacts on existing properties to the east.

- It is submitted that the revised drawings would be material.
- The revised southern gable elevation of Block A does not go far enough and requires a complete redesign. The proposed trebling of the number of windows of the same elevation will be more injurious to residential amenities.
- It is contended that the relocation of Block B will amount to greater impact on existing properties to the south.
- The proposed C/C1 units are too close to the site boundary and would not allow for the 11m separation distance.
- The upper floor windows of C/C1 will overlook properties on Ulverton Road and reduce privacy.
- The proposed relationship with Luckington House is disproportionate.
- The revised proposal includes planting along the eastern boundary where there is no room for any such planting.
- The width of the internal roadway is illustrated incorrectly.
- The set back distances of the proposed development from the site boundary are inappropriate.
- The revised drawings have included additional alterations not noted in the applicant's submission. This includes the following;
  - Apartment Block B has changed aspect of roof terrace and reconfigured the penthouse, moved lift shafts and changed the aspect of the building.
  - Changes to tree planting and landscaping
  - Changes to internal access roads and internal parking spaces and space and emergency vehicle turning options.

## 11.0 Prescribed Bodies

11.1. The following is the summary of a submission from the Department of Culture, Heritage and the Gaeltacht.

- The submitted 'Badger Conservation Plan' is welcomed.
- It is considered that more details are required with regards to certain conservation measures proposed.
- The Department recommends that conditions are imposed on any grant of permission.

## 12.0 Further Response by First Party

12.1. The following is a summary of a response submitted by the first party;

- It is argued contrary to the Local Authority view that the revised plans are not material.
- The Board are referred to Section 127 (4) (a) of the Planning and Development Act (as amended) and Section 127 (4) (b) of the Act that the Board shall consider such documents, particulars or other information which accompany the appeal.
- Section 132 gives the Board to power to request additional documentation.
- It is submitted that the proposed changes are not significant.
- It is regrettable that further information was not considered.
- The Board has the requisite powers to consider the proposed amendments to the scheme.

### Traffic Concerns

- The appeal submission included a technical note from CS Consulting Engineers that confirms the existing access road is adequate. An additional report from CS Consulting Engineers is included in this submission.

### Site levels relative to properties to the east

- The submitted drawing DMOD Architects drawings 17018-AP-130 addresses concerns in relation to site differences by providing 6 no. site sections.

- Additional drawings submitted include 17018-AP-135 and 17018-AP-136 as these include 4 no. additional cross sections.
- The ridge height of the Anchorage is +19.12 - +21.02 relative to the 2-storey duplex with parapet (+20.59) and roof height (+22.07).
- There is an 8.41m difference between the ground level of the garden measured relative to the parapet height of Block G/H.
- It is submitted that the proposed Block G/H is only 2 storeys in height and is carefully designed and orientated to mitigate impacts on adjoining residential amenities.
- There are no windows proposed at either ground or first floor of the east facing gable.
- The first-floor terrace will have a full screen to prevent any overlooking.
- There will be planting between the building edge and the site boundary. An Bord Pleanála are referred to the landscape masterplan and boundary plan.

## 13.0 Observers responses to Planning Authority submission

13.1. The following is a summary of the relevant issues submitted by the observers;

- Previous concerns have not been addressed.
- The submitted revisions to the drawings are material.
- The access lane is an inadequate width.
- The proposal includes a gable wall situated within a narrow gap of the boundary of Luckington House. Given the height differences between the appeal site and the site of Luckington House this narrow gap will be largely dark and damp.
- The proposal will have an adverse impact on Luckington House. This is confirmed by the submitted drawing no. 135.
- The separation distance for the proposed buildings is inconsistent with the pattern of development locally.

- The revised proposals prohibit third parties engaging.
- The use of drone imagery is contrary to GDPR, 2018.
- The applicants submit that there are no windows on the east facing windows facing 'The Anchorage' however this is incorrect.
- The screening material are not for the balcony is not clarified.
- There is no overshadowing study to the east of the site.
- It is submitted that recent letter by the applicant refers to a client's names which differs from the applicant's name. As such the most recent letter must be removed from the file.
- The grounds of refusal appeared to disregard some aspects of the defects of the proposed development including issues raised by Transportation Planning.
- Sections KK on Drg. No. 135 and Section MM on DRG no. 136 confirm that Blocks G/H will be visually dominant to neighbouring properties.
- Section LL shows the proposed finished floor levels and roof levels of Block D relative to 'Montpelier'.
- The proposal will create overshadowing towards 'Montpelier' and 'The Anchorage'.
- The laneway is inadequate to serve the proposed development.
- The boundary treatment at 'Montpelier' shown on Sections JJ and LL does not match the information provided in the landscape proposals on Mitchell & Associates Drg. No. 102.

## 14.0 Assessment

I would consider that the following are the principle issues in this case.

- Principle of Development
- Impact on Established Residential Amenities
- Residential Amenities for future occupants

- Residential Density
- Traffic / Access
- Flood Risk
- AA Screening
- Nature Conservation
- EIA Screening
- Amended Proposals

#### 14.1. **Principle of Development**

14.1.1. The appeal site is zoned Objective A '*To protect and / or improve residential amenity*', in accordance with the Dun Laoghaire Rathdown County Council County Development Plan, 2016 – 2022. I would note that in accordance with Table 8.3.2 of the County Development Plan that residential development is permitted in principle within this zoning objective A.

14.1.2. The National Planning Framework (NPF), 2018, recommends compact and sustainable towns / cities, brownfield development and densification of urban sites including brownfield and infill sites. The themes of compact and sustainable development are reinforced by policy objective NPO 35 from the NPF as this policy recommends increasing residential density in settlements including infill development schemes and increasing building heights. It is national policy, (i.e. Sustainable Residential Development in Urban Areas, 2009) to promote residential densities in urban areas in close proximity to services and public transport. The appeal site offers an opportunity to fulfil these national policy objectives as the subject site is located within walking distance of established amenities. The Dalkey Dart station is situated approximately 2km walking distance from the appeal site, via Harbour Road.

14.1.3. The national policies aimed at increasing residential density are consistent with the policies of the County Development Plan. Policy RES 3 'Residential Density' of the County Development Plan states it is the Council policy to promote residential



densities provided that proposals ensure a reasonable protection of existing residential amenities and established character of the local area.

14.1.4. The appeal site is effectively an infill site. The proposed development involves the replacement of 2 no. residential units on the appeal site with 26 no. residential units and this would be consistent with national and local planning policy.

14.1.5. I also would note that the Planning Authority has stated in their planner's report that the principle of residential development on the appeal site is accepted. Therefore, I would conclude that the principle of residential development on the appeal site is generally acceptable in principle provided that the proposal has adequate residential amenity, adequately safeguards the amenities of the adjoining properties, would not result in a traffic hazard and protects the environment and would be in accordance with the provisions of the Dun Laoghaire Rathdown County Council County Development Plan, 2016 – 2022.

## 14.2. **Impacts on Established Residential Amenities**

14.2.1. I would acknowledge that the site topography offers challenges for any redevelopment of the subject site. The on-site gradients and site topography are evident from the submitted map 'Existing Site Contours and Trees'<sup>1</sup>. In the location of the proposed Block A there is a drop in the site level of approximately 1.75 metres and there is a significant drop in site levels from the proposed Block A to Block B situated to the east of the site.

14.2.2. The proposed Block A will most likely have an impact on the established detached house located to the immediate south of the appeal site, i.e. no. 62 Ulverton Road. The submitted 'Proposed Site Layout Plan' demonstrates that the proposed ground floor plan and the first-floor plan of Block A will extend beyond the rear building line of no. 62 Ulverton Road by approximately 5 metres. I also note that the proposed

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<sup>1</sup> Drawing no. 011

lower ground floor plan would extend a further 3.5 metres beyond the 5 metres. As such the proposed Block A will extend a maximum depth of 8.5m beyond the rear building line of no. 63 Ulverton Road. The gable elevation of the proposed Block A is set back approximately 1m from the site boundary with the adjoining property to the south (no. 62 Ulverton Road). In terms of overshadowing concerns the proposed Block A is located due north of no. 62 Ulverton Road and as such, in my view, will impact on direct morning / evening sunlight typically on the 21<sup>st</sup> June and the 21<sup>st</sup> December. I note the submitted Daylight and Sunlight Analysis which demonstrates that the proposal would have an overshadowing impact on the properties to the south and also the property to the north in terms of amenities.

14.2.3. I would also be concerned with the visual impact, given its scale, that the proposed south facing gable wall would have on the established residential amenities to the immediate south. Notwithstanding the appellant's comments that the south facing gable elevation of Block A would reflect sunlight towards the rear garden of no. 62 Ulverton Road. I would conclude that the proposed breaking of the rear building line is likely to give rise to adverse impacts on established residential amenities.

14.2.4. I would note from the submitted floor plans that the southern gable elevation has no windows as such no overlooking concerns are likely from this gable elevation. However, the proposed Block A includes east facing balconies and these balconies would be higher than the established site boundaries and therefore the proposal would result in overlooking and perceived overlooking. The proposed balconies would overlook northwards, southwards and eastwards given the levels of the subject site.

14.2.5. I would consider that having regard to the proposed height and scale of Block A and proximity to the residential property situated to the immediate north (no. 64 Ulverton Road or 'Shelsbury') it is also likely to introduce overlooking, overshadowing and an overbearing impact. The adverse impacts on the residential amenities would be similar to those described above.

- 14.2.6. The proposed Block B is located to the east of the proposed Block A and the site levels at this location are lower than to the west of the site.
- 14.2.7. The proposed Block B is a 4-storey building consisting of 9 no. apartments. The north facing elevation, which is a gable elevation, has a 3-storey height as the proposed fourth floor is set back from the northern building line. The overall height of the northern elevation is approximately 10 metres above the ground level. This northern elevation is set back from the common boundary line by approximately 2 metres. The width of the proposed elevation is approximately 11 metres. I would consider that the scale of this elevation, given the proximity to the site boundary, would unduly impact on the established residential amenities to the immediate north in terms of overshadowing and visual overbearance.
- 14.2.8. The proposed housing units, House Type C are a split-level height. The house types are three-storeys facing to the east and two-storeys facing westwards. The proposed first floor west facing windows are small and will serve bathrooms / en-suites, walk-in wardrobes and stairwells. The rear elevations (west facing) of these properties are set back approximately 7m – 8.5m from the site boundaries. The submitted drawings indicate that these windows will be finished in opaque glass as such overlooking is not a concern. I noted from my site inspection that there are mature high-level trees located to the east proposed House 'Type C' and these mature trees would mitigate overlooking from the east facing elevation of the proposed House Type C. I would note from the submitted drawings that there is a relatively poor relationship between apartment no. 3 in Block B and the adjacent House Type C. There is a significant site difference between House Type C and Block B and this would in my view adversely impact on the proposed residential amenities for apartment no. 3.
- 14.2.9. The proposed 2 no. 'House Type D' are a pair of semi-detached houses. House Type D is a 2-bedroom two-storey house and the most concerning element, in my view is the west facing gable elevation given the proximity to the site boundary. The proposed west facing gable elevation is set back approximately 1 metre from the site boundary with the adjacent residential property 'Luckington House'. The submitted

Site Section drawing<sup>2</sup> indicates the difference in levels between the proposed development and the established property located to the immediate west. The proposed house Type D would rise above the site boundary by approximately 4 metres. I would note that there is a disproportionate separation distance between the proposed 'House Type D' and Luckington House, situated to the west, however in general I would not consider that the proposed House 'Type D' would seriously injure residential amenities.

14.2.10. The proposed most southern block on the appeal site is Block G & H. This block comprises of 2 no. ground floor apartments and 1 no. first floor apartment. The proposal includes a roof deck / terrace to the east and west of the proposed block. I accept that these 2 no. roof decks will provide an amenity for future occupants however the they are located close to the site boundary and therefore overlooking in an eastward's direction is a concern. Furthermore, I would note that there are a disproportionate separation distances proposed between the proposed Block G & H and the adjacent properties to the east, i.e. Montpelier and 'The Anchorage'.

14.2.11. Overall, I would conclude, having regard to the height, scale and proximity of the proposed development to the site boundaries that the proposed development would seriously injure established residential amenities in terms of overlooking, overshadowing and visual overbearing. I would concur with the Local Authority first reason for refusal and I would recommend a similar refusal reason to the Board.

### 14.3. **Residential Amenities for future occupants**

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

14.3.2. The proposed development provides for 19 no. apartments as follows.

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<sup>2</sup> Drawing no. 130

- Block A – 6 no. apartments
- Block B – 10 no. apartments
- Duplex G/ H – 3 no. apartments

14.3.3. I would acknowledge that Table 8.2.2 of the County Development Plan, 2016 – 2022, sets out the minimum overall floor areas required for apartments. These minimum floor areas in the County Development Plan exceed the minimum floor areas as recommended in the national guidelines ‘Sustainable Urban Housing: Design Standards for New Apartments, Dec. 2018’. The floor areas for the apartments in the proposed development would exceed the recommended minimum floor areas in the national guidelines and would exceed the minimum recommended floor areas in the County Development Plan.

14.3.4. Table 8.2.5 of the County Development Plan, 2016 – 2022, outlines minimum private open space provision for apartments. I would note from the submitted drawings that the private open space which generally comprises of balconies and terraces exceeds the minimum floor area as set out in Table 8.2.5 of the County Development Plan. I would also note that all the proposed apartments, except for 5 no. units, have a dual aspect orientation. Therefore, the overall percentage of dual aspect apartments proposed is approximately 74% of the total units which exceeds the minimum requirement of 70% as set out in Section 8.2.3.3 (ii) of the County Development Plan.

14.3.5. Overall, I would conclude that the standard of residential amenity proposed is high and the proposed apartments would offer a high standard of residential amenity for future occupants.

14.3.6. The proposed development also includes the provision of 7 no. house types comprising of as follows;

- 2 no. end of terrace units (House Type C1)
- 3 mid-terrace units (House Type C)
- 2 no. semi-detached units (House Type D)

14.3.7. In relation to private open space provision paragraph 8.2.8.4 'Private Open Space – Quality' of the County Development Plan, 2016 – 2022 sets out the minimum requirements. The private open space provision for the proposed houses is in the form of rear gardens and all the rear gardens proposed would exceed the minimum required areas. As such the private open space provision for the proposed houses are acceptable.

14.3.8. The proposed public open space provision for the proposed development is 13%. In accordance with paragraph 8.2.8.2 'Public Open Space – Quality' the required public open space provision for a residential development greater than 5 units is 15% - 20%. The County Development Plan sets out that the minimum default public open space provision is 10%. Therefore, I would consider that the public open space provision is acceptable.

14.3.9. I would note Section 8.2.3.3 'Apartment Development' of the Dun Laoghaire Rathdown County Development Plan, 2016 – 2022, which states that minimum separation distance of 22m between opposing rear windows will normally apply in the case of apartments up to three storeys in height however in taller blocks a greater separation distance maybe required having regard to context. In certain instances, in build-up areas, the County Development Plan provides for reduced separation distances. Section 7.4 of the 'Sustainable Residential Development in Urban Areas, 2009' recognises that the minimum separation distance between opposing rear windows is 22m however depending on location the guidelines advise a degree of flexibility can be applied. The separation distances between Block A and Block B fails to meet these minimum requirements and given the difference in levels

it is my view that overlooking would occur between Block A and Block B and this sets an undesirable precedent in the local area.

14.3.10. In conclusion therefore, I would consider that the proposed development would offer a good standard of residential amenity for future occupants. However, the proposal would present overlooking issues from Block A to Block B.

#### 14.4. **Residential Density**

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

14.4.2. It is national guidance in accordance with the 'Sustainable Residential Development in Urban Areas, 2009', to promote and encourage higher residential densities where appropriate, i.e. within proximity to cities and towns. I would note the location of the appeal site is within a built-up area with established services and amenities with public transportation connections to the City Centre. I would consider that Paragraph 5.11 of The Sustainable Residential Development for Planning Authorities, 2009, is most relevant to the proposed development. Paragraph 5.11 recommends that in outer suburban greenfield sites in large cities that densities of 35-50 dwellings per hectare are recommended.

14.4.3. The size of the subject site is 0.6 ha and the number of residential units proposed is 26 as such the proposed density is 43 units / per ha. I would consider that having regard to the challenges facing the site such as topography and the infill/ back land nature of the site within close proximity to established residential amenities that the proposed residential density would be acceptable on this site and would not be contrary to Policy RES 3 of the Dun Laoghaire Rathdown County Council County Development Plan.

## 14.5. Traffic and Access

- 14.5.1. The proposed development will be served by 2 no. vehicular accesses. It is notable that both vehicular accesses were in use in the recent past. The access proposed onto Ulverton Road would have formerly served, the now demolished, 'Yonder'. There is a current vehicular access to the east of the appeal site onto the existing laneway. This access serves the existing house on the appeal site, i.e. 'Maple Tree House'. It is proposed to utilise this entrance for the proposed development.
- 14.5.2. The access onto Ulverton Road will serve Block A which will comprise of 6 no. apartments and consists 7 no. car parking spaces. I noted from my site inspection that the sightline provision along Ulverton Road from the proposed entrance is generally good and there are many established vehicular entrances for residential properties onto Ulverton Road. The speed limit along Ulverton Road adjacent to the appeal site is 50 kph.
- 14.5.3. Table 8.2.3 'Residential Land Use – Car Parking Standards' of the County Development Plan sets out the required car parking provision for residential development. The required car parking provision for the proposed Block A is 8.5 spaces, excluding visitor spaces. However, Section 8.2.4.5 of the County Development Plan, 2016 – 2022, sets out that reduced car parking may be acceptable given the proximity of the development to public transport. The vehicular entrance serving Block A is located approximately 1km from the Dalkey Dart Station. The proposal provides 1 no. car parking space per apartment and a single visitor car parking space. I would consider that the car parking provision for Block A is acceptable having regard to Section 8.2.4.5 of the County Development Plan.
- 14.5.4. In relation to car parking provision for the proposed houses I would note that Table 8.2.3 of the County Development Plan requires two spaces for 3+ bedroom houses and one space per 2-bed unit. The proposed development includes 7 no. houses and the car parking provision would be acceptable and in accordance with Development Plan standards.



- 14.5.5. There would be a shortfall in car parking provision for the proposed apartments in Block B and Duplex G & H. The total required car parking provision for these 13 no. apartments would be 18.5 spaces and the total provision as proposed is 12 no. spaces.
- 14.5.6. The total bicycle car parking provision for the proposed development is 48 no. spaces which exceeds the minimum provision of 31 no. spaces, as per the County Development Plan.
- 14.5.7. The vehicular access to serve Block B, Duplexes G & H and the 7 no. proposed houses is onto the existing access lane.
- 14.5.8. The Transportation Planning report dated 8<sup>th</sup> November 2018, requests further information for the proposed development. The additional information request requires a range of drawings to comply with a number of standards.
- 14.5.9. The application documentation includes the submitted Traffic Impact Assessment. This TIA surveyed existing traffic movements at 3 different junctions in close proximity to the appeal site. The submitted TIA estimated traffic generation from the proposed development using the computer modelling package TRICS. The location of the 4 no. junction assessments is indicated on Figure 13 of the TIS. The conclusion of the assessment on all 4 no. junctions stated that the proposed development is shown to have negligible impact on junction performance. I would note that the report from the Transportation Planning, of the Local Authority, concluded that there were no objections to the proposed development. I would acknowledge the objections from the submitted observers in relation to the access lane however based on the scale of the proposed development I would not consider that the traffic generated from the proposed Block B, House Type C & D and duplex G & H would unduly impact on the traffic safety of the lane in this urban location. However, I would accept that there are outstanding issues in accordance with the report from the Transportation Department and these issues that would need to be

addressed before the Board would be fully satisfied with the proposed access issues.

14.5.10. I would consider, based on the submitted TIS, the correspondence on the file and given the existing pattern of development, that the traffic and access issues would not merit a refusal.

#### 14.6. **Flood Risk**

14.6.1. In terms of assessing a potential flood risk the Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009, sets out a sequential test for assessing flood impact.

14.6.2. The appeal site is in area that would be designated Flood Zone C in accordance with these guidelines. The proposed development, i.e. residential, is a highly vulnerable development in accordance with the Table 3.1 of the national guidelines and having regard to Table 3.2 of the national guidelines the proposed residential development would be appropriate on the appeal site which is situated in Flood Zone C.

14.6.3. I have reviewed the website [www.floodmaps.ie](http://www.floodmaps.ie) and there is no recorded history of flooding on the appeal site.

14.6.4. The proposed development includes attenuation proposals whereby it is intended that surface water discharge from the subject site will be limited to 2l/s and on-site storage provided for the 1 in 100 year extreme. I note that the Local Authority are satisfied with the flood risk concerns.

14.6.5. Overall, I would consider that the proposed development would be appropriate in terms of flood risk and I would conclude based on the information available that the proposed development would not create a flood risk.

#### 14.7. **AA Screening**

- 14.7.1. The Board will note that activities, plans and projects can only be permitted where it has been ascertained that there would be no adverse effect on the integrity of a Natura 2000 site, apart from in exceptional circumstances.
- 14.7.2. The Department of Environment, Heritage and Local Government Guidelines on 'Appropriate Assessment of Plans and Projects in Ireland, 2009,' recommend that the first step in assessing the likely impact of a plan or project is to conduct an Appropriate Assessment Screening to determine, on the basis of a preliminary assessment and objective criteria, whether a plan or project, alone or in combination with other plans or projects, could have significant effects on a Natura 2000 site in view of the site's conservation objectives. The Guidelines recommend that if the effects of the screening process are '*significant, potentially significant, or uncertain*' then an appropriate assessment must be undertaken.
- 14.7.3. The submitted AA Screening, which accompanied the planning application, assessed potential impacts of the proposed development on existing Natura 2000 Sites. I would note that the subject site is not actually located within a designated site, however there is an SAC, i.e. Rockabill to Dalkey Island SAC (site code 003000), situated approximately 1km to the east of the appeal site. The qualifying interests for this designated site include reefs and phocoona. There is an SPA, i.e. Dalkey Island SPA (site code 004172). The qualifying interests for the SPA include 3 birds.
- 14.7.4. I would note from the documentation on the file that there is no direct connectivity from the appeal site to the designated sites referred to above. The proposed development will be served by the public water mains and the public waste water drainage. There is potential that run-off surface water will drain towards the designated sites. However, given the separation distances from the appeal site to the designated sites and also having regard to surface water proposals I would not consider that surface water will drain towards the designated sites.

14.7.5. I would consider that it is reasonable to conclude that based on the information on the file, which I consider adequate to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any European Sites, i.e. site code 003000 and site code 004172, in view of the sites conservation objectives and a Stage 2 AA is therefore not required.

#### 14.8. **Nature Conservation**

14.8.1. I would acknowledge that some of the submissions outline their concerns in relation to a badger sett on the appeal site and the implications for the proposed site layout. However, as part of the appeal submission the applicant submitted a badger conservation plan from Brian Keeley (B.Sc in Zoology).

14.8.2. The Department of Culture, Heritage and the Gaeltacht made a submission to the Board, dated 28<sup>th</sup> February 2018, welcoming the submitted badger conservation plan. However, the Department considered that some details were absent and therefore recommended to the Board 3 no. conditions should they favour granting permission.

14.8.3. I would consider that on the balance of information available, and subject to conditions, that the applicant has adequately addressed concerns in relation to the badger sett.

#### 14.9. **EIA Screening**

14.9.1. Based on the information on the file, which I consider adequate to issue a screening determination, it is reasonable to conclude that there is no real likelihood of significant effects on the environment arising from the proposed development and an environmental impact assessment is not required.

## 14.10. **Amended Proposals**

14.10.1. In the appeal submission the applicant submitted revised proposals which are summarised as follows;

- Block B moved southwards away from the northern boundary.
- One Type C house removed.
- The upper floors of Block A are recessed back from the northern and southern gables.
- Additional screening is proposed along the eastern elevation of Block A to prevent overlooking towards 'The Wave'.
- The car parking area to the east of Block B has been redesigned with an additional open space area to the front of Block B.

14.10.2. On the basis of the submitted drawings that accompanied the appeal submission I would conclude that the above amendments, in particular the repositioning of Block B, are material. Should the Board also concur that the amendments are material the Board would then be precluded from considering the revised proposals within the context of this current appeal.

## 15.0 **Recommendation**

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

## 16.0 **Reasons and Considerations**

1. It is considered that the proposed development by reason of its layout and positioning and set back distance from adjoining boundary lines of the adjoining residential properties to the appeal site, that the proposed development would have an overbearing impact, would be visually obtrusive, would overlook and would seriously injure the residential amenities of the

adjoining properties. As such the proposal would detract from the amenities of adjoining properties, would be out of character with, and fail to respect the established pattern of development in the vicinity, and would set an undesirable precedent for similar type of development in the area. The proposed development would set an undesirable precedent in the area, seriously injure the residential amenity of the area and would, therefore be contrary to the proper planning and sustainable development of the area.

2. Having regard to the scale, design and layout of the proposed development and the close proximity of the proposed apartment Block A to Block B it is considered that the proposed development would constitute overdevelopment and would result in overlooking from the apartment Block A to Block B and would contravene the zoning objective of the current Dun Laoghaire-Rathdown County Development Plan, 2016 – 2022, which seeks to protect or improve residential amenity. The proposed development, would, therefore, be contrary to the proper planning and sustainable development of the area.

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Kenneth Moloney  
Planning Inspector

14<sup>th</sup> June 2019