



An
Bord
Pleanála

Inspector's Report ABP-303723-19.

Development	Demolition and replacement with a retail unit and 3 apartments.
Location	3 Kilbogget Villas, Old Bray Road, Cabinteely, Dublin 18.
Planning Authority	Dun Laoghaire Rathdown.
Planning Authority Reg. Ref.	D18A/1118.
Applicants	West Group Investments Ltd.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellants	As above.
Observers	Michael & Aideen O'Brien, Jack O'Callaghan, Cabinteely & District Res. Assoc., Andy Kirwan
Date of Site Inspection	22 nd August 2019.
Inspector	Philip Davis.

Contents

1.0 Introduction	3
2.0 Site Location and Description	3
3.0 Proposed Development	4
4.0 Planning Authority Decision	4
4.1. Decision	4
4.2. Planning Authority Reports	5
4.3. Prescribed Bodies	6
4.4. Third Party Observations	6
5.0 Planning History.....	6
6.0 Policy Context.....	6
6.1. Development Plan.....	6
6.2. Natural Heritage Designations	6
7.0 The Appeal	7
7.2. Grounds of Appeal	7
7.3. Planning Authority Response	9
7.4. Observations	9
7.5. Further Responses.....	12
8.0 Assessment.....	12
9.0 Recommendation.....	20
10.0 Reasons and Considerations	21
11.0 Conditions	21

1.0 Introduction

This appeal is by the applicant against the decision of the planning authority to refuse permission for the demolition of a cottage and its replacement with a retail unit and 3 apartments. It was refused for reasons relating to traffic safety, lack of car parking and overlooking. Four observers have submitted objections to the proposed development.

2.0 Site Location and Description

2.1. Old Bray Road, Cabinteely

The appeal site is located in a small local shopping area on the Old Bray Road, the former main road from Dublin to Bray which runs parallel to the modern N11. The original Cabinteely village was located at a crossroads of this road and what is now the Johnstown Road and Brennanstown Road. The former Cabinteely House and Demesne is now Cabinteely Park, west of the heart of the village. The village is indicated as just a church and police station in the mid-19th Century OS maps, but had grown to be a significant settlement by the beginning of the 20th Century, although it subsequently was swallowed up by the growth of the surrounding urban area. Although now a suburb, it still has some of the form of a country village, with a mix of late 19th Century and later buildings one and two storey high with a mix of terraced cottages and some small retail outlets, restaurants and financial services outlets, and one public house. There is no anchor foodstore in the village. Although bypassed by the N11, it is still a well trafficked junction, although the Old Bray Road to the south is a cul-de-sac. On either side of the village is a campus of offices used by the Bank of Ireland.

2.2. Appeal site

The appeal site, with a site area given as 0.044 hectares, is an elongated rectangular shaped plot on the north-east side of the Old Bray Road just south of the junction with Johnstown Road. It is occupied by a 2-storey mid terrace building with a ground floor retail use and upper floor residential (both vacant for some time). It is bounded to the north-west by a similar unit, with the House and Hounds Public House occupying the next block, on the corner of the Old Bray Road and Johnstown

Road. To the rear of the adjoining retail unit is the rear of the public house, with a dwelling fronting on Johnstown Road behind this. On the other side is a similar building in use as a restaurant. The site backs onto the rear garden of a dwelling (separated by a narrow lane), with the N11 beyond this.

3.0 Proposed Development

The proposed development is described on the site notice as follows:

Permission for the demolition of the existing building on site and erection of a part two, part three storey building with the taller element located to the rear, comprising a ground floor retail unit with 3 x 2 bedroom apartments above, internal courtyard, roof terrace, private amenity space provided by balconies, refuse storage, cycle storage and all other ancillary works. A basement is proposed to provide ancillary storage and services to both the retail and residential uses.

The application was submitted with plans and specifications, in addition to an Engineering Services Report, a Demolition, Construction & Waste Management Plan, a Design Statement, a Transport Assessment, and AA Screening Report, a Daylight and Sunlight Analysis and a Planning Report.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided to refuse permission for three reasons, which I would summarise as follows:

It would endanger public safety by way of the absence of any off-street car parking for the 3 no. residential units and so would give rise to illegal parking on roads in the area resulting in a traffic hazard or obstruction of road users.

The absence of off-street parking would set an undesirable precedent.

The proposed second floor unit to the rear would have serious and adverse effects on the residential amenities of the current and future occupants of

'Beaupre' and on the streetscape along Johnstown Road, contrary to policy UD1 and Section 8.2.3.4 of the CDP.

4.2. Planning Authority Reports

4.2.1. Planning Reports

- Notes location in Neighbourhood Centre (NC) zoning.
- No planning history for the site.
- Notes 9 submissions, all objecting.
- Outlines the policy considerations within the Development Plan for the apartments.
- Notes that the principle of mixed use on the site is acceptable and welcome, and the density level is in accordance with guidelines.
- Notes that the only residential site adjoining is the bungalow 'Beaupre' to the rear.
- It is concluded that the layout of the apartments is acceptable with the exception of a possible overlooking of the second floor on the residential amenities of 'Beaupre'.
- The concerns on parking by the Transportation Section are noted.
- Refusal is recommended.

4.2.2. Other Technical Reports

Drainage/Engineering: Further information required for proposed green roof. It is noted that Johnstown Road is served with a combined drain, not a surface water sewer, notes that the applicant is responsible for requiring any rights or permission necessary to connect to, or increase the discharge into the private drains.

Transportation Report: No objection in principle but notes the absence of off-street parking spaces for the proposed apartment units. Notes that it may be possible to accommodate one parking space within the site, which would be acceptable. Notes that the proposed basement cycle parking spaces are not in accordance with Development Plan guidelines. Recommends refusal for these reasons.

4.3. **Prescribed Bodies**

None on file.

4.4. **Third Party Observations**

A total of 9 no, submissions were made on the original application, all objecting for reasons relating to streetscape, residential amenities and parking/traffic.

5.0 **Planning History**

No records for the site.

The planning report refers to a number of permissions on adjoining sites including **D18A/0884** for change of use from restaurant to office; **D17A/0051** redevelopment to include change of use from retail to restaurant at ground floor (both these for the site to the north), and **D08A/0710**, change of use of ground floor from medical consulting rooms to kitchen and retail outlet and **D15A/0393**, change of use of ground floor and first floor to restaurant (adjoining site to the south).

6.0 **Policy Context**

6.1. **Development Plan**

The appeal site is in an area designated as 'Zoning Objective 'NC' '*To protect, provide for, and/or improve mixed-use neighbourhood centre facilities*'. I note that the apartment design standards set out within the Plan have now been superseded by national standards. Relevant extracts of the Plan are attached in the appendix to this report.

6.2. **Natural Heritage Designations**

There are no Natura 2000 sites on or close to the site. The area is within the catchment of watercourses that drain to Dublin Bay where there are a number of SAC's and SPA's.

7.0 The Appeal

7.1. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.2. Grounds of Appeal

A detailed appeal on behalf of the applicant was submitted by RPS. It provides an overview of the application and sets out a number of points and arguments I would summarise as follows:

- It is noted with regard to recent permissions for developments on adjoining sites that the planning authority noted the proximity of the site to a QBC and had adequate parking and good access, and that additional on-street stands would comply with DLRCC policy.
- With regard to reason 1, it is noted that the area is very well served with public transport and a number of cycle lanes and there are a number of proposals in the area both to increase public transport and cycling provision. Refers to the Planning and Transport Assessment report submitted with the application.
- Refers to Smarter Travel, the Transport Strategy for the GDA and the draft Regional and Spatial Economic Strategy with regard to the need to reduce dependence on car and to reduce parking provision in such areas.
- Notes section 3.1.8.4 of the DLRCDP with regard to parking, especially that a reduce car parking standard may be acceptable in such circumstances.
- Notes that the Sustainable Urban Housing design guidelines outline the requirement to remove requirements for car parking in circumstances where there are better mobility solutions.

- It is argued in some detail that the overall characteristics of the site and area are such that policy provisions support residential use without associated car parking (reference to section 8.2.4.5 of the DLRCDP).
- Notes that the Transport Report attached to the Planners Report states that there is no objection in principle.
- A number of recent planning permissions in the DLR area are reviewed, to argue that there are precedents for such developments without carparking or a special development contribution – e.g. **D17A/1647** on Georges Street in Dun Laoghaire.
- The applicant proposes a **travel plan** for the apartments (flats), which will be retained by the developer as rental properties. It will be a term of the lease that residents will not be permitted to own a car. No parking permits would be applied for (notes condition in D17A/0647). The applicant also commits to providing membership of a car club such as GoCar to the residents, or that an electric car would be provided for the sole use of the residents.
- It is noted that the existing building would generate its own parking requirements, so it is suggested that there is little net increase in real parking demand.
- It is argued in summary that the proposal is a modest development in the context of the village and entirely in line with national, regional and local plan policy to promote more sustainable types of development.
- With regard to Refusal reason 3, the applicant refers to Section 8.2.3.4 of the Development Plan to note that design principles in relation to infill and ‘living over the shop’ proposals allow for dispensations from normal standards to facilitate worthy developments.
- It is noted that there are no windows from the proposed development addressing ‘Beaupre’. A condition requiring some screening from the roof garden would be acceptable.
- It is argued that the balcony on apartment 3 faces north and is 16 metres from the nearest structure in ‘Beaupre’ and as such would impact, but it is suggested that a 1.8 metre screen would be appropriate.

- It is argued that there is no basis for a refusal for the reason of interference with amenities or a low level of amenity in the proposed development.
- With regard to cycle parking, it is argued that contrary to the statements in the planners report, the use of a basement for bicycle parking is appropriate to the circumstances.
- With regard to drainage issues, it is argued that the use of a green roof will minimise run-off and in these circumstances the discharge of combined foul/drainage water may be acceptable to Irish Water.
- A number of amended drawings are submitted for the Board to consider if it accepts some of the objections set out in the Planners Report. These alter the design of the second floor (apartment 3) and delete the roof garden and access stairs, reducing the building height by 2519mm.

7.3. **Planning Authority Response**

The planning authority has not responded to the grounds of appeal.

7.4. **Observations**

Michael & Aideen O'Brien of Brennanstown Road

- It is argued that the junction at Cabinteely is under severe traffic stress and both construction and operation of the proposed development would exacerbate existing issues (photos attached in support of their argument).
- It is submitted that deliveries for the retail unit would cause significant congestion and additional pollution and that the traffic information submitted with the application was not representative of rush hour at the junction.
- It is argued that it would overlook and overshadow nearby properties and interfere with the privacy of local residents.
- It is submitted that it is out of character with the local pattern and history of development.
- It is submitted it will cause additional parking problems and will increase traffic, noise and congestion in the area.

Jack O'Callaghan of Johnstown Road (submitted by Frank O'Gallachóir Associates)

- The objections in the Planners Report and the ground of refusal are supported.
- The observer states that he is the legal owner of the laneway which serves the rear of the site. It is submitted that the applicant has (contrary to the assumptions in the Engineering Services Report submitted with the application) no legal right to use this lane for access for construction or maintenance. It is requested that if permission is granted it be confirmed by condition that the access cannot be used and the proposed sliding gates to the rear service yard be deleted.
- It is stated that there is an existing private combined drain along the lane connecting to the public sewer on Johnstown Road. It is argued that the applicant has no legal right to use the lane for laying services.
- A solicitor's letter is attached with regard to the above two points. This letter states that the right of way to the rear of the property is for personal use and cannot be used for other purposes.
- It is argued that the proposed development represents an unacceptable intensification of the use of the site and would seriously exacerbate parking issues in the area.
- It is argued (aerial photo supplied) that the proposed development would lead to an unacceptable level of overlooking of nearby residential properties.
- It is submitted that the applicant's argument with regard to exempted development rights excluding parking provision is not applicable to this application.
- It is argued that the alterations proposed with the appeal do not address the core objections of local residents.

Cabinteely & District Residents Association.

- It is submitted that the scale and design are out of character with Cabinteely Village.

- It is submitted that the transition of scale and height between the proposed development and the adjoining properties is unacceptable.
- It is submitted that it will exacerbate traffic problems in the area.
- Concerns are expressed that it would set an undesirable precedent for further such developments in the village.

Andy Kirwin of 1 Kilbogget Villas (submitted by Doyle Kent PP Ltd).

- Mr. Kirwin resides at the above address (adjoins the site) and runs a building company from the rear yard.
- Fully supports the three reasons for refusal.
- Expresses strong concerns at the use of the rear lane and possible impacts on his building and residential amenity impacts.
- It is argued that the village suffers a chronic lack of car parking and any additional development or expansion of the commercial element with consequent additional deliveries will result in an unacceptable additional impact which will endanger public safety and lead to traffic hazard and obstruction.
- It is argued that it will have an overbearing impact on adjoining properties on either side. It is argued that the revised proposal submitted with the appeal does not address the significant negative impact by way of its scale and bulk along the adjoining boundaries.
- It is argued that the level of site coverage proposed is excessive and would prejudice possible future developments on adjoining properties.
- There is a granite party wall between the appeal site and the observer – concerns are expressed at the impact of the works on the structural integrity of this wall and it is questioned whether the applicant has legal title to carry out the required works.
- It is noted that no assessment has been carried out in the possible impact of works on the roots of street trees next to the site.
- It is questioned in detail whether it is practical to service the proposed retail element by way of the rear access as indicated in the application details.

Without this access it is questioned whether the level of intensification proposed is feasible without causing additional problems for loading and access. It is argued that the lane is inappropriate for any type of service access.

7.5. Further Responses

None on file.

8.0 Assessment

Having inspected the site and reviewed the file documents, I consider that the appeal can be addressed under the following headings:

- Legal issues
- Principle of development
- Pattern of development
- Parking and traffic issues
- Amenity and design
- Drainage and flooding
- Appropriate Assessment
- Other issues

8.1. Legal issues

The observers have raised a number of issues with regard to whether the applicant has sufficient legal title to carry out elements of the works. The applicant apparently has access to the rear lane, but (it is claimed) cannot carry out works on the lane or use it for services. The existing sewer is a private combined sewer which connects with the public sewer. Additionally, the adjoining neighbour has raised the issue of a party wall, which may require significant works to allow for a new basement.

With regard to the rear lane, the applicant apparently has the right to use it for rear access, but not to carry out any works to it or use it for infrastructure supply. The lane is currently sealed with a c.3 metre high metal fence/gate at Johnstown Road

and does not appear to be used much for vehicles. The legal situation must be considered somewhat ambiguous. But for the purposes of this appeal I will assume that while pedestrian access for the applicant will be possible, this lane cannot be physically altered by the applicant for the purposes of facilitating construction or the use of the commercial element of the proposed development. I will also assume that the applicant will not be able to use this lane for laying services and must rely on the existing private combined sewer.

With regards to party wall and structural issues, I consider that these are civil matters between the parties. With regard to these residual issues, I consider that the provisions of S.34(13) of the 2000 Act (as amended) applies.

8.2. Principle of Development

The site is within an area zoned as a Neighbourhood Centre, as are all the adjoining properties (I note that this includes the dwellings to the side and rear). Given the historic development and use of this area I consider this to be reasonable and appropriate. The proposed mixed use is therefore in accordance with the zoning objective, and the size and scale is generally consistent with the overall scaling of the terrace. The facilitation of more intensive mixed uses within established areas is fully in line with the general thrust of both national and regional guidance. I would therefore consider that the proposal should in principle be viewed favourably subject to the other objectives of the Development Plan, national and regional guidance, and the general principles of good planning and design.

I note that while Cabinteely Village has significant historic value to the locality and retains something of its old character, the area is not an ACA and neither the site nor the buildings immediately adjoining are listed on the NIAH and are not protected structures. There are no other specific development plan designations relating to the site and area, so the relevant policy considerations all relate to the zoning designation and policy for such replacement/infill type developments.

8.3. Pattern of development

The appeal site is within the old Cabinteely Village, a settlement that existed at least in the early 19th Century but seems to have grown mostly on the crossroads in the

late 19th and early 20th Century. It still functions as a lower order commercial centre and a neighbourhood centre for the immediate surroundings. It is characterised by a mix of typical one and two storey terraces, mostly a mix of commercial and residential. Despite the N11 bypass, the Old Bray Road is still quite a busy commuter route and so the crossroads can be quite congested. On-street parking is in bays on either side – there is no specific carpark for the village.

The existing buildings are typical of the period – a number are listed in the NIAH, but none on or immediately around the site. While not an area of the highest quality, I would consider the village to have a distinct and attractive character and as such any development should be expected to respect the existing scale and pattern of development while enhancing the overall townscape.

8.4. Parking and traffic issues (including bike parking)

The proposed development would replace the existing commercial development with a larger unit and three 2-bedroom apartments, which it is stated will be retained by the developer for private rent. The village has parking bays along the street, primarily in use for shoppers. This parking is mostly pay and display, with a loading bay marked outside the appeal site. This pay and display parking area extends for some distance on either side of the main junction and includes electric car recharging bays. It appears that there is a significant shortfall in parking for demand in the area, although it is unclear as to whether this relates more to residential parking or commercial parking. From my observations during the site visit, it would seem the main issue is overspill parking from the two Bank of Ireland office complexes on either side of the village.

The proposed development has no curtilage parking. There is potential capacity for one parking space in the rear accessed via the existing lane, although as noted above, it is not entirely clear this access is possible. The three apartments and the commercial unit would therefore lack any specific loading bay apart from the existing one to the front and would have no designated parking spaces, and there is no potential for additional off-site parking. I note of course that the existing building has no curtilage parking, although it would seem the rear yard was possibly used in the past as a private car park. There is therefore a significant shortfall of parking provision with regard to development plan guidelines and in national guidance on

apartment provision. The applicant has laid out a number of ways which the impact could be mitigated by condition, most notably by a Travel Plan which would set that the residents cannot have a car and the landlord would provide access to either a shared vehicle or a commercial carpool arrangement such as GoCar.

The straightforward question in this appeal therefore is whether the specific location justifies permitting a development such as this without curtilage or non-curtilage parking with regard to development plan and national/regional policies. As the applicant has noted, there are precedents for this on other Main Street and village centre type developments in DLRCC and I am aware of others permitted and constructed in Dublin City and elsewhere. There are also (as outlined in detail in the applicant's submissions) clear policy directions in national and regional policy (in particular 'Smarter Travel' and the 'Transport Strategy for the GDA') and within the development plan to permit a relaxation of parking standards when it facilitates mixed use – particularly with residential use – in existing urban areas, especially when they are on public transport corridors or otherwise very accessible. The development plan states (section 8.2.4.5):

In very limited circumstances, the Council may also consider the development of car free housing on suitable small-scale sites which have with (sic) high levels of public transport accessibility, have convenient and safe access to local shops and community facilities, and/or are located very close to Town Centres.

I consider that the key question in this appeal is whether the criteria outlined above applies to the proposed development. Cabinteely village is not a major centre, but is a distinct and longstanding neighbourhood centre and is well served with public transport, specifically the QBC on the nearby N11 and the Luas (Laughanstown stop is approximately 20 minutes walk away). It does not have a wide range of shops and there is no anchor supermarket, but there are restaurants, cafes, a post office, Garda station and school nearby. Cornelscourt shopping centre is the main retail centre, approximately 800 metres walk to the north-west. All the major services and facilities are relatively easy to access on foot or bike or short public transport hops. There are also a number of employment nodes immediately around the village, including the Bank of Ireland IT centre. I would also note that the new commercial unit could itself have potential to be a local foodstore.

I would therefore conclude that the appeal site is the type of site envisaged as suitable for car free use in the development plan, and this type of development would be consistent with national guidance. I would therefore consider that permitting the development without curtilage or street parking availability to be acceptable in principle.

The observers have emphasised the heavy traffic load in the area and the potential for additional pressure on on-street parking and the potential for serious issues with deliveries. I note of course that it is an existing commercial unit – while the proposal is for a larger unit, it is not clear that this would necessarily lead to a greater number of deliveries – obviously this is highly dependent on the type of future use. But having regard to the existing use and the zoning designation I do not consider this to be a reason for refusal. The additional apartments have the potential to put more pressure on local parking, and I can understand the concerns of locals, but this is a longstanding problem in the area and I do not consider that it would be appropriate to use it to in effect stop all possible redevelopments close to or near the junction.

The applicant has offered a condition such that a travel plan would prevent tenants from owning cars – I would doubt if this is enforceable, but I would recommend a condition such that a travel plan should be submitted for the satisfaction of the planning authority – at a minimum it should at least be investigated that a shared electric car (as suggested by the applicant) could be made available.

I would therefore conclude that having regard to the existing use of the lands, the zoning designation, and the nature of the area, it would be appropriate to permit a development on the site with no specific car parking spaces provided, subject to a condition requiring a Travel Plan to be agreed with the planning authority.

Bike parking

The planning authority considered that the proposal to have bike parking in the basement is inappropriate. Bikes would have to be brought in through the long access corridor and then brought down via the lift or stairwell. I would concur that the difficulties in access make this a less than ideal solution – if access was possible through the rear yard, then lock-ups in that yard would be best, but as noted above there is some ambiguity about whether access will be permitted. This is always likely to be a significant problem with such high density development as it is difficult to anticipate the preferences of the future tenants and rules about bringing bikes

within the building, not to mention allowing for the rapid changes in technology for personal transport. While certainly less than ideal, I would consider that the basement storage is perhaps the only reasonable option available for secure parking – in reality future residents may use other ad-hoc storage options. I would further note that some Sheffield stands should ideally be provided for the retail unit, but this could only be set by way of a special development contribution.

8.5. Residential amenity and design

Internal amenity

The three apartments – one above the front of the retail elements, the other two in a three-storey element close to the rear, are 2 storey each, accessed via a doorway and hall facing the Old Bray Road – are proposed to be managed and rented by the developer. Their internal layouts are in accordance with published guidance, although the ‘courtyard’ on the first floor allows minimal separation between apartments 1 and 2. But having regard to the location within a mixed-use area, I consider that the internal amenities and layout are acceptable and in accordance with guidance.

Impact on adjoining properties

The area is generally one and two storeys, with the adjoining buildings having 2 storey frontages with usually single storey extensions filling out what would have been the rear yards of the buildings fronting the Old Bray Road. The proposed 3-storey element towards the rear would be the only 3-storey element in the area.

The buildings on either side are commercial in use, with three dwellings on the north side, at right angles to the appeal site. I note that all the buildings, including the dwellings in the vicinity, are part of the ‘NC’ zoning designation

The proposed design includes a roof garden/terrace, and a second-floor balcony. The closest part of a rear dwelling is approximately 16 metres to the north, although one dwelling is closer, facing the lane next to the site, but there does not appear to be direct overlooking.

The obvious implication for privacy is the potential for overlooking from the roof garden/terrace and the lower northeast facing balcony. Assessed as a purely residential area there would be significant concerns about potential overlooking, but

having regard to the nature of the area and the zoning designation, I would consider the level of overlooking to be acceptable as it is not direct overlooking and can be mitigated. The applicant has suggested conditions regarding screening, which I would recommend are implemented. I do not consider that the alterations proposed by the applicant in the appeal submission are necessary to protect amenities.

The higher residential element has the potential to overshadow the units on either side, although as the site extends generally to the north-north west, direct shadow cast will be quite minimal. The applicant submitted a shadow assessment with the application which I consider to be generally accurate. As with the privacy issue, I consider that the generally commercial nature of the area and the zoning designation infers that an intensification of use is desirable in the context of policy, and I do not consider that the impacts by way of overshadowing or overbearing nature are outside the bounds of acceptability.

Impact on the streetscape

The proposed design is generally contemporary in nature and form. The existing building, while a visually consistent part of the streetscape, has little distinction and I do not consider that its replacement represents a loss. The proposed new frontage would represent a significant improvement in the overall appearance of the street, particularly if it attracted a high quality tenant to strengthen the neighbourhood retail role.

The key impact is the 3-storey element to the rear. I am satisfied that this will not be clearly visible from all but a few isolated points on public areas on the Old Bray Road and the Johnstown Road. It will not break the existing roofline as viewed from the adjoining public road. So while I would be concerned in principle at breaking the overall pattern of 1-2 storey buildings in the area, the proposed design is, I consider, quite sensitive and respects the overall pattern of development in the area, while ensuring a maximisation of the use of this site.

Conclusions

While I understand the concerns expressed by the observers and those who objected to the original proposal, I would conclude that the impact on residential and visual amenities would be relatively minor having regard to the nature of the area – a commercial neighbourhood centre surrounded on each side by a business park. I

consider that the overall benefits of an enhanced retail unit and additional residential units outweigh the relatively minor direct and indirect impacts.

8.6. Drainage and flooding

The site is currently served by a private combined sewer running under the laneway to the north, which connects to the main sewer on Johnstown Road. There is apparently no suitable sewer for connection on the Old Bray Road.

As noted above, there is a possible legal issue with connecting the site via the laneway as the owner is not inclined to grant permission for any additional underground infrastructure. The applicant states that the use of a green roof with a rainwater harvesting tank will ensure no net increase in run-off (the Engineering Services Report states that it will be reduced by 30%), with additional rainwater harvesting on the site, and foul sewerage can use the existing system. Such a proposal would require the agreement of Irish Water.

It is obviously problematic to permit such a development without a firm commitment that it can be fully connected to the foul water and surface water drainage system, but it does seem to be technically possible, even in the absence of permission to use the private mains. I therefore consider that this is an issue that can be dealt with by way of condition.

The site is not subject to any historic flooding according to the available information. A watercourse runs approximately 500 metres south of the site through Cabinteely Park, but any flooding of this watercourse does not appear to extend beyond the bounds of the Park. I would consider that the use of green roofs will ensure no significant net run-off from the site, so it would not contribute to downstream flooding.

8.7. Appropriate Assessment

A screening report was attached with the submission which concluded that the possibility of significant effects on European sites may be ruled out. It noted that surface water discharges would be to Killiney Bay and foul waters should discharge to Shanganagh WWTP at Killiney Bay. In neither case would the net inputs be significant.

The proposed development is on the footprint of an existing building, and would not have any environmental emissions much beyond its immediate boundaries. There are no designated habitats within 1 km of the site. The increase in foul and drainage water run-offs would be negligible in the context of the overall drainage scheme for the area. The closest site to the appeal site and to the drainage discharge is the Dalkey Islands SPA (site code 004172), which is designated to maintain or restore the favourable conservation condition of three species of tern. There are no pathways for pollution or other direct or indirect impacts that could be associated with the proposed works.

I therefore consider that it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order 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 European Site No. 004172, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.8. Other issues

The proposed development would be subject to a S.48 Development Contribution in accordance with the adopted Scheme.

There are no indications that the site is within an area of archaeological sensitivity.

I do not consider that there are any other planning issues raised in this appeal.

9.0 Recommendation

I recommend that the proposed development be granted planning permission for the reasons and considerations set out below, subject to the conditions in the final schedule.

10.0 Reasons and Considerations

Having regard to the Neighbourhood Centre (NC) zoning and the nature and scale of development in the vicinity, it is considered that subject to the conditions set out below, the proposed development would not seriously injure the amenities of the area, or cause traffic congestion or interfere with traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:
 - (a) A permanent 1.8 metre screen shall be erected on the north-west side of the second floor balcony.
 - (b) Additional screening shall be provided on the roof garden to prevent overlooking of the residential properties to the north-west.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of residential amenity.

3. Prior to the commencement of development, the applicant shall submit a travel plan for the future residential users of the residential units. This travel plan shall include proposals to ensure users to not park cars in the vicinity and shall include detailed provisions for bike and shared use vehicles for the future occupants.

Reason: In the interest of reducing traffic congestion.

4. Construction works shall not commence until written confirmation has been provided to the planning authority that Irish Water have agreed all details for the provision of water and foul/surface water drainage for the proposed development.

Reason: In the interest of clarity.

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

Reason: In the interest of the visual amenities of the area.

6. Details of all external shopfronts and signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the amenities of the area/visual amenity.

7. No advertisement or advertisement structure shall be erected or displayed on the building or within the curtilage of the site in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

8. Security roller shutters, if installed, shall be recessed behind the perimeter glazing and shall be factory finished in a single colour to match the colour scheme of the building. Such shutters shall be of the 'open lattice' type and shall not be used for any form of advertising, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

9. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the amenities of property in the vicinity.

10. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

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

11. The management and maintenance of the proposed development, following completion, shall be the responsibility of a legally constituted management company, which shall be established by the developer. A management scheme, providing adequate measures for the future maintenance of the development; including the external fabric of the buildings, internal common areas (residential and commercial), open spaces, landscaping, waste storage facilities and sanitary services, shall be submitted to and agreed in writing with the planning authority, before any of the residential or commercial units are made available for occupation.

Reason: To provide for the future maintenance of this private development in the interest of residential amenity and orderly development.

12. 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.

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

Reason: In the interest of sustainable waste management.

14. 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.

Philip Davis
Planning Inspector

26th August 2019