



An  
Bord  
Pleanála

## **S. 4(1) of Planning and Development (Housing) and Residential Tenancies Act 2016**

### **Inspector's Report ABP-304063-19**

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<b>Strategic Housing Development</b>	123 no. Build to Rent residential units, provision for communal facilities and associated site works
<b>Location</b>	24, 26 and 28 Fosters Avenue, Mount Merrion, Blackrock, Co. Dublin.
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council
<b>Applicant</b>	Foster Stack Limited
<b>Prescribed Bodies</b>	Transport Infrastructure Ireland Irish Water National Transport Authority

**Observers**

46 no. Observers, see Appendix I

**Date of Site Inspection**

12<sup>th</sup> June 2019

**Inspector**

Sarah Moran

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## 1.0 Introduction

- 1.1. This is an assessment of a proposed strategic housing development submitted to the Board under section 4(1) of the Planning and Development (Housing) and Residential Tenancies Act 2016.

## 2.0 Site Location and Description

- 2.1. The site is located on Foster's Avenue, opposite the UCD Belfield campus in south Co. Dublin and across from the UCD Nova access to same. It is c. 250 m south west of the N11 QBC. The site has a stated area of 0.6068 ha. It comprises the residential property no. 28 Fosters Avenue, a 2 storey house 'Sunnyside' and associated gardens at no. 24 Fosters Avenue and a separate property containing disused industrial buildings (former Glenville Industrial Estate). The site is at the bottom of an elevated area 'The Rise' and there is a retaining wall along the southern site boundary such that it is over 2m below the adjoining residential properties to the north on St. Thomas Road. There is a substantial amount of mature trees within the residential sites and on the boundaries of the industrial site. The site has frontage and vehicular accesses to Fosters Avenue. Aside from the road frontage, the site is surrounded by residential properties at Fosters Avenue, The Fosters and St. Thomas Road. The Eastern By-Pass Motorway Reservation runs along Fosters Avenue and includes lands on the opposite side of the road from the development site, within the UCD campus.

## 3.0 Proposed Strategic Housing Development

- 3.1. The proposed development is a Build to Rent scheme comprising:

<b>Build to Rent (BTR)</b>		
Unit Type	No. of Units	%
1 bed	53	43%
2 bed	70	57%
<b>Total No. of BTR Units</b>	<b>123 units</b>	

The development comprises a single 4-5 storey over basement block which is laid out in a 'H' configuration. It has a stated residential density of c. 203 units/ ha.

3.2. The development also includes:

- Demolition of the existing buildings on site;
- Basement level car parking for 71 no. cars, 10 no. motorcycles and surface parking provision of 2 no. visitor car parking spaces. Total cycle parking provision of 276 no. spaces including 244 spaces at basement level and 32 no. surface cycle spaces (22 no. internally and 10 no. externally);
- Communal facilities including a cinema and laundry facilities in the basement; lobby, communal amenity area and gym on the ground floor; amenity room with associated balcony on the 4<sup>th</sup> fourth floor and 3 guest bedrooms located on the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> floors;
- External amenity areas;
- Vehicular and pedestrian entrances from Foster's Avenue;
- Bin stores, landscaping, boundary treatments and all associated site works and services;
- Part V proposal comprising transfer of 8 no. 2 bed units and 4 no. 1 bed units to the local authority as rented units;
- No areas of the development are proposed to be Taken in Charge by Dun Laoghaire Rathdown County Council (DLRCC).

## 4.0 Planning History

### 4.1. D08A/0324

- 4.1.1. Relating to a site comprising Glenville Industrial Estate and no. 28 Fosters Avenue. Permission sought for a residential development of 19 no. units to consist of 2 no. blocks of 3 storey terraced houses with private front and rear gardens, all over individual basements with lift shafts and associated balconies, basement level car park with 58 no. car parking spaces and internal pedestrian access to each unit. Permission was refused by DLRCC for 3 no. reasons:

1. It is considered that the proposed development by reason of height, scale and bulk relative to the neighbouring structures would be visually incongruous with existing streetscape. The proposed development would therefore be out of character with the area. The proposed development would seriously injure the amenities, or depreciate the value, of property in the vicinity and would therefore be contrary to the proper planning and sustainable development of the area.
2. Having regard to the absence of public open space it is considered that the proposed development would provide a substandard level of amenity. Given that each of the units can be accessed individually from the basement it is considered that public open space would play an important role in facilitating social interaction between future residents. In addition no play areas are proposed. The proposed development is therefore contrary to Section 5.5.4 of the County Development Plan 2004 and to the proper planning and sustainable development of the area.
3. The public foul sewer to which the site would discharge is deficient. It is considered that if the proposed development were to discharge to the existing public sewer that it would give rise to conditions that are prejudicial to public health. The proposed development is therefore contrary to the proper planning and sustainable development of the area.

#### **4.2. D04A/0240, PL06D.207979 and D05A/0788**

- 4.2.1. Relating to a site comprising Glenville Industrial Estate and nos. 24, 26 and 28 Fosters Avenue. Permission granted under D04A/0240 for demolition of existing structures and the construction of a new terrace of 8 no. townhouses and rear garages fronting onto Fosters Avenue with a new gated entrance off Fosters Avenue, also a new roadway with 12 no. townhouses to the rear of the site and associated site works. The permission was the subject of a 3<sup>rd</sup> party appeal, ref. PL0D.207979. The Board granted permission subject to the omission houses nos. 9 and 20, also a reduction in the ridge height of Terrace A. Permission was granted under D05A/0788 for revisions to the development permitted under D04A/0240 comprising ground floor extensions to the side of permitted townhouses nos. 9 and 18.

#### 4.3. **D02A/1113 PL06D.201802**

4.3.1. Relating to a site comprising Glenville Industrial Estate and nos. 24, 26 and 28 Fosters Avenue. Permission sought for demolition of existing structures and construction of a 4 storey over basement mixed use development comprising medical centre at part ground floor and part basement; leisure centre at part basement and part ground floor; ancillary plant and 134 no. space (double-stacked) car park at basement; health shop, cafe and security controlled reception area at ground floor; 53 no. elderly persons apartments at 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> floor levels. The planning authority refused permission. The Board also refused permission for the following reasons:

1. The site of the proposed mixed use development is located in an area to which zoning objective “A” applies in the current Dun Laoghaire-Rathdown County Development Plan, for which the zoning objective is “to protect and improve residential amenity”. This objective is considered reasonable. It is considered that the proposed development, by reason of its scale, bulk and massing and the intensity of use, would seriously injure the amenities of the area and of property in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed mixed use development, comprising health centre, leisure centre, shop and 53 elderly person apartments and which would involve the demolition of a habitable dwelling would, by reason of its scale, bulk and massing, be visually obtrusive in the street scene would detract from the character and pattern of development in this established residential area. The proposed development would, therefore, seriously injure the residential amenity of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.
3. The proposed mixed use development, by reason of the intensity of development, would result in increased turning movements onto the heavily trafficked Fosters Avenue, an important distributor road in the area. It is considered that such turning movements onto such a heavily trafficked road would interfere with the free flow of traffic on that road, which would endanger public safety because of the intensification of traffic movements in the area.

## 5.0 Section 5 Pre Application Consultation

### 5.1. Pre-Application Consultation ABP-303257-18

5.1.1. The pre-application consultation related to the following proposal at the development site:

Demolition of existing building, construction of 123 no. build to rent apartments and associated site works.

5.1.2. A section 5 consultation meeting took place at the offices of An Bord Pleanála on 25<sup>th</sup> January 2018. Representatives of the prospective applicant, the planning authority and ABP were in attendance. Following consideration of the issues raised during the consultation process, and having regard to the opinion of the planning authority, ABP was of the opinion that the documentation submitted constituted a reasonable basis for an application for strategic housing development.

5.1.3. The opinion notification pursuant to article 285(5)(b) also referred to specific information that should be submitted with any application as follows:

1. Notwithstanding that the proposal constitutes a reasonable basis for an application, the prospective applicant should satisfy themselves that the proposed building heights provide the optimal architectural solution for this site and in this regard, the proposed development shall be accompanied by an architectural report and accompanying drawings which outlines the design rationale for the proposed building height and scale, having regard to inter alia, National and Local planning policy, the site's context and locational attributes. An accompanying architectural report should outline the design rationale for the proposed building height, scale and massing in light of the publication of 'Urban Development and Building Height' 2018 and specifically with reference to Chapter 3 Building Height and the Development Management process, of the guidelines.

2. A proposed covenant or legal agreement further to which appropriate planning conditions may be attached to any grant of permission to ensure that the development remains in use as Build to Rent accommodation. There shall be a requirement that the development remains owned and operated by an institutional entity and that this status will continue to apply for a minimum period



of not less than 15 years and that similarly no individual residential units are sold or rented separately for that period (Your attention is drawn to the provisions of Specific Planning Policy Requirement 7 of the 'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities' 2018).

3. A Daylight/Sunlight analysis, showing an acceptable level of residential amenity for future occupiers and neighbours of the proposed development, which includes details on the standards achieved within the proposed residential units, in private and shared open space, and in public areas within the development and in adjacent properties. Specific regard should be had to ground floor apartments at sensitive locations and existing adjacent properties.
4. A mobility management strategy that shall be sufficient to justify the amount of parking proposed for cars and bicycles.
5. A housing quality assessment which provides specific information regarding the proposed apartments and which demonstrates compliance with the various requirements of the 2018 Guidelines on Design Standards for New Apartments, including the specific planning policy requirements in respect of Build to Rent developments.
6. Additional drainage details for the site having regard to the requirements of the Municipal Services Drainage Planning as indicated in their report dated 17/01/19 and contained in Appendix B of the Planning Authority's Opinion. Any surface water management proposals should be considered in tandem with any Flood Risk Assessment, which should in turn accord with the requirements of 'The Planning System and Flood Risk Management' (including associated 'Technical Appendices').
7. Cross-sections at appropriate intervals, photomontages, a 3D model (if considered necessary) and any other information deemed relevant, illustrating the topography of the site and showing the proposal relative to existing development in the vicinity.
8. Contour/site level map accurately and legibly showing levels across the site and adjacent to the site.

9. A site layout plan showing which, if any, areas are to be taken in charge by the planning authority.
10. Additional details in relation to the Dublin Eastern Bypass Corridor and having regard to the requirements of the Transportation Planning Section as indicated in their report dated 17/01/19 and contained in Appendix B of the Planning Authority's Opinion.
11. Childcare demand analysis and likely demand for childcare places resulting from the proposed development, if any.
12. A building life cycle report shall be submitted in accordance with Section 6.3 of the Sustainable Urban Housing: Design Standards for New Apartments (2018). In addition, the applicant shall ensure that advice provided by the guidelines in relation to the development management process (section 6.0) is followed.
13. Construction and Demolition Waste Management Plan.

## **5.2. Applicant's Statement of Response to Pre-Application Opinion**

- 5.2.1. The application includes a statement of response to the pre-application consultation, as provided for under section 8(1)(iv) of the Act of 2016, which may be summarised as follows:
  - The applicant notes that ABP is of the opinion that the documents submitted with the request to enter into consultations constitute a reasonable basis for an application for strategic housing development.
  - The specific information requested in the Statement of Opinion is submitted with the application.

## **6.0 Relevant Planning Policy**

### **6.1. National Policy**

- 6.1.1. The following is a list of relevant section 28 Ministerial Guidelines:
  - Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas including the associated Urban Design Manual.
  - Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities as updated March 2018.

- Design Manual for Urban Roads and Streets (DMURS)
- The Planning System and Flood Risk Management Guidelines for Planning Authorities (including the associated 'Technical Appendices')
- Urban Development and Building Heights Guidelines for Planning Authorities
- Childcare Facilities Guidelines for Planning Authorities

## 6.2. Sustainable Urban Housing: Design Standards for New Apartments 2018

- 6.2.1. Section 5.0 of the Apartment Guidelines specifically relates to the Build to Rent (BTR) and Shared Accommodation Sectors. BTR developments are defined as follows:

*Purpose-built residential accommodation and associated amenities built specifically for long-term rental that is managed and serviced in an institutional manner by an institutional landlord.*

- 6.2.2. Specific Planning Policy Requirement (SPPR) 7 sets out the following requirements for BTR developments:

- (a) Described in the public notices associated with a planning application specifically as a 'Build-To-Rent' housing development that unambiguously categorises the project (or part of thereof) as a long-term rental housing scheme, to be accompanied by a proposed covenant or legal agreement further to which appropriate planning conditions may be attached to any grant of permission to ensure that the development remains as such. Such conditions include a requirement that the development remains owned and operated by an institutional entity and that this status will continue to apply for a minimum period of not less than 15 years and that similarly no individual residential units are sold or rented separately for that period;
- (b) Accompanied by detailed proposals for supporting communal and recreational amenities to be provided as part of the BTR development.

These facilities to be categorised as:

- (i) Resident Support Facilities - comprising of facilities related to the operation of the development for residents such as laundry facilities,

concierge and management facilities, maintenance/repair services, waste management facilities, etc.

- (ii) Resident Services and Amenities – comprising of facilities for communal recreational and other activities by residents including sports facilities, shared TV/lounge areas, work/study spaces, function rooms for use as private dining and kitchen facilities, etc.

6.2.3. Section 5.11 states:

*While all BTR developments will be required to provide satisfactory resident support facilities, the nature and extent of the resident services and amenities may be agreed by the project developer and the planning authority having regard to the scale, intended location and market for the proposed development. The provision of specific BTR amenities to renters will vary and the developer will be required to provide an evidence basis that the proposed facilities are appropriate to the intended rental market.*

6.2.4. SPPR 8 sets out the following criteria for proposals that qualify as specific BTR development in accordance with SPPR 7:

- (i) No restrictions on dwelling mix and all other requirements of these Guidelines shall apply, unless specified otherwise;
- (ii) Flexibility shall apply in relation to the provision of a proportion of the storage and private amenity space associated with individual units as set out in Appendix 1 and in relation to the provision of all of the communal amenity space as set out in Appendix 1, on the basis of the provision of alternative, compensatory communal support facilities and amenities within the development. This shall be at the discretion of the planning authority. In all cases the obligation will be on the project proposer to demonstrate the overall quality of the facilities provided and that residents will enjoy an enhanced overall standard of amenity;
- (iii) There shall be a default of minimal or significantly reduced car parking provision on the basis of BTR development being more suitable for central locations and/or proximity to public transport services. The requirement for a BTR scheme to have a strong central management regime is intended to contribute to the capacity to establish and operate shared mobility measures;

(iv) The requirement that the majority of all apartments in a proposed scheme exceed the minimum floor area standards by a minimum of 10% shall not apply to BTR schemes;

(v) The requirement for a maximum of 12 apartments per floor per core shall not apply to BTR schemes, subject to overall design quality and compliance with building regulations.

6.2.5. Part V requirements are to apply to BTR developments. Section 5.12 of the Guidelines notes that the particular circumstances of BTR apartment projects may mitigate against the putting forward of acquisition or transfer of units and land options as set out in DHPCLG Housing Circular 36 2016, Section 96(3) and the leasing option may be more practicable in such developments.

### **6.3. Urban Development and Building Height Guidelines for Planning Authorities 2018**

6.3.1. Section 2.6 of the Guidelines notes:

*In some cases, statutory development plans have tended to set out overly restrictive maximum height limits in certain locations and crucially without the proper consideration of the wider planning potential of development sites and wider implications of not maximising those opportunities by displacing development that our wider society and economy needs to other locations that may not be best placed to accommodate it. Such a displacement effect presents a lost opportunity in key urban areas of high demand for new accommodation, whether that is for living, working, leisure or other requirements in the built environment.*

Planning authorities are advised to adopt a more active land-management centred approach to the preparation of development plans, local area plans and SDZ Planning Schemes and to identify and provide policy support for specific geographic locations or precincts where increased building height is not only desirable but a fundamental policy requirement, e.g. locations with the potential for comprehensive urban development or redevelopment such as brownfield former industrial districts, dockland locations, low density urban shopping centres etc. Section 2.7 of the Guidelines advises that such schemes must become:

*... more proactive and more flexible in securing compact urban growth through a combination of both facilitating increased densities and building heights, while also being mindful of the quality of development and balancing amenity and environmental considerations.*

6.3.2. Section 2.12 of the Guidelines provides the following criteria for the consideration of 'central and/ or accessible locations' and also 'intermediate urban locations' where medium density residential development in excess of 45 units/ ha would be appropriate:

- Proximity to high quality public transport connectivity, particularly key public transport interchanges or nodes;
- The potential contribution of locations to the development of new homes, economic growth and regeneration in line with the compact urban growth principles as set out in the National Planning Framework and Project Ireland-2040;
- The resilience of locations from a public access and egress perspective in the event of major weather or emergency or other incidents;
- The ecological and environmental sensitivities of the receiving environment; and
- The visual, functional, environmental and cumulative impacts of increased building height.

6.3.3. Section 3 of the Guidelines sets out development management principles and criteria for the consideration of individual planning applications. There is a presumption in favour of buildings of increased height in town/ city cores and in other urban locations with good public transport accessibility. Section 3.1 sets out the following broad principles for considering development proposals for buildings taller than prevailing building heights in urban areas:

- Does the proposal positively assist in securing National Planning Framework objectives of focusing development in key urban centres and in particular, fulfilling targets related to brownfield, infill development and in particular, effectively supporting the National Strategic Objective to deliver compact growth in our urban centres?

- Is the proposal in line with the requirements of the development plan in force and which plan has taken clear account of the requirements set out in Chapter 2 of these guidelines?
- Where the relevant development plan or local area plan pre-dates these guidelines, can it be demonstrated that implementation of the pre-existing policies and objectives of the relevant plan or planning scheme does not align with and support the objectives and policies of the National Planning Framework?

6.3.4. Section 3.2 of the Guidelines sets out detailed development management criteria. SPPR 3 relates:

It is a specific planning policy requirement that where;

- A. 1. an applicant for planning permission sets out how a development proposal complies with the criteria above; and
2. the assessment of the planning authority concurs, taking account of the wider strategic and national policy parameters set out in the National Planning Framework and these guidelines;

then the planning authority may approve such development, even where specific objectives of the relevant development plan or local area plan may indicate otherwise.

#### 6.4. **Dun Laoghaire Rathdown County Development Plan 2016-2022**

##### 6.4.1. Zoning Objective

The site has the land use zoning objective A 'To protect and / or improve residential amenity'.

##### 6.4.2. Specific Local Objectives Relating to Fosters Avenue

The following Specific Local Objective applies to Fosters Avenue at the road frontage of the development site:

SLO 6 - To promote potential additional future uses of the Dublin Eastern Bypass reservation corridor, including a greenway/ cycleway, a pedestrian walkway, biodiversity projects, recreational opportunities – inclusive of playing pitches - and public transport provision such as Bus Rapid Transit services, pending a decision from Transport Infrastructure Ireland/ Central Government in relation to the future

status of the Bypass. Any potential additional future short-term uses of the reservation corridor will be subject to a joint feasibility study to be undertaken by TII and the NTA.

There is also a proposed Quality Bus Corridor (QBC) / Bus Priority Route along Fosters Avenue.

#### 6.4.3. Policies and Objectives

The following development plan policies and objectives are considered particularly relevant to the proposed development:

Policy UD6: Building Height Strategy It is Council policy to adhere to the recommendations and guidance set out within the Building Height Strategy for the County.

Policy RES3: Residential Density It is Council policy to promote higher residential densities provided that proposals ensure a balance between the reasonable protection of existing residential amenities and the established character of areas, with the need to provide for sustainable residential development. In promoting more compact, good quality, higher density forms of residential development it is Council policy to have regard to the policies and objectives contained in the following Guidelines:

‘Sustainable Residential Development in Urban Areas’ (DoEHLG 2009)

‘Urban Design Manual – A Best Practice Guide’ (DoEHLG 2009)

‘Quality Housing for Sustainable Communities’ (DoEHLG 2007)

‘Irish Design Manual for Urban Roads and Streets’ (DTTaS and DoEHLG 2013)

‘National Climate Change Adaptation Framework – Building Resilience to Climate Change’ (DoECLG 2013).

Development plan section 2.1.3.3 encourages higher residential densities at a minimum of 50 units/ ha for sites located within c. 1 km pedestrian catchment of a rail station, Luas line, BRT, Priority 1 Quality Bus Corridor and/or 500 m of a Bus Priority Route, and/or 1 kilometre of a Town or District Centre.

Policy RES4: Existing Housing Stock and Densification It is Council policy to improve and conserve housing stock of the county, to densify existing built-up areas, having



due regard to the amenities of existing established residential communities and to retain and improve residential amenities in established residential communities.

Policy RES7: Overall Housing Mix It is Council policy to encourage the establishment of sustainable residential communities by ensuring that a wide variety of housing and apartment types, sizes and tenures is provided within the county in accordance with the provisions of the Interim Housing Strategy.

#### 6.4.4. Appendix 9 Building Height Strategy

The Strategy identifies areas within the county that are considered capable of accommodating buildings that are significantly taller than the prevailing building height, i.e. Sandyford, Cherrywood, Dundrum, Dun Laoghaire and UCD Belfield. Specific locations suitable for taller buildings are to be identified in statutory and non-statutory development plans, i.e. Local Area Plans, Framework Plans and SDZ's. Taller buildings are generally not to be considered outside of these locations. There is a general Building Height Policy that applies to 'Residual Suburban Areas not included within Cumulative Areas of Control'. Apartment or townhouse type developments or commercial development in the established commercial core of these areas to a maximum of 3-4 storeys may be permitted in appropriate locations – for example on prominent corner sites, on large redevelopment sites or adjacent to key public transport nodes – providing they have no detrimental effect on existing character and residential amenity.

There is an allowance for a 'minor modification' of 1-2 additional floors in some circumstances, subject to 'Upward or Downward Modifiers'. Upward Modifiers include factors relating to urban design benefits, major planning gain, civic, social or cultural importance or the built environment, character or topography. More than one 'Upward Modifier' criterion must apply to a development. Downward Modifiers include:

1. Residential living conditions through overlooking, overshadowing or excessive bulk and scale;
2. An Architectural Conservation Area (or candidate ACA) or the setting of a protected structure;
3. Strategic protected views and prospects;

4. A planning or social objective, such as the need to provide particular types of housing, employment or social facility in an area;
5. An area of particular character, including the coastal fringe and mountain foothills.

#### **6.5. Applicant's Statement of Consistency**

6.5.1. The applicant has submitted a Statement of Consistency as per Section 8(1)(iv) of the Act of 2016, which indicates how the proposal is consistent with the policies and objectives of section 28 Guidelines and the County Development Plan. The following points are noted:

- The development provides for a density of 203 units/ ha on a brownfield, serviced site in a mature residential suburban area. It will densify an existing low density suburban area while ensuring that the amenities of adjoining dwellings are not undermined. This is consistent with the development plan core strategy and sustainable communities strategy, with the NPF and with RSES objectives for compact urban growth.
- The development respects and addresses the corridor associated with the Eastern Motorway By-Pass Reservation.
- The development has been designed to a high architectural standard in accordance with the requirements of development plan, national and regional design policies. The Design Statement and TIA submitted outline that the development complies with the Urban Design Manual and DMURS.
- The development is located on lands zoned for residential purposes and provides a well-designed, high density scheme in close proximity to a QBC. A multi-disciplinary design approach addresses the elements of quality design, place making and protection of surrounding amenities as set out in development plan guidance on quality residential design and the Sustainable Residential Developments in Urban Areas Guidelines and Urban Design Manual, including the 12 criteria.
- Development plan open space standards do not apply to BTR developments. The proposed communal open space provision substantially exceeds the default

minimum of 10% of site area and exceeds the standards set out in the Apartment Guidelines.

- The submitted Housing Quality Assessment outlines compliance with the guidance for BTR development in the Apartment Guidelines in particular SPPRs 7 and 8 and with regard to floor areas, internal storage, private open space provision and communal amenity space. The standard for dual aspect units in the Apartment Guidelines takes precedence over development plan policy.
- Development plan policy on separation distances between blocks allows for reduced distances depending on orientation and location in built up areas. The development allows setbacks of between c. 8.7m to c. 25m from the site boundary. The H design is configured so that no lateral windows overlook adjacent residential properties. Properties to the rear are at a higher level and the development is not higher than 3 storeys when viewed from these properties. Planting along site boundaries will provide additional screening.
- The development plan Building Height Strategy recognises that there has been an emerging pattern with infill developments at a higher density and with a taller height than the prevailing local low-rise context. The proposed infill development fronts onto a wide road and road reservation and is therefore suitable for increased building height. The site qualifies for several Upward Modifiers:
  - It is located along a hollow on the Fosters Avenue carriageway;
  - It is in an area with exceptional public transport availability;
  - It has an area of 0.6 ha and can set its own context for development;
  - It is opposite UCD, a major commuter destination, and at the city administrative periphery.

The proposed 5 storey building is therefore suitable at this location. The proposed building height is also in accordance with the Building Heights Guidelines including the development management principles and relevant criteria and SPPRs 3 and 4.

- The applicant proposes to meet Part V requirements by the provision of rented units to DLRCC or a nominated Housing Association with a discount rent on up to 10% of the units. Costings are submitted.

- Development plan car parking standards are considered to be maxima. The proposed car parking provision is justified with regard to the proximity to a QBC and is in accordance with the requirements of the Apartment Guidelines. The cycle parking provision exceeds the requirements of the Apartment Guidelines.
- The submitted TIA includes a Travel Plan as required by development plan policy.
- The application includes assessment of schools and childcare provision as required by the Sustainable Residential Development in Urban Areas Guidelines and the Childcare Guidelines.
- A SSFRA is submitted in accordance with the Planning System and Flood Risk Management Guidelines.

## 7.0 Third Party Submissions

7.1. The submissions were primarily made by or on behalf of local residents of Fosters Avenue, The Fosters, St. Thomas Road and the Mount Merrion area. There were also submissions by elected representatives, i.e. Catherine Martin T.D, Cllr. Barry Saul, Cllr. Deirdre Donnelly and Cllr. Liam Dockery. The submissions may be summarised as follows.

### 7.1.1. 3<sup>rd</sup> Party Comments on General Issues and Principle of Development / Density

- Development would contravene the 'A' zoning objective due to adverse impacts on residential amenities.
- Development is out of keeping with the character of the surrounding suburban residential development due to excessive height and scale.
- Development would contravene development plan policy on building height.
- Proposed density of 203 units/ ha is excessive and far higher than recently approved developments in the area.
- The development site differs from sites along the N11 where higher density developments have been permitted. It is an infill site surrounded by modest 2 storey houses and requires a different treatment from a site located in a built up urban area.

- Previous refusals at the development site for 3 – 4 storey developments for reasons relating to excessive height, bulk and scale.
- Reference to recent decision ABP-301872-18 at St. Anne's Convent, Kilmacud Road Upper, Kilmacud, Stillorgan, Co. Dublin (D18A/0265). Permission sought for a 5 storey block containing 30 apartments. The Board refused permission for 2 reasons. Reason 1 referred to excessive density in the context of adjoining established development and an abrupt transition in scale relative to the receiving environment. Reason 2 stated that the development was deficient in the quantum, location and quality of communal open space.
- Development would set an undesirable precedent for further high rise, high density development at inappropriate locations in the area.
- Concerns about the future management and use of BTR units, also potential use of the development for Air B & B or student accommodation.
- Development would be unsuitable for downsizers in the area due to tenure and inadequate parking provision. There is an urgent need for smaller residential units in the area to cater for downsizers and smaller households.
- Lack of childcare provision in the development.
- Concern about potential commercial use of proposed communal facilities by outside groups, e.g. the gym, with consequent adverse impacts on residential amenities.
- Development would result in the demolition of a habitable house at no. 24 Fosters Avenue / Glenville House, built in 1930 and one of the most unique and distinctive houses in the Mount Merrion area.
- Several submissions refer to errors in the newspaper notice. Application may be invalid.
- Adjoining property owners do not consent to proposed works to party walls.

### 7.1.2. 3<sup>rd</sup> Party Comments on Impacts on Visual and Residential Amenities

- Adverse visual impacts on Fosters Avenue due to excessive scale of development. Development is set forward from the established building line on Fosters Avenue.
- Development does not 'step down' to adjoining sites and results in an abrupt transition in scale.
- The submitted photomontages and VIA underestimate visual impacts.
- Severe loss of privacy of adjacent residential properties due to overlooking from balconies and penthouse floor.
- Overshadowing impacts. The submitted Daylight and Sunlight analysis underestimates impacts on adjacent properties.
- Noise impacts from traffic accessing the basement car park and night time activity at the development, e.g. use of balconies and communal areas for social activities.
- Development will be visually obtrusive when viewed from adjacent residential properties. Overbearing effect on houses in The Fosters and Fosters Avenue.
- Development will result in the removal of trees at site boundaries with consequent impacts on residential and visual amenities. Includes removal of trees in areas outside the applicant's ownership and along Fosters Avenue. Potential adverse impacts on existing trees in adjoining properties due to basement construction. Consequent reduction in screening to adjacent properties. The proposed landscaping scheme does not mitigate these impacts.
- Contravention of development plan policies RES 3 and RES 5.
- Construction of the development will result in adverse impacts due to dust, noise, traffic, etc., particularly in relation to demolition and basement excavation and construction.
- Development will have a significant adverse impact on the value of adjacent residential properties.

## 7.2. 3<sup>rd</sup> Party Comments on Quality of Residential Development

- Proposed design and layout would result in internal overlooking between adjacent balconies.
- Discrepancies in the documentation on file regarding the stated total provision of communal amenity space. Proposed east courtyard would have inadequate sunlight to comply with BRE guidance. Deficient quantity and quality of communal amenity space.
- Several ground floor units would not receive adequate daylight in compliance with BRE Guidelines. The Daylight and Sunlight analysis assumes that a dense row of trees at the southern site boundary would be removed, however these are not within the application site. Daylight levels in adjacent rooms would be substantially less if they are retained. The removal of the trees would result in severe overlooking of properties on St. Thomas Road.

## 7.3. 3<sup>rd</sup> Party Comments on Traffic and Parking

- Development will result in increased traffic congestion in the area. Fosters Avenue is already at full traffic capacity.
- Deficiencies in submitted TIA. Traffic survey does not take recent developments into consideration, i.e. development of Flanagans, Union Café and Trees Road, UCD student accommodation, car parks at UCD campus, which will all add to traffic on Fosters Avenue.
- Inadequate parking provision will result in increased illegal parking in the area. Lack of details of parking management.
- Traffic hazard at vehicular access to Fosters Avenue due to its proximity to the the UCD Nova access, also potential impacts on pedestrian safety at this location.
- Proposed set down area will be intensively used and may result in traffic hazard.
- Potential adverse impacts on the use of Fosters Avenue by emergency vehicles.
- Lack of cycle lanes on Fosters Avenue to cater for cycle traffic generated by the development.

### 7.3.1. 3<sup>rd</sup> Party Comments on Drainage and Flooding

- Previous refusals at the site in relation to drainage issues. These matters have not been addressed in the current proposal.
- The development site is frequently subject to pluvial flooding due to its location at the bottom of a valley. Fosters Avenue floods after heavy rain. OPW historic records indicate a flood event at Fosters Avenue that is not mentioned in the submitted Flood Risk Assessment. Also regular flooding at St. Thomas Mead and The Rise. Concern that the development will exacerbate flooding.
- Proposed drainage arrangements do not consider an existing watercourse along Fosters Avenue. The exact course of the stream has not been established, it is partially culverted, but it is in the vicinity of the development site. It discharges to Booterstown Marsh and South Dublin Bay SAC.
- There is a private sewer that traverses the rear gardens of nos. 28-40 Fosters Avenue and runs under the development site. The proposed drainage arrangements do not address the presence of this pipe. This matter must be clarified.

### 7.3.2. 3<sup>rd</sup> Party Comments on Trees and Ecology

- Application does not include an ecological report.
- Development will result in the loss of 97% of the existing trees on site with consequent ecological impacts. Also increased overlooking from the development as a result of tree removal. Development includes removal of Monterey cypress (*Macrocarpa*) trees at the southern site boundary that are outside the development site.
- Potential adverse impacts on bats.
- Need for construction management to ensure that there is no pollution of the stream at the site. Potential environmental issues associated with demolition of asbestos and other toxic substances at the site.
- The AA screening report does not acknowledge the existence of an underground stream running from the development site to South Dublin Bay SAC.



### 7.3.3. 3<sup>rd</sup> Party Comments Conclusion

I have considered all of the documentation included with the above third party submissions.

## 8.0 **Planning Authority Submission**

8.1.1. Dun Laoghaire Rathdown County Council (DLRCC) has made a submission in accordance with the requirements of section 8(5)(a) of the Act of 2016. It summarises observer comments as per section 8(5)(a)(i) and the views of the Dunbrum Area Committee Meeting of the 24<sup>th</sup> April 2019. The planning and technical analysis in accordance with the requirements of section 8(5)(a)(ii) and 8(5)(b)(i) may be summarised as follows. The submission includes several technical reports from relevant departments of DLRCC, which are incorporated into the following summary.

### 8.1.2. PA Comment on Principle of Development, Ownership Issues

- Residential development is consistent in principle with the zoning object subject to a full assessment against relevant local, regional and national planning policy.
- Development plan section 2.1 encourages the reuse of brownfield sites in areas already served by public transport and close to established social and community infrastructure. The delivery of housing on this site would be consistent with national planning policies in relation to promoting compact urban growth through well designed higher density infill development. The site is within 500m of the Stillorgan Road QBC. It is currently vacant and previously contained non-conforming uses in relation to its zoning objective. The planning authority welcomes the redevelopment of this site for residential development.
- It is not clear whether the lands on the northern boundary of the site are in the ownership of the applicant as they appear to be outside the red line area on the proposed ground floor plan (drawing no. P-0-001), the landscape plans (drawing no. 18DR01-DR-200B).

### 8.1.3. PA Comment on Density and Height

- It is acknowledged that the site has capacity to carry a density in excess of 50 units/ ha.

- Given the site's location within 500m of a QBC, its proximity of UCD, its size > 0.5 ha and its topography, increased height is appropriate and important in this location with regard to national guidance on building height and to the development plan Building Height Strategy.
- The proposed density of 203 units/ ha is very high when compared to the existing low density in the immediate and surrounding area. It is considered that the density proposed, due to its layout and design, represents over development of this suburban brownfield site in an established residential area.
- The Building Height Strategy notes that there are many examples of infill developments at a higher density and with increased height than the prevailing local context, many examples of this form of development are located on prominent sites, or on sites with frontage onto a wide road.
- However, the planning authority has serious concerns that the development will have a serious and negative impact on existing residential amenity, in contravention of the site's zoning to 'protect and improve residential amenity' and of development plan policy UD6 on building height, notwithstanding national policy on building height as set out in the Urban Development and Building Heights Guidelines for Planning Authorities and the relevant SPPRs, also relevant policy in the National Planning Framework.
- The planning authority is not satisfied with the rationale provided by the applicant regarding consistency with the Building Height Strategy.

#### 8.1.4. PA Comment on Impacts on Visual and Residential Amenities

- The development introduces a 4 storey element on Fosters Avenue, directly adjacent to 2 storey dwellings. It represents an abrupt deviation from the existing low rise pattern of development with consequent impacts on the visual amenity of the area. The proposed scale and density of development are considered more suited to a more urban, town or city centre location or a less constrained suburban location.

- While there is scope to absorb additional height at the site due to its size and extent on Fosters Avenue, there are several concerns regarding the proposed development.
- The heavily glazed penthouse level will have negative impacts on the area in terms of visual and residential amenity as at night time significant light spill will occur and is apparently contrary to the mitigation measures proposed in the 'Bat Eco Services' report.
- Notwithstanding the generous separation distances, proposed significant glazing and balcony elements to the eastern and western elevations will impact on adjoining residential amenity by way of overlooking and potential noise pollution.
- The proposed block is excessive in its depth at the western end of the building and is 5 storeys in height. The development is 4 storey directly adjacent to No. 30 Fosters Avenue. There are high level bedroom windows c. 12 m from No. 30 Fosters Avenue. The plans do not indicate if they are obscurely glazed and fixed but this could be resolved by condition. There are balconies with windows and doors in the link building and access to balconies at penthouse level resulting in potential for overlooking and noise impacts.
- The development is 4 storey adjacent to No. 22 Fosters Avenue to the east of the site. Potential impacts arise again at penthouse level.
- The 4-5 storey element of the development adjacent to No. 2 The Fosters at the south eastern corner of the site is c. 12m from the shared boundary and would appear overbearing and visually oppressive, seriously detracting from No. 2 The Fosters in terms of visual and residential amenity and would significantly depreciate the value of the property. The amenity area of No. 1 The Fosters to the north east directly adjoins the development. The balconies at penthouse level result in overlooking and noise impacts.
- Properties at Nos. 23, 25 and 27 St. Thomas Road are between 11 – 13 m to the south east of the development. The development relies on differences in levels and extensive planting on lands outside the applicant's control to mitigate impacts at this location. The planning authority considers that extensive glazing and

balconies at this location would seriously detract from these properties in terms of visual and residential amenity.

- The Daylight / Sunlight analysis submitted indicates that the East Courtyard within the development fails to receive the BRE required 2 hours of sunlight on March 21<sup>st</sup> while the other 2 amenity areas meet this requirement. The analysis of sunlight to the rear amenity areas of surrounding properties identifies that of the 14 gardens assessed, 12 will meet the BRE guidelines. The properties which meet the BRE guidelines will have a reduction in sunlight in combination with other impacts on residential amenities as discussed.
- The planning authority notes concerns about impacts on residential amenity as stated in third party submissions and concurs with these concerns.
- The planning authority has serious concerns that the overall scale, height and design of the building would result in an overbearing and oppressive scheme that would overlook and overshadow neighbouring properties, significantly detracting in terms of visual and residential amenity and depreciating the value of those properties.

#### 8.1.5. PA Comment on Quality of Residential Development

- The planning authority notes relevant guidance on BTR development in the Apartment Guidelines.
- The development meets the requirements of SPPR 3 with regard to minimum floor areas.
- A total of 53 apartments or 43% of the total no. of units are dual aspect, this contravenes SPPR 4 which requires 50% dual aspect units at a suburban / intermediate location.
- The applicants have generally addressed the requirements of SPPR 7 in relation to BTR development except for the issue of reduced car parking provision.

- The planning authority is generally satisfied with the housing mix with regard to SPPR 8. It is satisfied that the development is in accordance with the other aspects of the SPPR except for the level of dual aspect units.
- The development includes communal facilities in accordance with section 5.11 of the Apartment Guidelines. Further details of the management of communal areas could be resolved by condition.
- The proposed bin storage and private open space provision are adequate.
- The planning authority has concerns relating to the quality of the areas of communal open space as they are likely to be overshadowed by the residential block and have greatly reduced amenity value.

#### 8.1.6. PA Comment on Traffic and Transport Issues

- Incorporating Traffic and Transportation Report dated 16<sup>th</sup> May 2019.
- This raises several concerns including lack of a Mobility Management Plan; development includes works to the public footpath at Fosters Avenue on lands outside the applicant's control; concerns about proposed set down area; surface cycle parking should be provided within the development site.
- In addition, the Transportation Planning division consider that the proposed car parking provision should take account of existing and anticipated levels of car ownership in the DLRCC area. This is not considered to be an urban location and the level of car parking proposed is considered to be insufficient. A total of 123 spaces to serve 123 apartments would be appropriate, this may include the 2 no. car club spaces and designated disabled and visitor spaces.

#### 8.1.7. PA Comment on Drainage and Flood Risk

- Incorporating Surface Water Drainage Report dated 30<sup>th</sup> April 2019.
- The applicant has provided minimal information in relation to attenuation proposals and no Site Investigation Report has been submitted.
- A number of conditions are recommended in order to capture outstanding information and address deficiencies in the information submitted.

- The Surface Water Drainage Dept. notes third party concerns regarding the possible existence of a foul drain at the development site, serving properties upstream. Irish Water records do not generally record private drains and such is the case here. They do record the existence of a 300 mm foul pipe possibly originating within the site boundaries. Its size indicates that it possibly caters for greater foul flow than that generated within the development site and it may be a continuation of the drain referred to in third party submissions. This cannot be resolved in the absence of further information and may be addressed by the Board in a manner which they see fit.
- There is a lack of clarity as to what positive impact the upgrading works of the foul sewer in an adjacent catchment would have on the proposed development or on the receiving catchment downstream. The development will drain to the existing foul drainage system, deficiencies in which have been cited as refusal reasons on previous applications. To bypass the existing deficiencies a pumping station combined with a new sewer (possibly a rising main) together with improvement works on the N11 may be required.
- While the foul drainage issues are a matter for Irish Water to address, Drainage Planning considers that the lack of a clear proposal and timeframe to remediate the existing deficiencies may give rise to conditions prejudicial to public health and would thus also be of concern to the planning authority. The Board is advised that this issue would require further investigation and liaison with Irish Water. The planning authority has concern that the development could be deemed premature having regard to the existing deficiencies in the foul drainage infrastructure in the area.

#### 8.1.8. PA Comment on Ecology, Trees and Landscaping

- The development has done little to incorporate the recommended mitigation measures of the Bat Report submitted, specifically in relation to lighting. The planning authority is not satisfied that sufficient mitigation and protective

measures have been employed, contrary to European, national and local environmental and planning policy.

- A significant portion of the proposed public open space will have restricted access to sunlight.
- Ownership of the grass verge to the front of the site has not been resolved.
- Parks and Landscaping Report (undated). The development would remove 100% of existing surveyed trees that are growing within the development site. Parks and Landscaping disagree with the arborist's contention that all of the trees in the western site boundary must be removed to facilitate the fire tender access. Consideration could be given to retaining some or all of these trees using a 'no dig' solution.
- Parks and Landscape Services consider that the development is deficient in several areas and that there are significant concerns regarding the extensive tree loss, quality of the arborist's report submitted, play provision and planting details.

#### 8.1.9. PA Comment on Childcare Provision

- The development is > 75 units and therefore requires a childcare facility in accordance with the Childcare Guidelines. The pre-application Opinion required the submission of a Childcare Demand Analysis. The submitted analysis indicates that there are no childcare spaces in a 1.5 km radius. The applicant has not provided any real justification for the lack of a childcare facility in the development. The planning authority does not accept the applicant's calculations and considers that a scheme of this size would require a childcare facility.

#### 8.1.10. PA Comment on Part V

- Housing Report Dated 16<sup>th</sup> May 2019. There are concerns with the proposed Part V transfer of units on site due to legal issues.

#### 8.1.11. PA Comments Conclusion

- The planning authority welcomes the redevelopment of brownfield sites for residential purposes at significantly higher densities than currently exist in the area and recognises that such sites play a significant role in the delivery of sustainable housing provision. However, it recommends refusal in this instance

due to significant negative impacts on the residential and visual amenities of neighbouring properties.

- A total of 4 no refusal reasons are recommended relating to adverse impacts on visual and residential amenities; serious deficiencies in the public foul sewer; substandard amenity for future residents due to substandard public open space and lack of satisfactory mitigation measures for potential impacts on bats.
- Conditions are recommended in the event that the Board decides to grant permission.

## **9.0 Prescribed Bodies**

### **9.1. Irish Water**

- 9.1.1. Based upon the details provided by the developer and the Confirmation of Feasibility issued, Irish Water confirms that subject to a valid connection agreement being put in place between Irish Water and the developer, the proposed connection to the Irish Water network can be facilitated.

### **9.2. Transport Infrastructure Ireland**

- 9.2.1. The submission states that TII has no observations to make in relation to the proposed development.

### **9.3. National Transport Authority**

- 9.3.1. The following points are noted:
- The site is well served by public transport and is close to the major employment and education location of UCD. The NTA is supportive in principle of the proposed quantum of development at this location.
  - The site is within 500m of the N11 QBC. The NTA is currently advancing the Bus Connects programme, which proposes to upgrade the Stillorgan Road QBC to a Core Bus Corridor (CBC). This route would also serve as a Spine Route in the revised bus network with increased all day frequency serving a range of destinations in the wider Dublin area.
  - Development plan car parking standards permit a maximum of 158 car parking spaces to serve the development. DLRCC have indicated that a provision of 1.1



spaces per unit would be acceptable, i.e. 136 car parking spaces. The applicant proposes a reduced car parking provision with regard to the Apartment Guidelines guidance on parking and to proximity to public transport and cycling infrastructure. The NTA is supportive in principle of reduced car parking at this location due to its proximity to UCD and to the sustainable transport offer in its environs.

## 10.0 Environmental Impact Assessment (EIA) Preliminary Assessment

10.1. The application was submitted to the Board after the 1<sup>st</sup> September 2018 and therefore after the commencement of the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018.

10.2. Item (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

Construction of more than 500 dwelling units

Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere.

(In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)

10.3. The proposed development involves 123 no. Build to Rent apartments on a site of 0.6 ha. The site is located in an urban area. It is therefore considered that the development does not fall within the above classes of development and does not require mandatory EIA.

10.4. I note the submitted EIA Screening Report dated March 2019. As per section 172(1)(b) of the Planning and Development Act 2000 (as amended), EIA is required for applications for developments that are of a class specified in Part 1 or 2 of Schedule 5 of the 2001 Regulations but are sub-threshold where the Board determines that the proposed development is likely to have a significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is

required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment. This preliminary examination has been carried out and concludes that, based on the nature, size and location of the development, there is no real likelihood of significant effects on the environment. The need for EIA is therefore precluded and a screening determination is not required.

## 11.0 Appropriate Assessment (AA) Stage I Screening

### 11.1. The European Sites Likely to be Affected

11.1.1. The development site is not within or directly adjacent to any Natura 2000 site. The AA Screening Report on file considers the following designated sites within a 5 km radius of the development site for screening purposes:

Site (site code)	Qualifying Interests / Conservation Objectives
South Dublin Bay SAC (000210)  1.47 km from development site	Mudflats and sandflats not covered by seawater at low tide [1140]  Annual vegetation of drift lines [1210]  Salicornia and other annuals colonising mud and sand [1310]  Embryonic shifting dunes [2110]  The NPWS has identified a site-specific conservation objective to maintain the favourable conservation condition of the Annex I Habitat Mudflats and sandflats not covered by seawater at low tide [1140], as defined by a list of attributes and targets.
South Dublin Bay and River Tolka Estuary SPA (004024)  1.28 km from development site	Light-bellied Brent Goose ( <i>Branta bernicla hrota</i> ) [A046]  Oystercatcher ( <i>Haematopus ostralegus</i> ) [A130]  Ringed Plover ( <i>Charadrius hiaticula</i> ) [A137]  Grey Plover ( <i>Pluvialis squatarola</i> ) [A141]  Knot ( <i>Calidris canutus</i> ) [A143]  Sanderling ( <i>Calidris alba</i> ) [A144]  Dunlin ( <i>Calidris alpina</i> ) [A149]  Bar-tailed Godwit ( <i>Limosa lapponica</i> ) [A157]  Redshank ( <i>Tringa totanus</i> ) [A162]

	<p>Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179]</p> <p>Roseate Tern (<i>Sterna dougallii</i>) [A192]</p> <p>Common Tern (<i>Sterna hirundo</i>) [A193]</p> <p>Arctic Tern (<i>Sterna paradisaea</i>) [A194]</p> <p>Wetland and Waterbirds [A999]</p> <p>The NPWS has identified site-specific conservation objectives to maintain the favourable conservation condition of the bird species listed as Qualifying Interests, as defined by a list of attributes and targets.</p>
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11.1.20. Section 3.2.3 of the ‘Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities’ recommends a radius of 15 km for Stage 1 screening but also states that the distance can be much less, this must be evaluated on a case-by-case basis. Section 3.3 of the AA Screening Report states that a radius of 5 km is considered adequate in this instance having regard to the nature of the project and its location. The site is located in an established urban area and does not contain any habitats listed under Annex I of the Habitats Directive. The AA Screening Report and EIA Screening Report do not refer to the presence of protected species except for the bat species that use the site for foraging / commuting, which are not listed as Qualifying Interests of the above designated sites. The development is connected to designated sites within Dublin Bay via the surface water and foul water networks. It incorporates SUDS measures and a surface water management system and all discharges from the site will be treated by existing treatment facilities at Ringsend WWTP. However, several of the third party submissions refer to an unnamed, partially culverted, watercourse running along Fosters Avenue, in the vicinity of the development site (possibly the Trimlestown Stream), which discharges to Booterstown Marsh, within South Dublin Bay and River Tolka Estuary SPA and South Dublin Bay SAC, c. 1.5 km to the east of the development site. Therefore, there is a possible hydrological connection between the development site and several designated sites.

## **11.2. Potential Effects on Designated Sites**

11.2.1. The AA Screening Report considers the significance of potential effects on designated sites with regard to the relevant conservation objectives. It states that there is no source-pathway-receptor link between the development site and the above designated sites and concludes on this basis that there are no elements of the project that could, on their own, lead to significant effects on a Natura 2000 site. The applicant is not aware of any projects in the vicinity that could give rise to in combination effects. The Screening Report concludes that, having regard to the 'source-pathway-receptor' model and lack of any direct entry of surface and untreated waste waters to any of the Natura 2000 sites, the use of best construction practices as an integral component of the development and the treatment of waste waters prior to discharge, the proposal either individually or in-combination with other plans or projects could not be considered to have likely significant effects in view of the sites' conservation objectives.

## **11.3. AA Screening Conclusion**

11.3.1. I note the AA screening report submitted by the applicant, dated March 2019, which concludes that significant impacts can be ruled out and / or AA is not required. I note the urban location of the site, the lack of direct connections with regard to the source-pathway-receptor model and the nature of the development. However, I also note the uncertainty around the possible presence of a stream in the vicinity of the development that would provide a hydrological link to the South Dublin Bay and River Tolka Estuary SPA and South Dublin Bay SAC. I am therefore not satisfied, on the basis of the information available, that the development, individually or in combination with other plans or projects would not be likely to have a significant effect on the above listed European sites, or any other European site, in view of the sites' Conservation Objectives.

## 12.0 Assessment

12.1. The following are the principal issues to be considered in this case:

- Principle of Development
- Density and Building Height
- Quality of Residential Accommodation
- Impacts on Visual and Residential Amenities
- Impacts on Trees and Ecology
- Site Services and Flood Risk
- Roads and Traffic Issues
- Other Matters

These matters may be considered separately as follows.

### 12.2. Principle of Development

12.2.1. The general residential zoning objective 'A' applies to the development site, 'To protect and / or improve residential amenity'. The site historically contained a 'non-conforming' use, i.e. industrial development. Development plan policies encourage the redevelopment of brownfield infill sites in established areas already served by public transport and social and community infrastructure. The proposed infill development is also in accordance with regional and national planning policies to promote compact urban growth including densification of existing built-up areas. I note that the planning authority and the NTA are supportive in principle of an increased quantum of development at this location in an established residential area, within 500m of the existing Stillorgan Road QBC and adjacent to a large third level campus.

12.2.2. The proposed BTR development is described as 'purpose built residential accommodation and associated amenities built specifically for long term rental that is managed and serviced in an institutional manner by an institutional landlord'. The submitted Site and Newspaper notices specify that the development is 'Build to Rent'. The applicant has submitted a draft Covenant, which sets out that the residential units will remain in use as Build to Rent accommodation for a minimum

period of at least 15 years. The development therefore falls within the definition of BTR provided in the Apartment Guidelines and meets the requirements of part (a) of SPPR 7.

12.2.3. Aside from the adjacent UCD campus, which contains on-campus student accommodation, the surrounding area is generally characterised by family homes on large plots. The proposed BTR development of 53 no. 1 bed units and 70 no. 2 bed units will provide an innovative housing typology and add to the housing mix of the area, in accordance with development plan policy RES7. I also note that section 5.7 of the Apartment Guidelines states that BTR development can deliver housing units to the rental sector over a much shorter timescale than traditional housing models, making a significant contribution to the required increase in housing supply nationally, identified by Rebuilding Ireland, and the scale of increased urban housing provision envisaged by the National Planning Framework. In addition, SPPR 8 (i) of the Apartment Guidelines states that no restrictions on dwelling mix shall apply unless specified otherwise.

12.2.4. I am satisfied that the proposed BTR units are acceptable in principle at the development site on this basis.

### **12.3. Density and Building Height**

12.3.1. The development has a stated net. density of 203 units/ ha and is 5 storeys high. The applicant submits that the density and scale of development are suitable for this low-elevation site fronting onto a wide corridor at an edge-of-city location that is well served by high frequency bus transport.

12.3.2. Development plan policy on residential density encourages densities > 50 units / ha at sites within c. 1 km of a Priority 1 QBC and/or 500 m of a Bus Priority Route. This is in accordance with national planning policy as per section 5.8 of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, which states that minimum net densities of 50 units / ha should be applied within 500m walking distance of public transport corridors, subject to appropriate design and amenity standards, with the highest densities being located at rail stations / bus stops and decreasing with distance away from such nodes. Higher residential densities are therefore acceptable in principle at the development site. However, as per national and development plan policies, higher densities must be balanced

against the need to protect residential amenities and the established character of the area, ref. development plan policy RES3. Having regard to the following assessment of impacts on visual and residential amenities, it is considered that the proposed development would contravene policy RES3 as it would have an adverse impact on residential amenities. The applicant seeks to justify the proposed density on the basis of proximity to the N11 QBC and notes several recent large scale apartment developments along the N11. However, I consider that the development site, which is a relatively small infill site located on a distributor road and surrounded by 2 storey residential development, to be fundamentally different in scale and context from those developments. I also note the comments of the planning authority in this regard.

12.3.3. The development is located in an area defined as 'Residual Suburban Areas not Included within Cumulative Areas of Control' with regard to the Building Height Strategy set out in Appendix 9 of the Dun Laoghaire Rathdown County Development Plan 2016-2022. A general height limit of 3-4 storeys applies. I note the 'Upward Modifiers' set out in section 4.8.1 of Appendix 9 and consider that the following apply to the subject site:

- The built environment or topography would permit higher development without damaging the appearance or character of the area. The site is located at a low point at the bottom of a valley and at a lower level than surrounding development.
- The development would contribute to the promotion of higher densities in areas with exceptional public transport accessibility. The site is within 500m of Stillorgan Road QBC. The NTA is currently advancing the Bus Connects programme, which proposes to upgrade the Stillorgan Road QBC to a Core Bus Corridor (CBC) and a Spine Route in the revised bus network with increased all day frequency serving a range of destinations in the wider Dublin area. The comments of the NTA are noted in this regard. In addition, Fosters Avenue is designated as a proposed QBC in the current development plan.
- The development site has a stated area of c. 0.6 ha, i.e. > 0,5 ha and is therefore capable of setting its own context for development.

Given that several 'Upward Modifiers' apply, up to 2 additional floors may be considered. The proposed height of 5 storeys is acceptable in principle in this context. I also note the 'Downward Modifiers' set out in section 4.8.2 of the Strategy. The site is not located in an area of any particular sensitivity of designation, however I note 4.8.2.1:

*'Downward Modifiers may apply where a proposed development would adversely affect: 1. Residential living conditions through overlooking, overshadowing, or excessive bulk or scale.'*

It is therefore considered that a height of 5 storeys at the development site is generally in accordance with the Building Height Strategy, subject to consideration of potential impacts on residential amenities as discussed further below.

12.3.4. Section 3.1 of the Urban Development and Building Heights Guidelines for Planning Authorities for Planning Authorities sets out development management principles for the consideration of development proposals for buildings taller than prevailing building heights in urban areas. The proposed BTR development will assist in achieving national planning policy objectives regarding the achievement of compact urban growth, the development of brownfield sites in established areas and the provision of a greater variety of housing types and tenures. The development is considered to be generally in accordance with the Building Height Strategy set out as Appendix 9 of the County Development Plan. The Building Height Strategy predates the Building Height Guidelines. In this instance, I do not consider that the implementation of the Building Height Strategy would not align with or support the objectives and policies of the NPF.

12.3.5. The following points are noted with regard to the Development Management Criteria set out in section 3.2 of the Building Height Guidelines:

- The location is well served by public transport.
- The site is not located in an architecturally sensitive area.
- The scale of the site and the development do not provide an opportunity for place-making.



- The contribution of the development to Fosters Avenue is assessed below. Overall, it is considered that the development would have an adverse visual impact at this location due to its scale, design and layout and that the development does not make a positive contribution to the public realm.
- Having regard to the assessment below, it is considered that the development would have an adverse impact on residential amenities by way of overlooking, overshadowing and visual obtrusion.

I also note the assessment of the planning authority, which concludes that:

*“... the overall scale and height and design of the building would result in an overbearing and oppressive scheme that would overlook and overshadow neighbouring properties, significantly detracting in terms of visual and residential amenity and depreciating the value of these properties.”*

I concur with this assessment.

12.3.6. I consider that the proposed building height of 5 storeys is generally acceptable in principle with regard to the development plan Building Height Strategy and the Development Management Principles set out in section 3.1 of the Building Height Guidelines. However, having regard to the assessment of impacts on visual and residential amenities below, it is considered that:

- The Downward Modifier of adverse impacts on residential and visual amenities would apply with regard to the development plan Building Height Strategy and
- The development does not meet several of the Development Management Criteria set out in section 3.2 of the Building Height Guidelines.

The development is therefore considered to contravene both policy documents.

## 12.4. **Quality of Residential Accommodation**

### 12.4.1. Proposed Design and Layout

The site comprises an existing industrial / warehouse type building, which extends to within 1m of the western and southern site boundaries, and 2 separate residential properties to its immediate east and west. The residential property on the eastern site of the site, 24 Fosters Avenue, is a 2 storey house with a shallow rear garden surrounded by the industrial site whereas that on the western side of the site, 28

Fosters Avenue, is a detached house with a large rear garden that extends the full length of the site. The stated rationale for the development is to reduce the footprint of the buildings on the site such that there are increased separation distances from the eastern and southern site boundaries. This is achieved by the creation of a 'H' building form with the long side of the H facing Fosters Avenue with a landscaped strip inside the existing grass verge. The existing site boundary to Fosters Avenue is to be removed such that the building looks directly onto the street. The vehicular access to the basement car park is at the eastern end of the road frontage. Public open spaces are provided in the form of landscaped courtyards on the eastern and western sides of the link between the front and rear sections of the H. The eastern courtyard contains a play area. The remaining open spaces on the perimeter of the site are landscaped with a pedestrian route/ play surface along the southern site boundary. A small area on the southern side of the site is indicated as a 'southern courtyard'. A piece of play equipment is provided at the south eastern corner of the site. There is a fire tender / emergency access along the western perimeter of the site, which is surfaced in grasscrete.

#### 12.4.2. Provision of Communal Amenity Space and Facilities

The requirement for communal amenity space for apartment units as per the standards set out in Appendix I of the Apartment Guidelines is as follows:

Unit Type	No. of Units	Required Area per Unit (sq.m.)	Required communal amenity space provision (sq.m.)
1 bed / 2 person	53	5	265 sq.m.
2 bed / 3 person	1	6	6 sq.m.
2 bed / 4 person	69	7	483 sq.m.
<b>Total</b>	<b>123</b>		<b>754 sq.m.</b>

Development plan section 8.2.3.2 states a requirement of 15 – 20 sq.m. of communal open space per person, which may be calculated as follows:

Unit Type	No. of Units	Population	Required communal amenity space provision (sq.m.)
1 bed / 2 person	53	106	1,590 – 2,120
2 bed / 3 person	1	3	45 – 60
2 bed / 4 person	69	276	4,140 – 5,520
<b>Total</b>	<b>123</b>		<b>5,775 – 7,700</b>

Section 8.2.3.2 also requires a default minimum communal open space provision of 10% of the overall site area as per development plan section 8.2.3.2., i.e. 600 sq.m. in this instance.

The applicant submits that a total of 3,045 sq.m. of landscaped amenity space is provided. Having regard to the site layout and landscaping plan, I consider that much of this area would have limited amenity value. The principal communal open spaces are the eastern and western courtyards between the long sections of the 'H'. The western courtyard has a stated area of c. 550 sq.m. and the eastern courtyard c. 540 sq.m., i.e. a total of 1,090 sq.m., with the eastern courtyard incorporating large areas of raised planter beds over the car park, further limiting its amenity. The remaining areas of communal open space are marginal and primarily function as circulation spaces. There is a grasscrete fire tender access inside the western site boundary and over half of the eastern side of the site is taken up with the ramp access to the basement car park. The area at the southern site boundary is described as a 'linear play space' with a stated area of 220 sq.m., however much of this area is to be terraced to accommodate the change in levels at the site boundary. The Daylight and Sunlight Analysis considers sunlighting in the proposed amenity areas. BRE guidelines recommend that at least half of an amenity area should receive at least 2 hours of sunlight on March 21<sup>st</sup>. The western courtyard and southern amenity area well exceed this standard but the eastern courtyard achieves only 49% of the target value. I note that SPPR 8 (ii) of the Apartment Guidelines provides that flexibility shall apply in relation to the provision of communal amenity space, on the basis of the provision of alternative compensatory support facilities and amenities within the development.

SPPR 7 (b) of the Apartment Guidelines provides that BTR development must be accompanied by detailed proposals for supporting communal and recreational amenities. These facilities to be categorised as (i) residential support facilities or (ii) residential services and amenities. The development includes the following communal amenity spaces and facilities as per the submitted design statement:

<b>Use</b>	<b>Sq.m.</b>
Cinema	53
Laundry	16
Gym	73
Reception office	46
Ground floor amenity space	143
Guest bedrooms	21 x 3 = 63
Top floor amenity lounge	64
<b>Total</b>	<b>458 sq.m.</b>

The Building Management Plan provides details of the ongoing management of communal areas and residents' facilities. I consider that the cinema, gym, ground floor and top floor amenity spaces (total 333 sq.m.) come with the scope of SPPR 7 (b)(i), i.e. resident services and amenities that may be considered to supplement the communal open space provision. The proposed quantum of communal amenity space is considered acceptable overall on this basis and I am satisfied that a reasonable level of resident services and amenities are provided in accordance with SPPR 7 (b)(ii). I note that the planning authority considers that further details are required in relation to the management of communal areas and facilities including guest rooms. This issue could be dealt with by way of condition if permission is granted, I note that section 6.15 of the Apartment Guidelines provides for conditions for BTR developments to ensure the provision of appropriate management and maintenance structures.

One of the refusal reasons recommended by the planning authority refers to a substandard level of residential amenity having regard to the large area of overshadowed open space. While this issue is noted, I consider that the proposed quantum of public open space is acceptable overall in the context of the provision of supplementary residents' services and amenities and with regard to SPPR 7 (b)(i).

#### 12.4.3. Apartment Design

The Housing Quality Assessment indicates that the proposed apartments have been designed to meet the standards set out in the Apartment Guidelines. All units are

well in excess of the minimum floor areas and meet or exceed the standards for storage space and private amenity space. The application states that 57% of the apartments exceed the minimum floor area by at least 10%. The applicant is therefore not seeking any flexibility with regard to the standards relating to these matters. SPPR 8 (v) provides that the requirement for a maximum of 12 apartments per core shall not apply to BTR schemes and the applicant does seek flexibility on this matter with 2 cores serving 27 units at 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> floors. This is considered reasonable.

Section 3.17 of the Apartment Guidelines requires a minimum of 33% of apartment units to be dual aspect at central / accessible urban locations (I note that the planning authority apply a standard of 50%). The development contains a total of 53 dual or triple aspect units, 43% of the total, which exceeds this requirement. A total of 20 of the single aspect units are north facing, all of which are one bedroom. These units are at the front elevation of the block, looking onto Fosters Avenue and the UCD campus. The Daylight and Sunlight Analysis considers the Average Daylight Factor (ADF) of habitable rooms of units on the ground floor of the apartment block. BS 8206-2 Code of Practice for daylighting recommends an ADF of at least 5% for a well daylight space and 2% for a partially daylight space with minimum values of 1.5% for living rooms and 1% for bedrooms. The Analysis finds that the selected north facing units on the ground floor all achieve well over the target value. North facing units on the upper floors are expected to achieve higher values. The proposed north facing single aspect units are considered acceptable on this basis. The ground floor units generally achieve satisfactory ADF values overall. I also note that the apartments facing Fosters Avenue have been designed to achieve a satisfactory internal noise environment with regard to the possible development of the Eastern Bypass at this location.

#### 12.4.4. Quality of Residential Accommodation Conclusion

I am satisfied that the development will provide a reasonable quality of residential accommodation overall, in accordance with relevant standards set out in the Apartment Guidelines and with development plan guidance for residential development.

## 12.5. Impacts on Visual and Residential Amenities

12.5.1. Potential impacts on visual and residential amenities to the east, west and south of the development may be considered separately as follows. The assessment is based on the site inspection, the submitted plans, sections and elevations, landscaping details and the Daylight and Sunlight Analysis.

### 12.5.2. Fosters Avenue

The existing site frontage to Fosters Avenue is characterised by a rendered wall and a substantial amount of mature trees such that the warehouse / industrial building on the site is barely visible. The applicant submits that, as the site faces 'the widest road reservation in Ireland', it should read as an edge building with appropriately significant scale. The development presents a 4 storey plus penthouse building close to the road frontage with a vehicular access to the basement car park. The existing front boundary is to be removed and a landscaped strip provided between the front of the apartment building and the existing grass verge, defined by a low brick wall and metal railing. The landscaped area is to be planted with flowering trees. The primary pedestrian entrance is at the centre of the site to the lobby of the apartment building with an adjacent set down area at the road frontage. The eastern end of the road frontage is defined by the vehicular access to the basement car park and a bin storage area. There is also a gated access to the fire tender route along the western site boundary.

I consider that the development will contrast sharply with the established pattern and scale of development on Fosters Avenue. This contrast is exacerbated by the proximity of the front elevation to the road and by the extensive nature of the façade across almost the entire frontage of the site. The applicant submits that the development holds the established building line on Fosters Avenue. I do not accept this contention. I note that the façade to Fosters Avenue will sit significantly forward from the existing structure at the development site and forward of the established building line to the west of the development site, thereby increasing the visual presence of the development. I consider that the submitted photomontage underestimates likely visual impacts to Fosters Avenue as it appears to include the retention of existing trees along the western site boundary which are indicated to be removed in the proposed landscaping scheme. In any case, the development will

undoubtedly be visually prominent on Fosters Avenue due to its bulk and scale and location close to the road frontage of the site and in advance of the established building line to the west of the site. In addition, the presence of a bin storage area at the street frontage would significantly detract from the public realm at this location.

While any development of this site would change the outlook from no. 22 Fosters Avenue to the east of the site, the proposed 5 storey gable c. 11 m from the shared boundary, along with the basement access ramp, would be very visually obtrusive from the adjoining residential property and present a sharp contrast in scale and design from the existing 2 storey house at that location. There are likely to be adverse noise impacts on no. 22 Fosters Avenue due to vehicles accessing / exiting the basement car park. The development will result in overlooking to the east from balconies at penthouse level on the eastern elevation of the apartment block. The Daylight and Sunlight Analysis indicates that the rear garden of no. 22 Fosters Avenue will experience a reduction of 8% of the area of garden to receive at least 2 hours of sunlight on March 21<sup>st</sup>, albeit that the total remaining area of garden reaching this standard would be 66.7%, well above the 50% target as per BRE guidelines. There would also be a reduction in the Vertical Sky Component (VSC) of windows at No. 22 Fosters Avenue but this reduction is well below 20% as per BRE guidelines.

There is currently a timber post and panel fence along the western site boundary shared with No. 30 Fosters Avenue. There are several Leyland Cypress and a single Ash tree at this boundary, as well as a group of young beech trees perpendicular to the boundary, which are all to be removed to facilitate the development. The landscaping scheme includes the provision of new semi-mature trees at the western site boundary. There is an intervening distance of c. 12 m between the western elevation of the apartment block and the boundary shared with No. 30 Fosters Avenue. I consider that the development will be overbearing in views from adjacent properties on Fosters Avenue to the west of the site and will result in overlooking of adjacent private open spaces to the west of the site from windows and balconies in the upper floors of the western elevation of the apartment block. I also note the location of an amenity area with associated roof terrace on the western side of the top floor of the block. The Building Management Plan states that this area may be booked for occasional use for gatherings. I accept and concur with the stated

concerns of neighbouring residents that this aspect of the development could have adverse noise impacts, particularly to the west and south of the development. However, based on the Daylight and Sunlight Analysis, I do not consider that the development is likely to have a significant adverse impact on the residential amenities of properties to the west by way of overshadowing.

#### 12.5.3. The Fosters

Nos. 1 and 2 The Fosters immediately adjoin the eastern site boundary. The landscaping scheme includes new tree planting at the eastern site boundary, the same as within the western boundary shared with No. 30 Fosters Avenue. While the block is set back over 27 m from the rear boundary of No. 1 The Fosters with an intervening amenity courtyard, it will extend to within 12 m of the boundary shared with No. 2 The Fosters. Having regard to the photomontages and to the site inspection, I consider that the development would be particularly visually obtrusive and overbearing when viewed from this location. I also note that the balconies of the eastern elevation would overlook the private amenity spaces of Nos. 1 and 2 The Fosters. The Daylight and Sunlight Analysis indicates that the development will have an impact on the VSC of windows at Nos. 1 and 2 The Fosters but that this impact will be generally within acceptable parameters. It will also have an impact on the Annual Probable Sunlight Hours (APSH), the amount of sunlight that a given window may expect to receive over the period of a year, in excess of that recommended in BRE guidelines, i.e. the development will have a noticeable impact on sunlight at this location (assessed as moderate in the Daylight and Sunlight Analysis).

While there is a gym on the ground floor of the eastern side of the block, I do not consider that it will have adverse impacts on residential amenities to the east, subject to satisfactory design and management.

#### 12.5.4. St. Thomas Road

The ground level of the development site is 2 m lower than that of the rear gardens of the adjacent properties on St. Thomas Road, to the immediate south of the development site. There is currently a concrete blockwork wall of c. 3m in height along the shared boundary, which acts as a retaining wall, with the existing warehouse elevation c. 1m from the boundary. The proposed southern elevation extends to c. 11 – 13 m from the boundaries shared with properties to the south. It



contains roof terraces, projecting winter gardens and extensive areas of glazing. I do not consider that the difference in levels and the presence of extensive mature vegetation within the adjacent rear gardens is sufficient to mitigate against adverse impacts on residential amenities at this location by way of overlooking and visual obtrusion. There are also likely to be adverse impacts on residential amenities of properties in St. Thomas Road due to noise impacts from the 4<sup>th</sup> floor amenity area and balcony. However, based on the Daylight and Sunlight Analysis, I do not consider that the development is likely to have a significant adverse impact on the residential amenities of properties to the south by way of overshadowing.

#### 12.5.5. Impacts on Residential and Visual Amenities Conclusion

To conclude, I consider that the development will result in an abrupt transition in height and scale in close proximity to the adjoining low density 2 storey residential development. It will result in a dominant presence on Fosters Avenue due to its proximity to the road, contrasting height and extensive façade along most of the site frontage. The development would also be overbearing and visually obtrusive when viewed from adjacent residential properties due to its bulk and scale and proximity to site boundaries. It would also have adverse impacts on the residential amenities of adjacent properties by way of overlooking, overshadowing and noise impacts.

### 12.6. **Impacts on Trees and Ecology**

12.6.1. Section 5 C of the EIA Screening Report sets out the likely significant environmental impacts of the development. These primarily relate to impacts on trees and hedgerows and on commuting bats and to potential temporary impacts during construction.

#### 12.6.2. Impacts on Trees

The Arboricultural Impact Assessment indicates that all of the existing trees at the site are to be removed except for one specimen at the Fosters Avenue frontage. The tree survey identified 53 trees present including the grass verge on Fosters Avenue, which is in the public realm. The trees present at the site are of mixed quality and comprise self-seeded specimens within the industrial site and planted trees in the garden areas. The trees at the verge on Fosters Avenue, within the public realm, are generally of low to very poor quality with 2 specimens recommended for removal

based on very poor condition. The 52 no. trees to be removed are categorised as follows:

Category	No.	% of Total
A	0	0
B	31	58
C	15	28
U	6	11
<b>Total</b>	<b>52</b>	

The Arboricultural Impact Assessment also notes that there are number of large Monterey cypress (*Cupressus macrocarpa*) within a property at the southern site boundary, which will have to be cut back close to the boundary as they encroach onto the development site by up to 7m. Third parties have stated concerns in relation to this issue and consequent impacts on residential amenities. Details of tree protection works for the specimen to be retained are provided.

The removal of trees at the development site is to be mitigated by the landscaping scheme. The EIA Screening Report states that the landscaping proposals will result in a long term positive impact at a local level with a greater diversity of habitats.

### 12.6.3. Impacts on Bats

A bat survey was carried out at the site on the 9<sup>th</sup> to 10<sup>th</sup> August 2018. A day time survey was carried out to identify any potential bat roosts in trees at the site and to determine the potential usage of the site by bats. Dusk and dawn surveys were also completed and bat recording was carried out at 4 locations as per Figure 2 of the survey report.

No trees at the site were considered to be potential bat roosts. A total of 3 bat species were recorded foraging / commuting at the development site, i.e. Soprano Pipistrelle, Common Pipistrelle and Leisler's bat. No bats were recorded using the building from 04.00 hours confirming that they are not roosting within. The survey report states that there was a low level of bat activity recorded for the 3 bat species and concludes that the area is primarily used for shelter during the night. It is not clear from the bat survey report whether the interior of the existing building at the site

was examined for potential bat roosts and the survey is considered deficient in this regard.

Section 4.2 of the bat survey report recommends mitigation measures including lighting specification, planting of trees and hedgerows. The removal of trees and hedgerows at the site will have impacts on connectivity and on the foraging habitat of bats. In the long term, it is expected that the proposed landscaping will create new habitats and connectivity across the site.

#### 12.6.4. Impacts on Trees and Ecology Conclusion

Permission has previously been granted for development at this site and, in any case, infill development at the site would result in the loss of many of the existing trees. I also note the low quality of many of the existing specimens. However, the applicant does not appear to have considered the possibility of retaining at least some of the trees at the site, which could have assisted in ameliorating some of the impacts on visual and residential amenities discussed above. This point is also mentioned in the report on file of DLRCC Parks and Landscaping. The retention of trees is also recommended as mitigation for potential bat impacts in the Bat Survey Report. I also note and concur with the concerns stated by the planning authority in relation to light spillage from the scheme and consequent impacts on bats, which are inconsistent with the mitigation measures recommended in the bat survey analysis. In addition, the proposed lighting layout includes tree uplighting and wall mounted lights near proposed landscaping, which are also unlikely to be compatible with the recommended bat mitigation measures. The planning authority recommends refusal for 4 reasons, one of which relates to potential impacts on bats. I concur and consider that the proposed development would have a significant adverse impact on bat activity.

#### 12.7. **Site Services and Flood Risk**

- 12.7.1. A previous application at the development site, ref. D08A/0324, was refused on grounds relating to deficiencies in the public foul sewer. There have been several subsequent permissions for residential developments at the subject site by both the Board and the planning authority. A subsequent refusal by the Board for another residential development at the site, ref. PL06D.201802, did not refer to drainage issues.

12.7.2. The development involves a new connection to the public foul sewer on Fosters Avenue with the existing connection to be made redundant. Third party submissions state concerns regarding an existing private sewer that traverses the development site and adjoining rear gardens, which is not addressed in the proposed foul drainage arrangements. The planning authority notes the possible presence of a private drain at the development site that is not recorded by Irish Water. It also states concerns that there is a lack of clarity as to how the development would address existing foul drainage deficiencies that may give rise to conditions prejudicial to public health and thus are also of concern to the planning authority. The planning authority therefore has concern that the development could be deemed premature having regard to the existing deficiencies in the foul drainage infrastructure of the area and recommends refusal on this basis. While these issues are noted, the submission on file of Irish Water states that it has issued a Confirmation of Feasibility and that the proposed connection can be facilitated subject to a valid connection agreement. The proposed foul drainage arrangements are considered acceptable on this basis.

12.7.3. The development is to connect to an existing surface water sewer on Fosters Avenue. The development site is currently predominantly covered by hard standing and the development will reduce the outflow during storm events by c. 96%. The surface water drainage design includes SUDS measures comprising a green roof system, permeable paving and attenuation chambers providing for a 1:100 year storm event and 20% climate change. The report of DLRCC Surface Water Drainage Dept. states that the applicant has provided minimal information in relation to attenuation proposals and notes that no Site Investigation Report has been submitted. A number of conditions are recommended in order to address these deficiencies.

12.7.4. A Site Specific Flood Risk Assessment (SSFRA) is submitted, which states that the development site is entirely located within Flood Zone C. It therefore has a low probability of flooding and the Justification Test is not required as per the Flood Risk Management Guidelines. Several third party submissions state concerns in relation to surface water flooding at Fosters Avenue after heavy rain. I note the comment in the DLRCC Surface Water Drainage Dept. report that flood events at the Fosters Avenue / N11 junction, as referred to in submissions, have no bearing on flood risk

at the site, also that there will be no increase in surface water run off from the development site as it is to be attenuated to the allowable greenfield run off rate. These points are accepted. Third party submissions also refer to the presence of an unnamed watercourse in the vicinity of the development site, which is not provided for in the proposed drainage design. The DLRCC Surface Water Drainage Dept also notes a lack of clarity on this matter in the documentation submitted and as such the issue remains unresolved. There is a related AA issue as the watercourse in question discharges to Booterstown Marsh resulting in a potential hydrological link to the South Dublin Bay SAC (000210) and South Dublin Bay and River Tolka Estuary SPA (004024), see section 11.0 above.

12.7.5. The proposed connection to the public water supply is acceptable with regard to the comment of Irish Water.

12.7.6. To conclude, it is clear that there are several deficiencies in the information submitted with the application and in the proposed drainage design. The planning authority recommends conditions regarding drainage issues, including measures to resolve some of the above issues, which could be imposed if permission is granted.

## **12.8. Roads and Traffic Issues**

12.8.1. Fosters Avenue has 2 lanes of traffic at this point. The site is c. 300m from the junction of Fosters Avenue and the N11 / Stillorgan Road and associated QBC. There is also a development plan objective for a future QBC along Fosters Avenue. There are footpaths and grass verges on both sides of the road but no formal cycle lanes. The vehicular access to the UCD Nova campus is directly across the road from the development site. That access is currently in use as a construction access during the development of student accommodation at the Belfield campus. As per development plan maps, the Eastern By-Pass Road Reservation runs along Fosters Avenue in front of the development site and incorporates lands on the southern side of Fosters Avenue, within the UCD campus. The development involves a vehicular access to the basement car park at the eastern end of the site frontage and a fire tender / emergency access at the western end of the site frontage. There is also a set down area in front of the main entrance to the apartment block, within the public realm. There is good visibility along Fosters Avenue in both directions at this point and I am satisfied that the proposed vehicular entrance will not result in a traffic

hazard. I note the submitted Road Safety Audit in this regard. The proposed set down area appears to be located in lands outside the control of the applicant and is opposed by DLRCC Transportation Planning Dept. The granting of planning permission does not entitle the applicant to carry out works if the consent of 3<sup>rd</sup> parties is required, as per section 34(13 of the Planning and Development Act 2000 (as amended). This aspect of the development could be omitted by condition if permission is granted.

12.8.2. The third party concerns regarding traffic congestion in the area are noted. The TIA is based on traffic surveys carried out during the week beginning the 12<sup>th</sup> November 2018. The development is expected to have a relatively low trip generation rate due to its proximity to highly accessible public transport facilities and cycle facilities. This is accepted and I note the comments of the NTA regarding existing and future public transport services in the area. I am satisfied that the site is highly accessible and that the development will not result in undue adverse traffic impacts such as would warrant a refusal of permission.

12.8.3. The basement car park provides 71 no. car parking spaces including 2 car club spaces (confirmation from Go Car is submitted) and there are 2 no. surface visitor spaces next to the basement ramp, i.e. a total parking provision of 73 no. spaces. It is also proposed to provide 10 motor cycle spaces in the basement. I note some discrepancies in the documentation on file and these figures are based on the submitted floor plans and site layout. Development plan car parking standards require 1 space per 1 bed apartment and 1.5 spaces per 2 bed apartment, i.e. 158 no. spaces to serve the proposed development. SPPR 8 (iii) of the apartment guidelines states that there shall be a default of minimal or significantly reduced car parking provision on the basis of BTR development being located at accessible sites and / or proximity to public transport services, also the scope for parking management in BTR schemes. Some details of proposed mobility measures are submitted. The Building Management Plan states that a community manager will be responsible for the management of car parking however no further details are provided. I note the comments of DLRCC Transportation Planning Dept., including that the proposed parking quantum is insufficient. I consider that the proposed quantum of parking is acceptable given the accessible location of the site and with

regard to SPPR 8 (iii), subject to further details of parking and mobility management, which could be required by condition.

12.8.4. Section 4.17 of the Apartment Guidelines recommends a provision of 1 cycle storage space per bedroom, i.e. 193 no. spaces to serve the proposed development. The proposed cycle parking provision comprises 244 no. spaces at basement level and 32 no. surface level spaces including those adjacent to the pedestrian entrance to the site from Fosters Avenue, which exceeds the relevant standard.

## 12.9. Other Matters

### 12.9.1. Part V

The applicant proposes to meet Part V obligations by the provision of rented units to DLRCC or to a nominated housing association with a discount of up to 10% of the market rent of the units. The units to be transferred comprise 8 no. 2 bed units and 4 no. 1 bed units. Details of costings are submitted. The report on file of DLRCC Housing Dept. raises concerns about this approach in relation to legal issues. A condition requiring a Part V agreement may be imposed if permission is granted.

### 12.9.2. Building Life Cycle Report

The applicant has submitted a Building Life Cycle report, as required by the Apartment Guidelines. It is intended that property and management costs will be absorbed into the rental value of each of the properties and an annual management fell will not directly apply. The development will be managed by a property management company except for the Part V units, which may be owned separately. The property management company will agree a service charge budget with the owners management company, which will include an allowance for the creation of a sinking fund as part of a 10 year planned preventative maintenance strategy. Section 2 of the Life Cycle Report sets out measures to reduce management costs, e.g. a reduction in the need for artificial lighting and other energy saving measures.

### 12.9.3. Childcare Provision

The development does not include a childcare facility. The Childcare Facilities Guidelines for Planning Authorities recommend a provision of 20 childcare places per 75 no. residential units, i.e. c. 33 spaces to serve the proposed development. Section 4.7 of the Apartment Guidelines recommends that the provision of any such

facilities in apartment schemes should be established having regard to the scale and unit mix of the proposed development and to the existing geographical distribution of childcare facilities and the demographic profile of the area. It also states that 1 bed apartment units should not be generally considered to contribute to a requirement for childcare provision and, subject to location, this may also apply to units with 2 or more bedrooms.

The application includes a Childcare Facilities Assessment, which includes analysis of census data for the area. It concludes that the development site is located in a mature suburb with a low ratio of families with pre-school children (average 16%). The report assesses that 11 of the proposed 2 bed apartments would generate demand for childcare based on this demographic profile. Based on CSO figures for the Dublin area which found that 25% of children of pre-school age attend childcare facilities, the report concludes that the development would generate a demand for 3 no. childcare places. Some details of existing childcare facilities in the area are also provided such that availability of spaces appears to be very limited. The planning authority does not accept these conclusions and considers that childcare facilities should be provided in the development. Having regard to the Build to Rent nature of the development, to the demographic profile of the area and to the housing mix of the development, which entirely consists of 1 and 2 bed units, I consider it reasonable that a childcare facility is not included in the proposed development.

#### 12.9.4. Cultural Heritage

There are no protected structures or conservations areas at or in the immediate vicinity of the development site. An Archaeological Assessment is submitted, dated March 2019. There is one recorded monument within 500m of the development site, ref. DU023-067, a 18<sup>th</sup> / 19<sup>th</sup> century house that has been significantly altered and is now in use as a hotel. A programme of archaeological monitoring carried out c. 205 m northwest of the development area failed to reveal any features of archaeological potential. Aerial photographs and inspection of the site failed to reveal any features of archaeological potential. The development area has been subject to extensive development and it is likely that any potential archaeological deposits within the site have been removed by those works. The assessment predicts no negative archaeological impacts and no archaeological mitigation is deemed necessary. These conclusions are accepted.



## 13.0 Conclusion

13.1. The proposed Build to Rent accommodation is acceptable in principle at this site with regard to the relevant 'A' zoning objective under the Dun Laoghaire Rathdown County Development Plan 2016-2022 and to the central and accessible location of the site adjacent to a third level campus and a Quality Bus Corridor and in an established residential area with a wide range of social infrastructure and public amenities. In addition, the site is generally considered to be suitable for higher density residential development with regard to these factors. However, due to the design, bulk and scale of the proposed apartment block, to its proximity to site boundaries and to the proposed removal of trees at the development site, it is considered that the development would be overbearing when viewed from adjacent residential properties and would have a significant adverse impact on their residential amenities by way of overlooking, overshadowing and noise impacts. In addition, the development would have an adverse visual impact on Fosters Avenue due to its bulk and scale in close proximity to the road, in advance of the established building line to the west of the site, and to the extensive nature of the façade at the road frontage. It is also considered that the development would have an adverse impact on Bats recorded to be present at the site due to the removal of trees and to impacts related to light spillage from the apartment block and from the proposed public lighting scheme. I therefore recommend that the Board refuse permission

## 14.0 Recommendation

14.1. Having regard to the above assessment, I recommend that section 9(4)(c) of the Act of 2016 be applied and that permission is REFUSED for the development as proposed for the reasons and considerations set out below.

## 15.0 Reasons and Considerations

1. Having regard to the design, scale, bulk and height of the development, to its proximity to site boundaries and to the proposed removal of trees at the development site, it is considered that the proposed scheme would be overbearing when viewed from adjacent residential properties and would seriously injure the residential amenities of adjoining properties through undue levels of overlooking, overshadowing and noise impacts. In addition, the development would have an adverse visual impact on Fosters Avenue due to its bulk and scale in close proximity to the road, in advance of the established building line to the west of the site, and to the extensive nature of the façade at the road frontage. The proposed development would be contrary the National Planning Framework and Ministerial Guidelines, which promote innovative and qualitative design solutions, and would seriously injure the amenities of property in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The Bat Survey Report indicates that there are 3 Bat species present at the development site, i.e. Soprano Pipistrelle, Common Pipistrelle and Leisler's Bat, which are all protected under the European Communities (Birds and Natural Habitats) Regulations 2011 and the Wildlife Act 1976 (as amended). It is considered that the proposed development would have a significant adverse impact on the Bat species present at the site due to the removal of existing trees that provide connectivity and foraging habitat and to potential light spillage from the apartment building and the public lighting serving the development. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Sarah Moran  
Senior Planning Inspector

4<sup>th</sup> July 2019

## **Appendix I List of Observers**

Brendan and Mary McManus

Cormac and Dianne Commins

Teresa Hussey

Samantha Ashe

Siobhan and John Coogan

Susan and Barry Murphy

Teresa Houlihan

Prof. Conal Hooper

Robert A. Hussey

Noel and Niamh Sheridan

Orla O'Grady Walshe

Peter and Grainne O'Donovan

Peter and Mary Graham

Michael and Suhaila Binchy

Nico Petris

Nigel and Elaine Gray

Maurice and Elizabeth Cullen

JP and Caitriona Flynn

Joseph and Elizabeth Connolly

JP and Caitriona Flynn and others

John and Julie-Anne Hudson

John Collins

Frankie and Declan McSweeney

Helen Maher

Jane O' Brien

Jean Cooper  
Gearoid O'Keeffe  
Francis Moran  
Eoghan Mooney  
Fiona Hussey  
Eleanor McCormack  
Elizabeth Brown and David Montgomery  
Emmett O'Rafferty  
Donal Kavanagh  
Cllr. Deirdre Donnelly  
Des Smyth  
Desmond and Elizabeth O'Reilly  
David Collins and Deirdre O'Meara  
Declan Hayes and Elma O'Reilly  
Cllr. Liam Dockery  
Colm and Dominique Carey  
Cllr. Barry Saul  
Catherine Martin T.D.  
Alex and Dolores Wadkin  
Gerard and Ailish Byrne  
Donal O'Connell