



An
Bord
Pleanála

Inspector's Report ABP-303768-19

Development	Residential development comprising of 52 no. units.
Location	Brighton Road, Foxrock, Dublin 18.
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D18A/0846
Applicant(s)	The Brighton Road Partnership
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	As above
Observer(s)	Embassy of the Kingdom of the Netherlands
Date of Site Inspection	30th July 2019
Inspector	Kenneth Moloney

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	5
3.1. Planning Authority Reports	6
3.2. Submissions.....	7
3.3. Third Party Observations	8
4.0 Planning History.....	8
5.0 Policy Context.....	8
6.0 National Policy	9
7.0 The Appeal	11
8.0 Responses.....	16
9.0 Observation	18
10.0 Response	19
11.0 Assessment.....	21
12.0 Recommendation	36
13.0 Reasons and Considerations	36

1.0 Site Location and Description

- 1.1. The subject site is situated to the rear of three established residential properties located on Brighton Road, Foxrock, Dublin 18. The western boundary of the appeal site adjoins Leopardartsown Racecourse.
- 1.2. The 3 no. properties, namely from north to south, include St. Benedicts, Fairholme and Craughwell. These properties are all two-storey detached, individually designed and substantial in size with mature gardens.
- 1.3. Brighton Road is one of mature suburban residential development characterised by large individually designed detached dwellings set within substantial mature gardens giving the area a strong sylvan character. The plot sizes and shapes are irregular.
- 1.4. There is a narrow entrance, located between Fairholme and Craughwell and this entrance provides access to the appeal site.
- 1.5. The overall size of the appeal site is approximately 0.95 ha (2.35 acres) and the shape of the site is irregular.
- 1.6. The topography of the site slopes gently downwards from Brighton Road to the rear of the site adjoining Leopardartsown Racecourse.
- 1.7. The subject site is generally overgrown and is enclosed by mature hedging / trees on the northern and western site boundary.
- 1.8. There is a new housing development, i.e. Brighton Wood, located to the immediate south of the appeal site. This new housing development comprises of 2-storey, terraced and detached houses. These houses are recently occupied or near completion.
- 1.9. There is a scattering of mature trees throughout the site and there is also some dense scrub / overgrown vegetation on the site.
- 1.10. There is a Dublin Bus bus stop located adjacent to the site entrance at Brighton Road.

2.0 Proposed Development

- 2.1. The proposed development consists of 52 no. dwellings provided as;

- 38 no. apartments
- 14 no. houses

2.2. The following Table includes a breakdown of the residential units proposed;

<u>Type of Units</u>	<u>No. of Units</u>
1-bed apartments	9
2-bed apartments	23
3-bed apartments	6
Semi-detached houses	6
Detached houses	8

- 2.3. The vehicular access to the subject site is located between two existing houses which face onto Brighton Road and the proposed development is located to the rear of 3 no. existing houses which face onto Brighton Road.
- 2.4. The proposed site layout includes a 5-storey apartment building located to the north-west of the subject site.
- 2.5. The proposal provides for a basement area which will provide for 54 no. car parking spaces, 48 no. bicycle parking spaces and bin storage.
- 2.6. The proposed housing is comprised of both 2-storey and 3-storey in height.
- 2.7. The proposed development includes off-street car parking for the houses.
- 2.8. The houses proposed include the provision of private open space provision in the form of rear gardens.
- 2.9. The proposed development includes a central area of public open space measuring approximately 900 sq. metres.

Additional information was sought by the Local Authority in relation to the following issues;

1. Details of proposed green roof

2. Details of location of tree pits proposed as sockaways.
3. The proposed outfall shall be into a public area – clarification sought.
4. Surface water details
5. Details of drainage connections to be clarified
6. Reconsider the omission of trees no.s 42 – 46 and no.s 49-52.
7. Public lighting
8. Shadow analysis
9. Greater set back in relation to the apartment building.
10. Side elevation of house no. 6 redesigned.
11. Provision of a small play space
12. Building Life Cycle Report
13. Future connectivity to greenway
14. Omission of the entrance gate
15. Taking in charge proposals
16. Revised basement layout plan showing omission of stacker car parking space
17. Compliance with DMURS
18. Vehicular entrance details
19. Bicycle parking spaces – residential and visitor spaces

3.0 Planning Authority Decision

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

1. Having regard to the proposal for a storage tank and a pumping station outfalling to a Foul Sewage system on Brighton Road that has a deficiency leading surcharges and overflows during peak flows which would be exacerbated by the proposed development, it is considered that in this regard the proposed development is prejudicial to Public Health and would be

premature until the deficiency in the system ceases. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

2. Having regard to the proposed removal of a large number of significant trees at the entrance of the site and within the Foxrock Architectural Conservation Area it is injurious to the sylvan character of this section of the Foxrock Architectural Conservation Area. The proposed development would be contrary to 2016 – 2022 Dun Laoghaire Rathdown Development Plan Policy OSR7: Trees and Woodland which requires the preservation of groups or woodlands which form a significant feature in the landscape. It is considered that the removal of the trees would be harmful to the sylvan character of Brighton Road and therefore be contrary to Development Plan Policy AR12 which seeks retention of features that contribute to the character of an Architectural Conservation Area are including soft landscaping and would be contrary to the proper planning and development of the area.
3. Having regard to the proximity to the boundary of the proposed 5 storey apartment block and its height and depth at this location, it is considered that the apartment block would appear overbearing and when viewed from the adjoining property to the north-east: No. 5 Brighton Road, would be seriously injurious to the residential amenity of no. 5 Brighton Road and depreciate the value of this property.

3.1. Planning Authority Reports

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

Planner's Report

- Proposal is acceptable in principle.
- Density is acceptable.
- Proposal will not be detrimental to the character of the Foxrock ACA.

- Proposed 5-storey height may be acceptable on the site.
- There may be overshadowing on the rear garden to the north. Shadow analysis required.
- The proposal complies with SPPR 1 & SPPR 2 of the Apartment Guidelines, 2018.
- It is considered that the proposal is consistent with SPPR 4, SPPR 5 and SPPR 5 of the Apartment Guidelines, 2018.
- The proposal complies with the minimum requirements in relation to private amenity space, public amenity space, storage provision and refuse storage.
- Further information sought in relation to Transportation issues and Surface Water drainage.
- There are concerns in relation to loss of mature trees.
- Should permission be granted a condition shall be attached ensuring the retention of the western stone boundary.

3.1.2. Housing Department; - Should permission be granted then a condition is attached requiring the developer to enter into an agreement.

3.1.3. Drainage Planning; - Further information sought in relation to outfall, green roof and tree pits / soakaways and volumnes of surface water. A gravity solution is a preferred solution to pumping.

3.1.4. Transportation Planning; - Additional information sought.

3.2. **Submissions**

There is a submission from the Department of Culture, Heritage and the Gaeltacht. It is recommended that pre-development archaeological testing shall be required by condition. It is also recommended that the clearance of trees shall only take place

from the 1st of March to the 31st August in any year. Irish Water stated, in their report, that the applicant is required to contact IW should there be a proposed pumped foul solution for the proposed development.

3.3. **Third Party Observations**

There was one third party submission and the issues raised have been noted and considered.

4.0 **Planning History**

- L.A. Ref. 15A/0719 – Permission **refused** by DLRCC for 6 no. detached houses on part of the appeal site. The reasons for refusal included (a) contrary to policy objective RES 3 as density too low, and (b) contrary to policy objective RES 7 as inappropriate mix of units.
- L.A. Ref. 06A/1997 – Permission **refused** by DLRCC for retention and completion of site development and boundary works. The refusal was appealed to ABP (appeal ref. 243193) who subsequently refused permission for the following reasons (a) proposed access is premature pending the determination of the intended future layout and use of these lands, (b) would facilitate the part creation of a new substandard vehicular access route to lands in the absence of a satisfactory proposal for the overall layout and use of these lands.

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 relevant;

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

- Some of the subject site is located within the Foxrock ACA.

The following County Development Plan policy objectives are relevant;

Residential

Policy RES3 – Residential Density

Policy RES7 – Overall Housing Mix

Policy RES9 – Housing for All

Policy RES13 – Planning for Sustainable Communities

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’
- Section 8.2.4.8 ‘Motorcycle Parking’
- Section 8.2.11.2 ‘Architectural Heritage – Protected Structures’
 - (i) Works to Protected Structures
 - (iii) Development in Proximity to a Protected Structure

6.0 National Policy

6.1. National Planning Framework, 2018

The recently published 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
- NOP 13 – Relax car parking / building heights to achieve well-designed high-quality outcomes
- NPO 35 – Increase residential density

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, 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.

6.4. **Urban Development and Building Heights, Guidelines for Planning Authorities, 2018,**

Section 3 sets out the Development Management Criteria. Paragraphs 3.4 – 3.8 sets out guidance for building height in suburban / edge locations in city and towns.

7.0 **The Appeal**

The appeal submission outlines details of the site location and description, details of the proposed development, the planning history. The submission also includes commentary on the positive assessment of the Local Authority on the proposed development and the grounds of the appeal. The submission also outlines a modified scheme. The following is a summary of the relevant parts of the grounds of appeal;

Refusal Reason no. 1

- Irish Water have informed the applicant that the utility company does not intend to proceed with strategic infrastructure that was to have been located along the Old Harcourt Tramline.
- It is now proposed to connect the site with the existing Carrickmines network.
- Given the existing invert levels this will be achieved through a pumping station on the application site.
- The size of the pumping station has been agreed with Irish Water.
- The Board are referred to a detailed strategy as set out in the Engineering Statement.

Refusal Reason no. 2

- The vehicular access proposals will necessitate removal of trees.
- The submitted Arboricultural Statement was submitted with the appeal. This confirms that many of the trees on the site have been previously negatively impacted by the development before the applicant acquired the site.

- The Arboricultural Report submitted with the planning application identified that many of the existing trees on the site are identified as 'Category U' which identifies trees are 'dead, dying or dangerous'.
- The trees proposed for removal are impacted upon by the presence of existing drainage works along the laneway.
- The nature of prior intervention is considered enough to have resulted in a threat of harm or damage relating to a greatly risk of failure.
- Necessary entrance geometry and sight lines cannot be achieved without disturbing these trees.
- It is submitted that the Local Authority Park's Dept. had little regard to reasoned justification for the removal or retention of trees.
- The Board is referred to drawing no. D2-Brighton Road-AIA-08-18 'Tree Impact Plan'. This plan identifies trees that will be removed and trees that will be retained.
- With respect to tree removal along Brighton Road although they are of good quality these trees are a young age and small in stature.
- Works close to trees would be necessary for the entrance. Impact on trees was minimised by the realignment of the road thus reducing any need for works close to the trees.
- It is contended that the Planning Authority has not fully considered the proposal and details of the proposed re-alignment of the entrance onto Brighton Road is attempting to achieve.
- The following is relevant in relation to boundary treatment;
 - It is intended to retain as much roadside natural boundary as possible.
 - The upgrade and realignment of the entrance at 'Craughwell' will require the removal of a number of trees.

- The closing of the second site entrance provides a good compensatory measure as it presents an opportunity to preserve and augment planting in the area.
 - The Parks Dept. have not given adequate consideration to the compensatory planting measures.
 - A submission by Bernard Seymour Landscape Architects, which supports the appeal, outlines the overlay of trees to be removed and details of replacement planting.
 - The following replacement trees are proposed 5 no. Pinus Sylvestris to retain the existing character. These trees will be approximately 6 – 7m high. The proposed planting will also consider 6 no. magnolia denudata planted in between the new mature pines to lighten up the entrance with their spring mwhite flowers.
 - The Local Authority Conservation Officer is satisfied that the design of revised entrance onto Brighton Road will be sympathetic to the character of the Foxrock ACA.
 - The change to the entrance is set out in visualisations prepared by Modelworks media.
 - The visualisations only represent the trees at the time of planting. These trees will reach a maximum height of approxinmatley 35m.
 - The rate of growth is approximately 1 – 1.5m within a 5 year period.
 - Tree protection barriers will be provided.
 - The construction of the road surface will eliminate damage to roots through compaction and desiccation of the soil.
- The following is relevant in relation to conservation;
 - The Conservation statement concludes that the maturity of the proposed trees will help maintain the sylvan character of Brighton Road. These native trees will positively contribute to the character of the area.

- The Conservation Officer of the Local Authority concluded that the proposed development will create a new entrance that is more understated and sympathetic.
- The following is relevant in relation to Road Safety;
 - The submitted drawing no. A085-025 illustrates the alignment of the proposed new entrance.
 - The existing laneway and entrance to 'Craughwell' will be extinguished.
 - A realigned entrance is proposed onto Brighton Road to serve the proposed development and provision for a new internal shared access arrangement to the existing 'Craughwell' house and to the proposed new housing to the rear.
 - The proposed entrances onto Brighton Road is considered appropriate from a traffic and road safety perspective.
 - The Local Authority Transportation Section has no objections to the proposed development.
 - The trees proposed for removal would not be visible from Brighton Road.
 - The nature of the tree removal is localised.
 - The proposed realignment provides a balance between road safety and retaining the character.
 - The Transportation Section and Conservation Section consider the proposal acceptable.
- The following is relevant in relation to Planning Precedent;
 - The Board is referred to L.A. Ref. 06A/1997 – appeal ref. 222502.
 - The Board had concluded that the works to the site were premature however the Board anticipated residential development to the site.

Refusal Reason no. 3

- It is contended that the proposed layout of the apartment block is the most efficient and effective solution based on current site constraints.
- The shadow assessment submitted to the Local Authority demonstrates that the proposed development will have no adverse impacts on adjacent residential amenity.
- The Local Authority Planning Officer notes that the appropriate levels of separation distance are achieved.
- The northern block of the proposed apartment block is designed to ensure no overlooking of adjoining lands to the south.
- The Local Authority is satisfied that no direct overlooking will occur.
- The proposed apartment block is set back approximately 34m from the proposed dwellings along the eastern boundary of the site.
- The following set back distances are relevant;
 - 82m from the existing dwellings facing onto Brighton Road
 - 83m from No. 5 Brighton Road 'Goleen'.
- The submitted drawing no. 1803-L-108 demonstrates that the proposed apartment building is situated on the lowest point of the application site.
- The Planning Authority outlined concern in relation to overbearing nature of the proposed development. In response the following is submitted;
 - 5 storeys is consistent with the building height guidelines
 - The apartment building is located on the lower levels of the site
 - The 5-storey apartment block includes a set back at the 4th floor level
 - Separation distance from the northern boundary is 5 – 7m.
 - The existing northern boundary is largely retained.
 - Any future redevelopment of the northern neighbouring undeveloped lands will require similarly appropriate set back distances.

- It is concluded that the proposed development is not unduly dominant in the context of the property to the north.

Modified Scheme

- In summary the modifications include;
 - The 3rd floor is set back and aligns with the proposed 4th floor.
 - The floor area of apartments no. 28 & 29 is reduced from 99sq. m. to 82 sq. m.
 - The external terraces for both of the revised units (no. 28 & no. 29) face west and east only.
 - The projection on the northern elevation has been omitted. The floor area of apartments no. 4, 5, 12, 13, 20 & 21 is reduced from 99 sq. to 95 sq. m.
 - The 4th floor apartments remain unchanged with the exception of a minor change to an external terrace.
- The proposed modifications are contained in the submitted drawings.
- The apartments still comfortably exceed the minimum standards as set out in the Apartment Guidelines (2018).
- The residential mix and density remains unchanged.
- The public open space provision is 12%.
- Private open space provision exceeds minimum standards.

8.0 Responses

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

Drainage

- The initial concerns with regard to drainage remain. The proposal still focuses on pumping and storage with potential to overflow to public open space.

- It is submitted that the concerns of drainage planning would be alleviated if the pumping station and the holding tank were to be vested in IW. IW would be deemed the responsible body.
- Should the Board consider the proposal favourably, and considers that it is within its powers to do so, a condition vesting the foul pump and tank with IW could be included.
- The alternative proposal would require access through third party land. The Carrickmines option could therefore be considered premature.
- There were a number of additional drainage issues outlined in the planner's report and these issues were not addressed in the submission to ABP.
- A number of conditions are recommended to ABP should permission be granted.

Trees

- The proposed removal of trees would be contrary to Policy OSR7 of the County Development Plan.
- The removal of trees will be harmful to the sylvan character of Brighton Road and contrary to County Development Plan policy AR12.
- Should ABP favour granting permission it is requested that conditions are attached requiring the preservation of the sylvan character of the area.

Dominance of Apartment Building

- The proposed height complies with the national guidelines.
- There is an issue with overshadowing and overbearing nature on the adjoining property to the north.
- A greater set back on the upper floors can be achieved by reducing the length of the apartment block or creating a greater set back above the second floor.
- The Planning Authority welcomes the modifications as it reduces the overbearing nature while retaining the density.

9.0 Observation

The following is a summary of observations submitted by Feargall Kenny, Planning Consultant, on behalf the Embassy of the Kingdom of the Netherlands.

- The zoning of the subject site is residential where there is an objective to protect residential amenity.
- The Planning Authority outlined concerns in relation to separation distance and overbearing in relation to the property to the north.
- It is submitted that the height, scale and overbearing nature of the 5-storey apartment block would have an adverse impact on the property to the north.
- It is considered that the property to the north will be overlooked from the second floor balconies of the proposed houses no. 9 & 10.
- The proposed height and scale will have an adverse impact on residential amenities and devalue neighbouring property.
- It is contended that the proposed height is unacceptable in an area characterised by 2-storey houses and adjacent to an ACA.
- The subject site, in accordance with Appendix 9, Section 4.8 of the Building Height Strategy, is located in an area defined as 'Residual Suburban Area'. In these areas the recommended height that will apply is two-storeys.
- The proposed development would be contrary to Section 8.2.3.2 (vii) of the Development Plan.
- It is submitted a set-back of 1.1m does not address the overbearing impact.
- The gross density, which excludes the access road and the sightline provision, of the subject site is approximately 60 dph.
- The density range for the subject site is 35 dph – 50 dph.
- The subject site does not offer accessible good quality public transportation.
- The proposed height, massing and proximity will adversely impact on the ACA.

- The removal of boundary trees and hedgerows is inappropriate within the context of the ACA.
- There are two precedents (appeal ref. 246304 & appeal ref. 243193) where ABP determined that scale of residential developments located proximate to the ACA's were excessive. In both cases the density, i.e. 33 dph and 19 dph, were far less than that currently proposed.

10.0 Response

The following is the summary of a response submitted by the applicant;

Density

- The seeking of a minimum density of 35dph is no longer consistent with national and regional policy, i.e. the NPF and draft RSES.
- In the pre-app consultation with DLRCC it was requested that the density for the proposed development was a minimum of 50dph.
- It is submitted that the proposed density is consistent with national policy.

Building Height

- Building height considerations is comprehensively considered in the first party appeal.
- The Urban Development and Building Height Guidelines, 2018, ensure that a reduced building height is no longer consistent with current planning policy direction.
- The new building height guidelines recommend taller buildings.
- The guidelines set out a number of SPPR's which take precedence over any conflicting policy in County Development Plan.
- The Planning Authority acknowledge that the proposed apartment building is located on the lowest level of the site.

Proximity to Boundary / Overlooking

- There are appropriate set back distances from existing to proposed.
- The relevant standard for opposing windows is 22m.
- The proposed apartment block is set back approximately 34m from the proposed dwellings along the eastern boundary which is generous. Other set backs to existing residential properties are more significant.
- The external terrace of the proposed houses no. 9 & 10 are enclosed and set back within the building. There is only a view west over the public open space. This is illustrated in drawing no. 1803-L-112.
- There is no direct overlooking from proposed houses no. 9 & 10.
- The submitted Daylight and Sunlight Assessment confirms that no overshadowing will occur.
- The northern elevation of the apartment block is designed to ensure that overlooking will not occur.
- In response to overbearing the following is submitted;
 - 5 storeys is consistent with the building heights guidelines
 - The apartment building is located on the lower levels of the site
 - The 5-storey apartment block includes a set back at the 4th floor level
 - Separation distance from the northern boundary is 5m – 7m.
 - The existing northern boundary is largely retained.
 - Any future redevelopment of the northern neighbouring undeveloped lands will require similarly appropriate set back distances.
- Modifications are proposed as set out in the appeal.
- The following factors are considered relevant in relation to justification of the proposal in terms of height and impact on surrounding context;
 - The proposal requires the removal of trees. The submitted Arboricultural assessment has been provided to justify the proposal.

- There will be substantial replanting including fast growing Pinus Sylvestris.
- Provision of trees protection barriers.
- New boundary treatment is in keeping with the character of the Foxrock ACA.
- The rationalisation of a number of entrances onto Brighton Road is considered appropriate from a traffic and road safety perspective. The Local Authority Transportation Planning Section has no objections.
- The proposed 5-storey height is compliant with the Building Height Guidelines.
- The apartment block is located at the lowest point of the subject site.
- The apartment block is set back approximately 115m from Brighton Road.
- The existing and proposed planting will assist in screening the proposal from Brighton Road.

Planning Precedent

- The following is a planning precedent (L.A. Ref. D06A/1997 – ABP Ref. 06D222502).

11.0 Assessment

- Principle of Development
- Impact on Adjoining Residential Amenities
- Residential Amenities for future occupants
- Building Height & Scale
- Density
- Architectural Heritage
- Foul Drainage

- AA Screening
- EIA Screening
- Precedents
- Modified Drawings

11.1. **Principle of Development**

11.1.1. The appeal site is zoned Objective A '*To protect and / or improve residential amenity*', in accordance with the Dun Laoghaire Rathdown 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.

11.1.2. The National Planning Framework (NPF), 2018, recommends compact and sustainable towns / cities, brownfield development and densification of urban 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 objectives as the subject site is located within walking distance to services / amenities associated with Foxrock village. The appeal site is located approximately 2km from the Carrickmines Luas station which provides a park and ride facility. The appeal site is also within 2km of the N11 corridor which provides a range of bus services including QBC's. The appeal site is located approximately 0.8km from Foxrock village.

11.1.3. I also would note that the Planning Authority have 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 provided that the proposal has adequate residential amenity, adequately safeguards the amenities of the adjoining properties, would not result in a traffic hazard, would not be prejudicial to public health, protects the environment, architectural heritage and would be in accordance with the provisions of the Dun Laoghaire Rathdown County Council County Development Plan, 2016 – 2022.

11.2. **Impact on Adjoining Residential Amenities**

- 11.2.1. There are a number of residential properties, both existing and proposed, located adjacent to the appeal site. This includes the existing detached houses which face onto Brighton Road, located to the immediate east of the appeal site. There is also a newly built housing development, i.e. Brighton Wood, which is located to the immediate south of the appeal site. Finally, the residential property Goleen or no. 5 Brighton Road lies to the immediate north of the appeal site.
- 11.2.2. In relation to the properties located to the immediate east of the appeal site I would note that two of these properties, i.e. St. Benedicts and Craughwell, are in the ownership of the applicant. The submitted ‘proposed ground floor plan’¹ drawing indicates the set back distances of the proposed development to these existing properties. I would acknowledge that the houses proposed in the north east corner of the appeal site have a back to back relationship with two existing houses that face onto Brighton Road. The rear elevations of the proposed houses are set back in the region of 35 metres from the rear elevations of the existing two houses. The proposed houses all have rear gardens in excess of 11 metres. These proposed houses are 3-storey in height however the upper floor windows accommodate bedrooms only and as such overlooking, in my view, given the separation distance, is not a concern.
- 11.2.3. The new housing development located to the immediate south is two-storey in height adjacent to the appeal site. These are two-storey terraced houses with rear gardens, i.e. Brighton Wood, adjoining the southern boundary appeal site. There are proposed

¹ Drawing no. 1803-L(-)102

3-storey semi-detached houses located to the immediate north of these existing two-storey terraced houses in Brighton Wood. The south gable elevation of the proposed houses would orientate directly towards Brighton Wood. This proposed south gable elevation is set back approximately 3.4 metres from the site boundary. The gable elevation is a solid elevation with the exception of a small window serving a landing area on the first and second floor level. These windows can be fitted with obscure glazing as such overlooking will not be an issue. Having regard to the orientation of the proposal relative to Brighton Wood and the absence of any overlooking potential I would conclude that the proposal would not adversely impact on the amenities of Brighton Wood.

11.2.4. Goleen or no. 5 Brighton Road is located to the immediate north of the appeal site. This property has a sizeable rear garden and in accordance with documentation on the file there is a private tennis court located to the immediate north of the proposed apartment building. The northern gable elevation of the proposed apartment building is set back approximately 4.5 metres from the site boundary. The northern gable elevation is a 4-storey elevation with a 5-storey penthouse which is set back from the main building line. The proposed 4-storey northern gable elevation is generally a solid elevation with the exception of 2 no. bedroom windows per floor which are proposed as obscure bedroom windows. The proposed said bedrooms are served by a second window which is east and west facing respectively. I note that the Local Authority was concerned with the overbearing nature of the proposed 5-storey apartment building relative to the residential property to the north and this concluded in the Local Authority refusal reason no. 3.

11.2.5. The neighbouring property to the north is Ambassador's residence for the Embassy of the Kingdom of the Netherlands. The embassy is based in Dublin 2. I would note that the application documentation does not include a comprehensive contiguous site section that would demonstrate the proposed apartment building relative to the adjoining site to the north. Furthermore, the application documentation does not include a visual impact assessment that would demonstrate the proposed development relative to the property to the north. In my view, based on the available documentation, it is questionable, given the set back distance to the site boundary

and the height of the proposal, whether the proposed development would impact on adjoining residential amenities and as such whether the proposal would depreciate the value of property in the vicinity in particular the existing property to the north.

11.2.6. The application documentation includes a 'Daylight and Sunlight Analysis'. In accordance with this documentation the proposed apartment building will have an overshadowing impact on the neighbouring site to the north, albeit a partial impact in some instances, on the following dates and times;

- December 21st
 - o 10am
 - o 11am
 - o 12pm
 - o 1pm
- March 21st
 - o 8am
 - o 12pm
 - o 1pm
 - o 2pm

11.2.7. I would accept that some of these overshadowing impacts are marginal and not significant. However, some of the overshadowing impacts are significant and likely to have an impact on established amenities.

11.2.8. I would conclude, based on the information available, that the proposed development is likely to have an overbearing and overshadowing impact on the amenities of the property to the north.

11.3. **Residential Amenities for future occupants**

- 11.3.1. I would consider that the provision of private open space, public open space, quality of housing units, car parking provision and cycle parking would be relevant considerations in assessing the residential amenities for future occupants of the proposed development.
- 11.3.2. In relation to private open space provision paragraph 8.2.8.4 'Private Open Space – Quality' of the County Development Plan, 2016 – 2022, recommends that the minimum private open space for a 4 bedroom (or more) sized house shall be 75 sq. metres. I would note from the submitted Site Layout Plan that all the houses proposed comfortably exceed this minimum requirement. As such the private open space provision for the proposed houses are acceptable. The floor areas for the proposed houses are also generous and would offer a good standard of residential amenity for future occupants.
- 11.3.3. 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, March 2018'. The floor areas for the proposed apartments would exceed the recommended minimum floor areas in the national guidelines and would exceed the minimum recommended floor areas in the County Development Plan. Table 8.2.5 of the County Development Plan, 2016 – 2022, outlines minimum private open space provision for apartments. The open space provision for the proposed apartments is in the form of balconies / terraces. The proposed balconies serving the individual apartments generously exceeds the minimum requirements.
- 11.3.4. I would note from the submitted drawings that approximately 50% of the proposed apartments have a dual aspect orientation. This ratio is consistent with SPPR 4 (ii) of the Sustainable Urban Housing: Design Standards for New Apartments, March 2018'. The primary orientations of the proposed balconies are west and east facing.

11.3.5. The provision of public open space for the proposed development comprises of two parcels of open space within the proposed development and the total amount of public open space is 1,200 sq. metres in accordance with the submitted 'Site Layout Plan'. The proposed open space includes a centrally located open space, approximately 900 sq. m., and the second parcel of open space is located to the west of the apartment building. The public open space provision is in the region of approximately 10% and would therefore be consistent with the minimum public open space provision for a residential development as set out in Section 8.2.8.2 of the County Development Plan. The proposed development would therefore offer a good standard of public open space provision.

11.3.6. In relation to car parking provision I would note that Table 8.2.3 of the County Development Plan requires two spaces for 3+ bedroom houses. The proposed development comprises of 14 houses each with 3+ bedrooms as such the required car parking provision is 28 spaces.

11.3.7. The proposed development includes the provision of 54 no. car parking spaces in the basement level of the proposed apartment building. Having regard to the breakdown of units, in terms of 1-bed, 2-bed and 3-bed, the required car parking provision is 55.5 spaces is in accordance with the provisions of the County Development Plan. The proposal also indicates 5 no. surface car parking spaces. I would consider that the overall car parking provision to serve the proposed development is acceptable. The proposed development provides for 48 no. bicycle parking spaces at basement level which is acceptable.

11.3.8. In conclusion therefore, I would consider that the proposed development would offer a good standard of residential amenity for future occupants.

11.4. **Building Height & Scale**

11.4.1. The proposed apartment building has a 5-storey building height, comprising of 4-storeys and a penthouse level. Appendix 9 'Building Height Strategy' of the County

Development Plan sets out the building height strategy for the County. Section 4.8 of Appendix 9 is relevant for the proposed development. Section 4.8 refers to residual suburban areas, such as Foxrock, not already covered by a statutory plan. It is stated that a general recommended height of two-storeys will apply to residual suburban areas. However, Section 4.8.1 provides for 'Upward Modifiers' and where these circumstances apply consideration for an increase in height by one or possibly two floors will apply. Having reviewed Appendix 9 I would consider that Section 4.8.1 (d) 'topography' and (f) 'site greater than 0.5ha' would be relevant to the proposed development. This Section sets out that a higher building heights than the prevailing height can be favourably considered on the appeal site. Section 5 of Appendix 9 refers to 'General Principles' and this includes to promote higher density through in-fill development. The proposed development is in accordance with this general principle.

- 11.4.2. However, since the adoption of the Dun Laoghaire Rathdown County Development Plan in 2016 a number of national policy documents have been published with specific direction in relation to building heights. National Planning Objective 13 of the NPF states that in urban areas, planning and related standards, including building height, will be based on performance criteria to achieve well-designed high quality outcomes in order to achieve targeted growth. Furthermore the national guidelines Urban Development and Building Heights, Guidelines for Planning Authorities, 2018, state it is government policy that building heights must generally be increased in appropriate locations. Section 3.4 refers to 'Building Heights in suburban / edge locations (city and town)' and advocates apartment development of 4-storeys upwards. The guidelines acknowledge that such development addresses the need for more 1 and 2 bedroom units in line with wider demographic and household formations. Section 3.6 of the guidelines states that 4 storeys or more can be accommodated 'alongside existing larger buildings, trees and parkland, river/sea frontage or along wider streets'.
- 11.5. Overall, I would conclude that the principle of the proposed 5-storey apartment building is acceptable in terms of height having regard to national planning policy

and having regard to Appendix 9 'Building Height Strategy' of the County Development Plan

11.6. **Density**

- 11.6.1. In considering the residential density for the proposed development there are several statutory policy documents that must be considered. In this report I have referred to the National Planning Framework, 2018, in paragraphs 6.1 and 11.1.2 above. The NPF sets out that increased residential density, in appropriate locations, is a fundamental objective of achieving Project Ireland 2040. Furthermore SPPR 4 of The Urban Development and Building Heights, Guidelines for Planning Authorities, 2018, state that future development of greenfield or edge of city/town locations, planning authorities shall ensure minimum densities for such locations as set out in the 'Sustainable Residential Development in Urban Areas, 2009'.
- 11.6.2. 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 close 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.
- 11.6.3. It is policy of the County Development Plan, 2016 - 2022, i.e. Policy RES3 to promote higher residential densities to achieve more compact development. Paragraph 2.1.3.3 of the Dun Laoghaire Rathdown County Council County Development Plan states that higher densities with a minimum of 50 units per hectare will be encouraged for sites located within circa 1 km pedestrian catchment of a Quality Bus Corridor (QBC). The appeal site is located approximately 2km from a QBC.

11.6.4. The size of the appeal site is 0.95 ha and the proposed development provides for 52 residential units as such the residential density for the proposed development is 55 units per ha. I would consider that having regard to national policy that the proposed residential density would be acceptable on this site and would be consistent with Policy RES 3 of the Dun Laoghaire Rathdown County Development Plan, 2016 - 2022.

11.7. **Architectural Heritage**

11.7.1. I would note that in accordance with the County Development Plan zoning maps that the appeal site largely adjoins the Foxrock ACA. However some of the appeal site, including the proposed vehicular access which is situated between Fairholme and Craughwell is located within the boundary of the Foxrock ACA.

11.7.2. I note from the 'Character Appraisal' of the Foxrock ACA that Brighton Road is noted for its overarching tree canopy which provides an aerial ceiling of foliage. Furthermore it is stated that there are original soft roadside boundaries and that the narrow pavements on both sides of Brighton Road contribute to the rural character of the area. The overall visual character of the area is sylvan in nature characterised by low density residential development with well enclosed road corridors.

11.7.3. The proposed development involves the removal of mature trees which are situated to the front of the appeal site and also mature trees situated to the front of Craughwell. The mature trees situated to the front of the appeal site and proposed for removal are numbered trees no. 42 – 46 in the submitted documentation and the trees situated to the front of Craughwell and proposed for removal are numbered trees no. 49-52.

11.7.4. The Local Authority identified the removal of these mature trees as a concern and requested additional information requiring the applicant to retain these trees or provide a robust rationale for their omission. The applicant responded to the

additional information request by submitting a revised Arboricultural Assessment. The revised AA outlined that in respect of trees no. 41 – 47, the nature of poor intervention is considered enough to have resulted in a damage relating to a greatly increased risk of failure. It is also submitted that underground services and two existing manholes run close to the group of trees. There is an excavation trench that appears to support a conduit at a little less than a metres depth. It is concluded that these services would be critical in respect of tree stability and safety. The removal of trees no. 49 – 52 is justified on the basis of achieving adequate sightline provision for the proposed vehicular entrance. The proposal includes replacement planting which includes the installation of 5 no. 6 – 7 metre tall *Pinus Sylvestris* to keep the existing character of the entrance.

- 11.7.5. I would note that the report from the Conservation Officer has no objection to the proposed tree removal and concludes that proposed new entrance employs a material palette and native planting that will create an entrance that is more understated and sympathetic than what was proposed under the previous scheme. The report from the Parks Department, dated 18th January 2019, recommends a refusal as the proposal would be contrary to the County Development Plan policy objective OSR7.
- 11.7.6. The mature trees numbered no. 42 – 46 are set back from the public road and based on a visual observation of the area I would consider that their removal would be a loss for the site however their removal would not, in my view, diminish the overall character of the Foxrock ACA, as they are set back from the public road. In relation mature trees numbered no. 49 – 52 the loss of these mature trees would have an impact on the character of the ACA as their loss would be more noticeable from the public road. However, the proposal involves replanting of some fast-growing specimens which will contribute to the character of the area.
- 11.7.7. I would conclude that the overall scale of the loss of trees would not be significant. I would not concur with the Local Authority's second reason for refusal.

11.8. **Foul Drainage**

- 11.8.1. The Local Authority's first reason for refusal relates to foul drainage and states that the proposed drainage system is premature having regard to capacity issues that apply to the existing foul drainage system on Brighton Road.
- 11.8.2. The foul drainage proposal involves connecting the subject site to the existing public sewer on Brighton Road. It is proposed to use a pumping station to facilitate the connection. I would note, in accordance with the submitted Topographical Survey drawing², that the centre of the appeal site has a level of approximately 76-77m OD whereas the front of the site adjoining Brighton Road has a level of 79m OD.
- 11.8.3. The Local Authority Drainage report, dated 4th September 2018, identified concerns with proposals to pump the foul effluent from the entire site to the existing combined sewer on Brighton Road. The report outlined that potential failure of the pumping station would be prejudicial to public health resulting in contamination.
- 11.8.4. An Irish Water submission, dated 18th December 2018, indicated that upgrade works are required to extend the wastewater network in this area. IW also confirmed, in this report, that proposed upgrade works are at a design stage.
- 11.8.5. Subsequent to an additional information request the applicant submitted that the proposed temporary pumping station will be an interim measure until the gravity-based system is functioning. The proposed pumping station will also include a solution to address a possible mechanical failure.
- 11.8.6. Irish Water in their report dated, 11th January 2019, recommended a refusal as the existing public sewer is deficient leading to surcharges and overflows during times of peak flows and this will be exacerbated by the proposed development which involves

² Drawing no. A085-011

a storage tank and a pumping station outfalling to a foul sewage network on Brighton Road.

- 11.8.7. In the appeal submission the applicant submitted a detailed engineering strategy. The engineering strategy takes account of Irish Water's revised intention not to proceed with the upgrade works on Brighton Road. This strategy confirms that IW is willing to accept a proposal that involves a pumping solution. It is proposed that the foul drainage will be pumped to the Carrickmines Little 375 diameter sewer which is located approximately 500m from the south of the site.
- 11.8.8. The Local Authority in their response submission are still opposed to this alternative solution which involves discharging to Carrickmines Little which would involve access through third party lands for which no permission or consent has been obtained. The Local Authority advised the Board that should the Board be minded to grant planning permission that a condition would resolve the foul drainage issues. In this regard the Local Authority recommended a condition that would require vesting the foul pump and tank to Irish Water.
- 11.8.9. Overall, I would conclude that there are genuine concerns with the proposal that involves storage and pumping of effluent. The appeal site levels are lower than Brighton Road and would require a pumping station to an existing network that is experiencing capacity issues. The proposed alternative solution would also require a pumping station to the Carrickmines Little network some 500m from the appeal site. However, the issue of third-party consents has not been addressed. Therefore, I would consider that this option is not feasible without third party consents in place. Overall, I would conclude that the proposed development is premature pending a successful foul drainage proposal and I would concur with the Local Authority's first reason for refusal.

11.9. **AA Screening**

- 11.9.1. 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.
- 11.9.2. The submitted AA Screening, which accompanied the planning application, assessed potential impacts of the proposed development on existing Natura 2000 Sites. The subject site is not actually located within a designated site, however there is an SAC (South Dublin Bay SAC, site code 000210) and an SPA (South Dublin Bay and Tolka Estuary SPA, site code 004024) located approximately 5km to the east of the appeal site. The qualifying interests for the SAC include mudflats and sandflats, annual vegetation of drift lines, Salicornia and other annuals colonising mud and sand and shifting dunes. The qualifying interests for the SPA include 14 birds. 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. As part of the proposed development an on-site attenuation system is proposed. This proposed attenuation system will ensure that surface water run-off from the proposed development will be the same as the current greenfield rate.
- 11.9.3. The AA Screening report, submitted by the applicant, concludes that the proposed development will have no direct impacts on established Natura 2000 sites.
- 11.9.4. I would 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 any European Sites, i.e. site code 000210 and site code 004042, in view of the sites conservation objectives and a stage 2 AA is therefore not required.

11.10. **EIA Screening**

- 11.10.1. 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.

11.11. **Precedents**

- 11.11.1. The submission from the observer submits two previous cases which the observer refers to precedents for the proposed development. In both cases the original number of dwellings were reduced in number. One of the precedents is located on Torquay Road and the second precedent is a neighbouring site to the appeal site, i.e. Brighton Wood, which is located to the immediate south of the appeal site. Of the two precedents I would consider that Brighton Wood would be most relevant given its location. However the observer submits that the density for the Brighton Wood, which was permitted by ABP, is 19 dph. However I would note that Brighton Wood was permitted in 2014 and the national policy environment has changed significantly in the period since 2014. I would consider that the current case before the Board must be considered on its own merits.

11.12. **Modified Drawings**

- 11.12.1. The appeal submission includes an alternative proposal. In this regard the revised proposal includes a modification to the proposed apartment block. It is proposed to set back the northern elevation of the third floor by 1.1 metres. This modification will ensure that the building line of the proposed third floor, facing northwards, aligns with the building line of the fourth-floor level. The proposed

modification will ensure that two apartments, i.e. Unit Type A, are reduced in floor area from 95 sq. metres to 82 sq. m.

11.12.2. The revised proposal results in minor modifications to apartments no. 4, 5, 12, 13, 20 & 21 from 99 sq. m. to 95 sq. m. The fourth-floor apartment remains unchanged but there is a slight change to the associated terrace which has reduced to 21 sq. m.

11.12.3. I have examined the revised modifications and I would acknowledge that the modification would have an impact in reducing scale however I would consider that the modifications would not satisfactorily address the concerns that I have outlined in Section 11.2 above. The proposed development, including the revised proposal, having regard to the height, scale and proximity of the proposed development to the site boundary that the proposed development would seriously injure established residential amenities in terms of overshadowing and visual overbearing. I would concur with the Local Authority third reason for refusal and I would recommend a similar refusal reason to the Board.

12.0 Recommendation

12.1. 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.

13.0 Reasons and Considerations

1. Having regard to the deficiencies in the existing foul sewerage system serving the site and serving the area, it is considered that the proposed development would be premature pending adequate overall resolution of the existing deficiencies in the system and would, therefore, be prejudicial to public health.
2. The proposed development by reason of its layout, design and close proximity to the northern boundary would be visually obtrusive, giving rise to

overbearing and would result in overshadowing to the property in the immediate north of the site. The proposed development would be contrary to the current development plan policies for the area to preserve and improve residential amenities, and would seriously injure the amenities of the property in the vicinity and would therefore be, contrary to the proper planning and sustainable development of the area.

Kenneth Moloney
Planning Inspector

9th August 2019