



An
Bord
Pleanála

Inspector's Report ABP-303919-19

Development	Demolition of existing two storey public house and construction of 3 no. Commercial Units and 46 No. Apartments and all associated site works
Location	The Former Paidi Ogs Public House, Junction of Church Road, and Old Navan , Mulhuddart
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	FW18A/0187
Applicant(s)	Frank Gleeson.
Type of Application	Permission.
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Frank Gleeson.
Observer(s)	None
Date of Site Inspection	29 th of May 2019

Inspector

Karen Hamilton

1.0 Site Location and Description

- 1.1. The subject site consists of a derelict public house (Paidí Ogs) located within the centre of Mullhuddart, on the outskirts of north Dublin. The site is bound to the south by the Navan Road, east by Church Road and the River Tolka runs directly adjacent to the site at the north.
- 1.2. The public house faces directly onto the public footpath along the Navan Road and is attached to a two storey takeaway, west, beside the entrance to the carpark. The site comprises of both the building and a large car park accessed from the main Navan Road, which extends to the rear of the neighbourhood at the northwest.
- 1.3. Mullhuddart centre includes a range and mix of uses ranging from retail to restaurant with buildings facing directly onto the public footpath/ Navan Road with heights between 3 and 4 storeys.
- 1.4. The Tolka River, along the north, forms part of the Tolka Valley, which provides amenity areas in the form of passive recreation. On the opposite side of the river, to the north, is a large residential area comprising of a range of house types with a four storey apartment building orientated along the Tolka River.

2.0 Proposed Development

- 2.1. The proposed development would comprise of the following:
 - Demolition of an existing two storey public house,
 - Construction of a new building including:
 - 3 no commercial units (2 no. retail, 1 no. licenced public house)
 - 46 no. apartments (4 no. studio, 14 no. one bed, 23 no. 2 beds and 5 no. 3 beds)
 - All associated site works.

3.0 Planning Authority Decision

3.1. Decision

Decision to refuse permission for 4 no. reasons as summarised below:

1. Due to the design, layout and elevation treatment the proposed development would be visually obtrusive, seriously injure the amenities of the area and materially contravene Objective PM 33 which seeks to enhance the fabric of urban centres.
2. Due to the design, bulk and mass, the proposed development would have a negative impact on an important interface between a Local Centre and the High Amenity area of the Tolka Valley and would contravene Objectives NH51 and NH52 of the development plan.
3. The proposed development is partially within lands zoned as fluvial flooding in the Strategic Flood Risk Assessment of the development plan and the applicant has not submitted a flood risk assessment as required by national guidance.
4. Taking into account the specific provisions of an indenture between the Council and a former owner, the planning authority is not satisfied that the applicant has sufficient legal interest in the lands or approval of a person in order to carry out the proposed works.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner reflects the decision to refuse permission and is summarised below:

Design

- The density and height of the proposal is acceptable at this location although the treatment onto the Church Road has an insufficient treatment and the scale of the height has not be substantially justified.

- The North West elevation and south east elevations are considered excessively bulky in the setting of this prominent site.

Access and Parking

- The access into the site is not adequate to allow segregation of HGVs, cars and bicycle.
- A specific indenture between the Council and a previous owner included an agreement that an area of the carpark was used by members of the public.

Flood Risk

- The area is identified as being at risk of flooding in the Strategic Flood Risk (fluvial). There has been no flood risk assessment submitted.

Appropriate Assessment

- No details have been submitted and the site is immediately adjacent to the Tolka River.

3.2.2. Other Technical Reports

Parks Department- Request for additional information including:

- A Tree protection plan,
- Provision of play space for the apartments and;
- A revised site layout map including a 10-15m riparian buffer strip along the top of the bank.

Transport Department- Request for additional information including:

- Revised entrance layout to allow pedestrian priority;
- Revised layout to allow segregation for HGV reversing manoeuver;
- Segregation of residential parking from the general and visitor parking provision;
- Clarification on maintenance of an access gate;
- Increase in the provision of cycle parking;
- Access for fire tender.

Water Service- Request for additional information:

- Submission of a flood risk assessment.

3.3. Prescribed Bodies

Irish Water – Request for additional information on the location of the foul sewer on the site and the provision of a wayleave.

3.4. Third Party Observations

One third party submission was received from a local representative and the main issues raised relate to the overall design of the proposal and the impact on the character of Mulhuddart Village, in particular the 5 storey building. Reference was provided in relation to the flooding on the site and the impact on traffic in the village.

4.0 Planning History

FW13A/0127

Permission granted for change of use of a single retail unit to 2 restaurants with sit in and takeaway service.

FW10A/0040

Permission granted for a change of use to a rear portion of Paidi Og's public house from nightclub to retail unit, external ATM and other associated works.

FW08A/0612

Permission refused for the demolition of public house and the construction of a mixed use development (4,297m² residential, and 596m² commercial) due to:

- the excessive provision of residential development in a neighbourhood centre,
- the design of the development in the vicinity of the Tolka Valley High Amenity Area,
- overshadowing of the courtyard would diminish the function use of the amenity area,
- insufficient provision of car parking,

- premature development pending the Mulhuddart Bridge Replacement Scheme which would lead to serious traffic congestion,
- insufficient legal interest by the applicant to carry out the proposed development.

5.0 Policy and Context

The Planning System and Flood Risk Management Guidelines for Planning Authorities (Nov 2009).

Guidelines for Planning Authorities on Sustainable Residential Development in Urban Area (2009). Urban Design Manual, A Best Practice (DOEHLG, 2009).

Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2015).

Urban Design Manual- A Best Practice Guide and the Design Manual for Urban Roads and Streets (2013) DMURS.

Guidelines for Planning Authorities, Retail Planning. (2012)

5.1. Fingal County Development Plan 2017-2023

Part of the site is located on lands which are designated as a Local Centre where it is an objective to “*protect, provide for and/or improve local centre facilities*” and a section along the north, adjacent to the Tolka River designated as High Amenity, where it is an objective to “*Protect and enhance high amenity areas*”.

Policies from the development plan, most relevant to the assessment of the proposed development are summarised below.

The lands are within Mulhuddart Village which in one of 11 settlements in the second tier of Table 2.9 Consolidation Areas within the Gateway located within the Metropolitan Area.

Mullhuddart

Objective 1- Provide for appropriate mixed use village-scale development which enhances local services and community facilities, and has a residential content.

Objective 3- Improve and promote links between the Tolka Valley Park, Blanchardstown Centre and Mulhuddart Village.

Urban Consolidation and Design

Objective PM03 - Identify obsolete and potential renewal areas within the County and encourage and facilitate the re-use and regeneration of derelict land and buildings in the County's urban centres.

Objective PM31- Promote excellent urban design in accordance with the 12 urban design principles set out in the *Urban Design Manual – A Best Practice Guide* (2009).

Objective PM33- Enhance and develop the fabric of existing urban centres in accordance with the principles of good urban design, including the promotion of high quality well-designed visually attractive areas.

Tolka Valley Park and Amenity

Objectives NH51- Protect High Amenity areas from inappropriate development and reinforce their character, distinctiveness and sense of place.

Objective NH52- Ensure that development reflects and reinforces the distinctiveness and sense of place of High Amenity areas.

Flooding

Objective SW02- Allow no new development within floodplains other than development which satisfies the justification test, as outlined in the national guidelines.

Objective SW04- Require the use of Sustainable Urban Drainage Systems (SuDS) to reduce the potential impact of existing and predicted flooding risks.

Objective SW07- Implement the national guidelines and a site-specific Flood Risk Assessment to an appropriate level of detail, addressing all potential sources of flood risk, is required for lands identified in the SFRA, located in area including Mulhuddart, demonstrating compliance with the guidelines, paying particular attention to residual flood risks and any proposed site specific flood management measures.

5.2. Natural Heritage Designations

The site is located c. 13km North West from the edge of South Dublin Bay and River Tolka Estuary SPA.

5.3. EIA Screening

Having regard to the nature and scale of the proposed development 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.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are submitted from the applicant in relation to the reason for refusal and the issues raised are summarised below under headings:

Refusal reason No. 1

- The existing village is dominated by three storey mixed use developments with both modern and traditional.
- The materials on the existing building is made up of a wide range and there is no consistency.
- The building height beside the existing two storey takeaway (remaining on the site) has been stepped down to three storeys in height.
- The design has been revised (detailed below) and photomontage drawings (Appendix O) and a 3D model video (Appendix P) have been submitted with the grounds of appeal.
- Revised drawing 3.1.100_Rev A includes:
 - Reduction in the height of the building adjoining the takeaway from four stories to three stories (removal of apartment no. 39).
 - Alterations to the entrance and carpark layout.

- Modifications to the northern boundary to provide a low stone wall and railings.
- Revised drawing 3.1.101_RevA includes:
 - A new playground to the west of the apartment building, adjoining the carpark entrance and the surface carpark,
 - Provision of three common apartment storage areas (30.2m², 56.6m² and 25.8m²) for 45 no. bicycle spaces and circulation shaft on the lower ground floor,
 - New entrance from the public street, along Navan Road, to access the apartment units,
 - Amendment of carpark layout to include autotrack drawings.

Refusal reason No 2

- A number of design changes and additions have been included based on the comments from the Local Authority (Appendix N, revised visuals Appendix O and 3D model Video Appendix P).

Refusal reason No 3

- An engineer's report has been submitted (Appendix L) which includes the following amendments proposed to the overall proposed to address the concerns of the transport section:
 - Inclusion of a speed table at the entrance, a stop line before the pedestrian crossings, the inclusion of tactile paving and the removal of 2 no. car parking spaces at the vehicle entrance to allow pedestrian priority.
 - Removal of 3 no. car parking spaces to allow greater manoeuvring of delivery vehicles.
 - Reservation of parking spaces 1-59 for private parking and remaining 18 spaces will facilitate visitor and commercial parking.
 - Provision of addition secure cycle parking within the complex.
 - Autotrack analysis to show sufficient access for a fire tender.

Submission of a Flood Risk Assessment.

Parks Department

- Appendix N includes a proposed boundary treatment along the north of the site and includes the removal of the block wall, replaced with a low stone wall and railing.
- A new playground is included in the car park to comply with the requirements of the national apartment guidelines, provision of a play space for schemes over 25 or more units.
- There has been no tree survey submitted although this could be included as a condition.
- There is no proposal for clearance of any vegetation, therefore the provision of a 10-15m riparian strip has not been included.

Irish Water

- A full site investigation would be required to determine the exact location of any pipes on the site.
- The exact distance from the proposed building to the existing pipework cannot be confirmed at this time.
- If any existing pipe is found to be within distance outlined by Irish Water a diversion agreements would be necessary (IW).

6.2. Applicant Response

The applicant is the appellant.

6.3. Planning Authority Response

A response to the grounds of appeal was received from the planning authority and the issues raised are summarised below:

- The principle of development at this location is supported.
- The amendment to the design, as submitted in the appeal are noted although these are considered minor and the overall bulk and mass, external materials

and relationship to adjoining buildings and high amenity lands would not successfully contribute to an important landmark building within Mulhuddart.

- The redevelopment of this strategic site should be of a high urban design standard and comply with Objective PM33, NH51 and NH52 of the development plan.
- There are serious reservations with regard to the location and ultimate usability of the playground proposed to the west of the building (Drwg 3.1.101 Rev A) and the proximity to the surface car park, entrance to the undercroft car park and bin storage area.
- The revised drawings include the reduction of the northern boundary wall with a low stone wall and metal railings. The site is located within Flood zone A and B and further examination of the flood risk pertaining to the site would be required.
- Legal documents submitted refer to an Indenture which states:
“The Council undertakes for its part that in the event of the Company wishing to extend its premises the Council undertakes and agrees that it will not cite inadequate parking facilities as a reason for objecting to any extension”
No further details are submitted with the application.
- In the event of a grant of permission a Section 48 contribution is requested.

6.4. **Observations**

None received

6.5. **Further Responses**

The appellant has further responded to the planning authority submission as summarised below:

- A letter from the applicant’s solicitor confirms they have submitted conclusive evidence of ownership and the legal title of the applicant.

- The OPW erected flood defences (2003-2009) and the carpark was seen as a compatible use. The Parks Department requested low walls with railings as an alternative to the 2m high block wall.
- The proposed attenuation will slow the run-off rate reducing the downstream impact of storm water from the development.
- Attenuation calculations submitted indicate that the storm water can be accommodated on the site by use of green roofs and permeable paving.
- A Flood Risk Assessment has been submitted which provided justification for the development as per the zoning on the site and part 2 of the Justification Test in regard to the four criteria (flood risk, measures to minimise risk, flood protection and good urban design).

7.0 Assessment

7.1. The following assessment has regard to the plans and particulars submitted with the grounds of appeal which includes a revision to the overall scheme to include the following:

- Removal of one apartment unit to allow a reduction in height of façade along the Navan Road, adjoining the existing takeaway,
- Alteration to elevations along the main facade, Navan Road, incorporating the provision of access for the apartments,
- Alterations to the entrance including the removal of 2 no. car parking spaces at the entrance of the site, raised pedestrian crossing and vehicle stop line set forward to allow pedestrian priority at the entrance,
- Segregation of car parking spaces for residential and commercial and visitor parking,
- Internal alterations of ground floor to include bicycle parking and communal storage space,
- Inclusion of new playground on the ground floor adjacent to the car park,
- Reduction in the height of the block wall along the north to incorporate and reduced block wall with railing over.

- 7.2. The altered design has been circulated to the planning authority who submitted a response to the amendments.
- 7.3. I consider the proposed amendments do not significantly alter the proposed development, can be accepted as a revision and I am assessing this application *de novo* on the basis of the revised design submitted by the applicant.
- 7.4. The main issues of the appeal can be dealt with under the following headings:
- Principle of Development
 - Design and Layout
 - Foul Sewer
 - Flooding
 - Access and Parking
 - Appropriate Assessment

Principle of Development

- 7.5. The subject site is located on a dominant corner site within Mullhuddart local centre with frontage, south, along the Navan Road and, east, along Church Road. The rear of the site backs directly onto the Tolka River, designated as an area of High Amenity in the development plan. The site comprises of a derelict public house (Paidí Ogs) along the east, and a car parking on the remainder. The car parking appears to be currently used as a public car park for the larger Mullhuddart neighbourhood area.
- 7.6. The proposed development includes the removal of an existing public building and the construction of a new 4/5 storey building incorporating ground floor retail units along the southern façade with the remaining upper and rear floors incorporating apartment units. The provisions of the car park are to remain similar to the existing layout albeit allocated for different uses, further discussed below.
- 7.7. The designated zoning along the Navan Road, south, is for a local centre with an objective to “*protect, provide for and/or improve local centre facilities*” whilst the area along the north, adjacent to the Tolka River is designated as High Amenity, where it is an objective to “*Protect and enhance high amenity areas*”.

- 7.8. It is noted that part of the site encroaches onto an area designated as amenity although cognisance is given to the planning history and non-confirming uses within the site and I have no objection to the principle of the use on the site for a mixed use development, subject to complying with development policies and other planning requirements as addressed in the following sections.

Design and Layout

- 7.9. The proposed building on the site includes 3 no. commercial units (2 no. retail, 1 no. licenced public house), accessed directly onto the public footpath along Navan Road, and 46 no. apartments (4 no. studio, 14 no. one bed, 23 no. 2 beds and 5 no. 3 beds) on the upper floors with all elevations visible to the public. The rear of the site backs onto the Tolka Park Valley an area designated for high amenity.
- 7.10. The first and second reason for refusal relates to the design, layout and elevation treatment and insufficient integration at a visually prominent junction, where the proposed development would materially contravene Objective PM 33 of the development plan requiring the promotion of good urban design. In addition, the location of the site as an interface with a high amenity zoning of the Tolka Valley is raised as a concern, materially contravening NH51 and NH52.
- 7.11. Objective PM31 of the development plan promotes excellent urban design in accordance with the 12 urban design principles set out in the *Urban Design Manual – A Best Practice Guide* (2009) which in combination with the national guidelines advocate high quality sustainable development that are well designed and built to integrate with the existing or new communities and the design manual provides best practice design criteria such as context, connections, inclusivity, variety, efficiency, layout etc. The proposed development is assessed against these criteria in greater detail below for both the commercial and residential.

Density & Height

- 7.11.1. The proposed development includes 45 no. units (revised plans have removed one apartment unit) providing a density of 37.4 ha with a building height of 4/5 storeys (c. 18m) with 5 stories along the front of the site. The development plan does not specifically include a requirement for density as a means of guiding the amount of residential units. SPPR 4 of the *Urban Development and Building Height Guidelines* (2018) requires that minimum densities from the *Sustainable Residential*

Development in Urban Area Guidelines (2007) are applied to appropriate developments. These guidelines require an increase in density on sites which are located along public transport routes, a minimum of 50 dwellings per hectare are required and for those lands in suburban locations. The report of the area planner noted the location as appropriate to accommodate the density and height of the proposed building. The proposed development provides c. 38 units per ha and whilst lower than the recommended density it must be acknowledged that the local centre zoning on the site and the integration of the commercial units on the ground floor and expanse of car parking has been provided to meet the zoning objective. Therefore, I consider the density acceptable.

Elevation Treatment

- 7.12. The site includes three dominant frontages, Navan Road to the south, Church Road to the east and Tolka River to the north. The ground floor levels of the site are below Church Road and the current building is currently lower than the road. The proposed building is generally in keeping with the footprint of the existing building to be demolished.
- 7.13. The elevation treatment of the building consists of a mix of materials including, grey aluminium windows, different coloured reconstituted stone and glazing. The design is a simple modular type design which I consider is representative of the nature of the site. I consider the choice of high quality materials is appropriate for this site. The reasons for refusal specifically referenced the bulk and massing of the building which I consider appropriate for this urban location and representative of urban development.
- 7.14. Navan Road: The treatment along the Navan Road is generally in keeping with those buildings to the west, which form part of Mulhuddart local centre which consist of 3-4 height buildings with ground floor retail and a mix on the upper floors. The subject site is attached to a 2 storey takeaway building and the applicant has reduced the height of the building to three storeys, directly adjacent to this takeaway to provide a transition area. I consider this amendment reasonable.
- 7.15. Church Road: The elevation along the east is set below Church Road, in line with the current building and a side gate and access separates both. A public house with

associated beer garden is located to the front, south of the ground floor, and apartment buildings face along the east.

- 7.16. The elevation treatment along Church Road is similar to the other elevations, the finish floor level or contextual drawings of the proposed building relative to Church Road does not accompany the plans and particulars. Whilst I note computer generated images (CGIS) accompanied the revised drawings, there is concern the finished floor levels are absent from the overall design.
- 7.17. Objective PM33 of the development plan, included as a reason for refusal, requires the principles of good quality design to be promoted at main entries to towns or villages. As stated above, I consider the overall design and use of materials is appropriate at this location and having regard to the location of two single storey buildings along Church Road, outside the control of the applicant, I consider the set back is a necessity.
- 7.18. Tolka River: The site backs onto the Tolka River which is designated in the development plan as an area of high amenity. The river has a green corridor along the majority of both sides although this site has encroached towards the edge of the river in the past and the green space has been removed. There is a four storey apartment building, the opposite side of the Tolka River, facing towards the river, separated by a public green space.
- 7.19. Objective NH51 & NH52, of the development plan, requires the protection of high amenity areas from inappropriate development and highlights the need for protecting character, distinctiveness and sense of place. The elevation treatment along the north facing onto the Tolka River, as described above, consists of a mix of re-constituted stone panel and glazing and corner balconies are provided for apartments to the east and west of the building.
- 7.20. The site is a brownfield, urban infill site and therefore the principle of a high density development is deemed appropriate. The increase of height is required to ensure sufficient densities, to comply with national standards, are achieved. As stated above, I consider the overall design and choice of external materials will ensure a high quality design and will fit into the context of the site, therefore complying with the 12 criteria in the urban design guidance.

7.21. I consider design of the proposed development is appropriate at this location within an urban infill, mixed use area and I consider, having regard to the pattern of development in the vicinity, the proposed development will not have a significant negative visual impact on the surrounding area of Mulhuddart local centre and therefore complies with the 12 criteria in the urban design manual and the objectives of the development plan.

Boundary Treatments

7.22. A large block wall runs along the north of the site separating the site from the Tolka River. The report of the Parks Department considered the block wall was not appropriate for this high amenity location along the Tolka River. Revised drawings submitted with the grounds of appeal included the removal of the block wall and replacement with a low stone wall and railing as recommended. No illustrations were included. Whilst the provision of a lower wall may be more aesthetically appealing at this location, I note reference to the existing wall as a flood defence, further detailed below. Therefore, considering the use of the block wall as a flood defence, alterations along the boundary are not considered acceptable.

Apartment Design

7.23. The apartment building faces south and includes east and west elevations. The balconies of those apartments facing north are orientated either east or west and have dual aspect. The proposed development has been accompanied by a schedule of the proposed floor space indicating compliance with the national apartment guidelines, which I consider reasonable. The tenure mix provided will accommodate an appropriate housing range.

Communal Open Space

7.24. The main communal open space is provided on the flat roof of the fifth floor with 600m² provided integrating raised planters and seating and screened by a safety balustrade.

7.25. The national guidance for apartments development “ Sustainable Urban Housing: Design Standards for New Apartments- Guidelines for Planning Authorities” permits the use of roof gardens subject to safety requirements and require the provision of appropriate play areas for schemes with more than 25 residential units. Objective DMS57 of the development plan requires the provision of 10% of the proposed

development site to be used as public open space and the Council has discretion for a financial levy in lieu of open space not provided.

- 7.26. The report of the Parks Division referred to the absence of sufficient public open space within the overall scheme including reference to the national apartment guidelines and the provision of play areas for apartment scheme with greater than 25 units. The reason for refusal did not reference the provision of open space as inadequate or substandard.
- 7.27. The amended design, submitted within the grounds of appeal include the removal of 16 no. car parking spaces for the provision of a playground adjoining the rear ground floor entrance to the apartment scheme. There has been no specification of the play equipment or details of the screening around the perimeter of the play area.
- 7.28. Whilst I note there is a lack of adequate detail to assess the quality of the proposed play area, I consider the provision of the roof garden can provide a high quality amenity space and I consider conditions, relating to screening and equipment, can be reasonably included to ensure the provision of a high quality play area for the revised playground designation.

Trees

- 7.29. The site contains c. 6 no. large mature trees at the entrance of the site within the car park. The applicant states that a tree protection plan will be submitted prior to construction. The report of the Parks Division raised concern over the protection of trees and recommended additional information was sought including:
- An Arboriculture Impact Assessment,
 - Tree Constraints Plan,
 - Tree Protection Plan,
 - Arboriculture Method Statement.
- 7.30. Objective PM64 of the development plan requires the need to protect, preserve and ensure the effective management of trees and groups of trees, which I consider reasonable. I note the trees add to the character of the site and surrounding area and should be retained as part of the overall development and should the Board consider granting permission, a condition can be reasonably includes to ensure retention.

Foul Sewer

- 7.31. A submission from Irish Water, to the planning application, referred to the location of the foul sewer on the site and requested submission of additional information on the maintenance of a minimum distance of 10 times from the pipe diameter or the depth to the invert of the pipe, whichever is greatest. The report of the area planner did not refer to IW request although the applicant, in their grounds of appeal, state that full site investigation is required to determine the exact location of the pipe and the exact distance from the proposed building cannot be confirmed. It is stated that a diversion agreement will be submitted to IW prior to development, should it be required.
- 7.32. I do not consider adequate information has been submitted to permit a full assessment of the proposed development, in particular the scale of works required to upgrade the foul sewer. In addition, I note the location of the site along the Tolka River, which is a site constraint and having regard to the lack of detail of information with the proposal I do not consider the proposed development can be fully serviced.

Flooding

- 7.33. The site is located in an area which has been identified as Fluvial - Indicative 1% AEP (100-yr) Event on the OPW CFRAM maps. The site and surrounding area are currently under review as per www.floodmaps.ie. The third reason for refusal relates to the absence of any flood risk assessment as required by the national guidance "The Planning System and Flood Risk Management Guidelines for Planning Authorities".
- 7.34. A Flood Risk Assessment (FRA) was submitted with the grounds of appeal which details the justification test for the zoning on the site, the compatibility of the ground level parking with the flood zone, references the flood events within the vicinity of the site, the Tolka Flood Risk Alleviation Scheme and the relatively newly constructed concrete walls (within 10years) along the river's edge, which is assumed to be flood defences, erected by the OPW. The FRA references Map 18 of the SFRA of the development plan, which highlights the site as a defended area.
- 7.35. The proposed development includes permeable paving for the promotion of Sustainable Urban Drainage Systems (SUDS) and a hydrobrake on site to regulate the flow of surface water to a maximum discharge of 0.931l/s, into the existing storm water network, which I consider reasonable.

- 7.36. Chapter 7 of the development plan provides guidance for development which may be impacted by flooding and in regard to pluvial flooding, Sustainable urban Drainage Systems (SuDS) can alleviate and mitigate against such flooding. The applicant submits that the attenuation tank and use of green roof and permeable paving will prevent any flooding in the vicinity.
- 7.37. The revised plans submitted with the grounds of appeal include a revision to the block wall along the north of the site, in response to a query from the Parks Department, and includes a block wall with railing over, no illustrations have been submitted. I note this contradicts the information contained in the FRA and therefore I do not consider there is sufficient information with the proposed development to definitively conclude the proposed development would not be at risk of flooding.
- 7.38. Having regard to the designation of the site as Flood Zone A and B, (fluvial) within the SFRA of the development plan, the location of the site within an area currently under review by the OPW and the proposed removal of the block wall along the north of the site, it is considered that in the absence of adequate information relating to the risk of flooding, analysis of such risk, and appropriate mitigating measures to address any risk the proposed development

Access and Parking

- 7.39. The site contains a large car park along the west, associated with historic permissions, currently used for public parking. The proposed development includes the retention of a significant part of the car park and integration into the overall design, with access restricted via a barrier at the entrance into the site.
- 7.40. The grounds of appeal include a response to queries from the parks and roads sections, in addition to the reasons for refusal, which includes alterations to the entrance, car park layout and number of car parking spaces. I have addressed the issues relating to access and parking separately below.

Access

- 7.41. The proposed development includes alterations to an existing entrance, the revised design, submitted with the grounds of appeal, includes alterations to the entrance to ensure pedestrian priority and enhanced sight lines. The alterations include the removal of 2 no. parking spaces at the entrance and integration of a raised pedestrian platform. I note the standards of the national guidance, DMURS, and the

revised design and I consider the access into the site is an acceptable stand for the proposed development.

Ownership

- 7.42. The planning authority has cited appropriate land ownership as the fourth reason for refusal having regard to an indenture signed between the Council and the owner of the site following the purchase of the carpark in 1989. The registered title includes an agreement that the car park shall be retained and made available for the public.
- 7.43. The applicant has attached a letter from Clerkin Solicitors (Appendix M) and a portion of the copy of the Indenture from 1989 between the Council and an owner of the site with the grounds of appeal, which states that the Council is obliged not to refuse or object to an application on the basis of parking. In addition, the submission states that the applicant is the full legal owner of the site.
- 7.44. The Development Management Guidelines for Planning Authorities advise that the planning system is not designed as a mechanism for resolving disputes about title to land or rights over land and these are ultimately matters for resolution in the Courts. As section 34(13) of the Planning and Development Act 2000, as amended, states, a person is not entitled solely by reason of a permission to carry out any development. Having regard to the facts of the case, I therefore do not consider it necessary to inquire further into this matter, since any grant of permission will be subject to the provisions of section 34(13), placing the onus on the applicant to be certain under civil law that he has all necessary rights in the land to exercise the grant of permission.

Car parking

- 7.45. The site is located along a main bus route which, in addition to other areas, connects the site with DCU. Table 12.8 of the development plan sets out car parking requirements as follows:

Commercial: 1 space per 20m²

Public Bar: 1 per 15m²

Residential: 1-2 (1- 2 bedrooms) and 2 spaces (more than 3 bedrooms)

- 7.46. 83 no. car parking spaces were provided with the proposed development. The amended design, with the grounds of appeal, removed 2 no. spaces at the entrance

to accommodate sightlines and 16 no. car parking spaces to accommodate a playground. 72 no. spaces have been provided for (487.6m²) of retail space and 45 no. apartment units.

- 7.47. I note the requirement for car parking standards in the development plan should be applied to sites within the context of government policy aimed at promoting modal shift to more sustainable forms of transport. In this regard, I note Section 4.19 of the national guidelines for apartments refers to the need to minimise car parking provision at highly accessible locations or at confluence of public transport systems. In addition the car parking strategy in the development plan permits accountability of missed use provision having peak parking demands at different times of the day and week.
- 7.48. Therefore, having regard to the location of the site along a main transport corridor with bus links to the surrounding area, the mixed use development proposed, the national guidance and provisions of the development plan I consider the provision of 72 no. car parking spaces is sufficient for the overall scheme.

Cycle Parking

- 7.49. The proposed development includes 45 no. apartments and Table 12. 9 of the development plan includes the standards for cycling spaces as follows.

Apartments: 1 space per unit plus 1 per 5 for visitors

Retail: 1 per 100m² GFA

- 7.50. The initial proposal included 28 no. cycle spaces within the undercroft of the building and 10 visitor space, the report of the transportation department did not consider this provision sufficient and required a minimum of 2 secure spaces per apartment unit (90 spaces). The revised design includes an increase in communal storage space within the ground floor, with alternative communal storage facilities (c. 120m²) with foldable wall-mounted cycle racks to accommodate a minimum of 90 cycle spaces.
- 7.51. Having regard to the location of the site within a local centre along a main bus route and with cycle links along the Tolka River and towards surrounding areas, I consider the overall proposal for car and cycle parking complies with the national guidance for sustainable residential development and the apartment guidelines.

Appropriate Assessment

- 7.52. The site is located adjacent to the Tolka River which flows c.13km south east directly into the South Dublin Bay and River Tolka Estuary SPA. The conservation objective is to maintain the favourable conservation condition of 13 no. bird species and other wetland and waterbirds. Having regard to the further information request from Irish Water and the applicant's response regarding site investigation works, I do not consider it has been reasonably established that the site can be serviced, with particular regard to the foul sewer.
- 7.53. Therefore on the basis of the information provided with the application and appeal and in the absence of complete details to service the site I cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the adjoining Tolka River and South Dublin Bay and River Tolka Estuary SPA, or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

8.0 Conclusion

- 8.1. The reasons for refusal relate to the overall design of the proposed building, impact on the Mullhuddart local centre and Tolka River, flood risk and inadequate land ownership. The Parks Department, Traffic Section and Irish Water raised concerns on the proposed development and requested additional information, of which was not included as reasons for refusal. The applicant has submitted an amended design, with the grounds of appeal, including alterations to the scheme, many of which are designed to address concerns raised by internal sections of the local authority. Whilst I note the planning authority response considers the alterations minor, I consider the alterations relating to amendments to the boundary treatment, and foul sewer treatment have implications for the surrounding environment. I consider these alterations are significant and should be available for the public.

9.0 Recommendation

- 9.1. I recommend that planning permission should be refused for the reasons and considerations as set out below.

10.0 Reasons and Considerations

1. The proposed development is in an area which is deemed to be at risk of flooding, by reference to the current Development Plan for the area and the documentation on file. The proposal includes a block wall along the north of the site and is defined as a defended area in the Strategic Flood Risk Assessment of the Fingal County Development Plan 2017-2023. Having regard to the The Planning System and Flood Risk Management Guidelines for Planning Authorities (Nov 2009) and the provisions of the Development Plan in relation to development proposals in areas at risk of flooding, it is considered that, in the absence of adequate information relating to the risk of flooding, analysis of such risk, and appropriate mitigating measures to address any risk. The proposed development would be contrary to the proper planning and sustainable development of the area.
2. The subject site has a foul sewer traversing the site. The proposed development does not include the location of the pipe or any diversion proposals. The site is constrained by its location along the Tolka River and therefore in the absence of any proposal and or agreement to divert this foul sewer it is considered that the proposed development would be premature and would, therefore, be contrary to the proper planning and sustainable development of the area.

Karen Hamilton
Planning Inspector

13th of June 2019