



An  
Bord  
Pleanála

## Inspector's Report

### ABP-304655-19

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<b>Development</b>	Demolition of existing warehouse building and construction of 24 no. apartment units and all associated site works
<b>Location</b>	At lands to the rear of premises numbered 31-34 Baldoyle Road & 'Elphin' licensed premises, Baldoyle Road, Sutton, Dublin 13.
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F19A/0132
<b>Applicant</b>	LDC Developments Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse permission (5 no. reasons)
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	LDC Developments Ltd.
<b>Observers</b>	George Keating Frank Knightly and Pam Dowdall

John and Anne-Marie Lally

Keith and Maeve Fogarty

Adèle Sleator

**Date of Site Inspection**

01/11/2019

**Inspector**

Conor McGrath

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## 1.0 Site Location and Description

- 1.1. This backland site is located to the rear of Elphin public house, and no.'s 31-34 Baldoyle Road, Sutton, Dublin 13. The site has a stated area of 0.2336ha and is currently occupied by a part single part two-storey warehouse unit (856-sq.m.) which is vacant and in poor condition. The remainder of the site is overgrown and generally level. The site is bounded on its southern side by a narrow mews laneway which runs east from the Baldoyle Road and provides pedestrian access to the adjoining Binn Eadair View residential estate. There is currently no vehicular access from the lane to the site.
- 1.2. Lands to the east and north comprise two-storey terraced housing in Binn Eadair View. Properties on Baldoyle Road to the west which back onto the site comprise single-storey commercial units and detached bungalows. To the south of the site are the rear gardens of semi-detached houses on the seafront / Dublin Road. Sutton Dart Station lies approx. 5 minutes walk / 550m northeast of the site and can be accessed through the adjoining residential areas.
- 1.3. The southern boundary of the mews lane is irregular and provides rear access to properties on the Dublin Road. The lane varies in width along its length and at its narrowest point the lane is less than 4m wide, adjoining the Elphin public house. The original access to this commercial site was to the north of the Elphin public house, however, this route has been incorporated into the site of the public house and is in use as a beer garden.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the demolition of existing structures on the site and its redevelopment to accommodate 24 no. apartments in a 3-4 storey block, with basement car parking. Apartments are comprised as follows:
  - 8 no. 1-bed
  - 14 no. 2-bed
  - 2 no. 3-bed units
- 2.2. Vehicular and pedestrian access is proposed from the adjoining lane with a new basement car park accessed from the southwestern corner of the site providing 24

no. car parking spaces. One bicycle parking space per unit is also provided. Open space is provided on the eastern and western sides of the residential block.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

The planning authority decided to refuse permission for the proposed development for five reasons, as follows:

1. The proposed development by virtue of its excessive scale, height and limited set-back from site boundaries, in addition to the ad hoc nature would result in a visually dominant and overbearing building for adjoining occupiers to the east and north, would overshadow those properties and unacceptably impact on residential amenities, streetscape and existing character of the area including properties to the south. As such the proposed development would contravene materially the zoning objective for the surrounding area.
2. The vehicular access suffers from inadequate sightlines. The proposed intensification of use would endanger public safety by reason of traffic hazard.
3. The proposed development would front onto the laneway in manner that would overlook the rear amenity spaces of houses to the south along Dublin Road, would provide inadequate privacy for ground floor inhabitants of the proposed development and would render the private amenity spaces at ground floor level unusable. The proposed development would provide insufficient amenity and would diminish that of houses in the vicinity contravening the surrounding RS zoning and objective DMS90 of the Plan.
4. Inadequate landscaping proposals have been provided, contrary to objective DMS03 of the development plan.
5. The proposal does not provide sufficient car or bicycle parking contrary to the development plan requirement to provide usable spaces.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The development is acceptable in principle in this zone. The site is suitable for higher densities but must protect adjoining amenities and privacy. Having regard to separation distances, the development does not respect the height and pattern of development in the surrounding area.

The proposal will not promote intensity of use within this Local Centre but is a permissible use. The layout will create frontage and passive observation of the laneway, but proximity may impact on amenity of ground floor apartments. Set-back is inadequate and a four-storey block with balconies encroaching on the lane is not acceptable. Redesign by way of FI was not considered feasible.

The blank eastern and northern façades will give rise to overbearing impacts. The development would have a negative impact on visual amenity, be out of character with the surrounding pattern of development and have an overbearing impact on the laneway. There would be overlooking of the rear amenity space to south and west. There are concerns regarding overshadowing in the absence of any analysis.

Design accords with the Apartment design guidelines. There is an unacceptable shortfall in dual aspect apartment provision. There are concerns regarding the usability of communal open space in the context of surface water management proposals. The second floor communal balcony will provide limited amenity value.

The principle of using the lane was accepted in principle under PL06F.248478. Sufficient width exists for emergency vehicle access in line with DMURS. There are concerns with regard to parking layout. Bicycle parking provision is deficient. The access would give rise to a traffic hazard as it fails to meet sightline requirements.

### 3.2.2. Other Technical Reports

- Environmental Health Air & Noise Unit: No objection subject to conditions.
- Transportation Planning Section: Parking provision is below development plan standards. Some spaces have restricted access. Additional bicycle parking is required. EV charging should be accommodated. A transition should be

provided on the basement access ramp. A footpath should be provided along the lane frontage. Shared surface is not a viable safety option. Increased sightlines at the site entrance are required. Significant redesign required and refusal recommended.

- Environmental Health: No comment.
- Water Services: No objection subject to conditions, including redesign of the surface water drainage arrangements to include a 1:100-year event.
- Parks Division: Unacceptable in its current form due to lack of public open space and landscaping details. The shortfall in open space would require a financial contribution in lieu thereof. A tree survey should be prepared and a detailed landscaping plan is required. Planting indicated on site layout plans would not be feasible or realistic within these areas.

### 3.3. Prescribed Bodies

Irish Water: No objection subject to conditions.

### 3.4. Third Party Observations

The planning authority received a number of submissions on the application. The points raised in these submissions are generally reflected in the observations on the appeal.

## 4.0 Planning History

**PA ref. F18A/0553:** Withdrawn application for 8 no. townhouses and associated works on the site.

**PA ref. F16A/0444 ABP ref. 06F.248478:** Decision to grant permission was overturned on appeal for demolition of a warehouse and boundary wall and construction of 6 no. houses and associated site works. The reason for refusal related to serious overlooking of adjoining property due to the proposed level and proximity of ground floor accommodation and patio areas to adjoining development, which would detract from its residential amenity.

**PA ref. F15A/0559:** Application for permission for 6 no. houses deemed withdrawn.

**PA ref. F12A/0214:** Permission granted for new vehicular entrance to serve the existing warehouse from existing public lane exiting onto Baldoyle Road south of 'Elphin' licensed premises to replace existing vehicular entrance accessed from private lane north of 'Elphin' licensed premises.

Planning applications in respect of no.'s 87 and 96 Dublin Road:

**PA ref. F03A/0825** – Planning permission refused for a bungalow to the rear of no. 87 with vehicular access from the laneway. The decision referred to deficiencies in the lane which would endanger public safety and the lack of comprehensive and inclusive proposals for widening and improvement of the lane.

**PA ref. F98A/0674:** Permission refused for demolition of existing garage and construction of creche at the rear of no. 96 with access over the laneway. The decision referred to the precedent for other development along the lane and the substandard nature of the access.

## 5.0 Policy Context

### 5.1. Development Plan

#### **Fingal County Development Plan 2017-2023**

The subject lands, and adjoining lands to the southwest are zoned for local centre use, LC: *to protect, provide for and/or improve local centre facilities.*

Vision: Provide a mix of local community and commercial facilities for the existing and developing communities of the County. The aim is to ensure local centres contain a range of community, recreational and retail facilities, including medical/ dental surgeries and childcare facilities, at a scale to cater for both existing residential development and zoned undeveloped lands, as appropriate, at locations which minimise the need for use of the private car and encourage pedestrians, cyclists and the use of public transport. The



development will strengthen local retail provision in accordance with the County Retail Strategy.

The range of permitted uses in this zone include residential use.

Surrounding lands are otherwise zoned *RS Residential*, for which the objective is to provide for residential development and protect and improve residential amenity.

Vision: Ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity.

With regard to Transitional Zonal Areas, section 11.4 notes that it is necessary to avoid developments that would be detrimental to the amenities of the more environmentally sensitive zone. In zones abutting residential areas or abutting residential development within predominantly mixed-use zones, particular attention must be paid to the use, scale and density of development proposals in order to protect the amenities of residential property.

Objective Z04: Have regard to development in adjoining zones, in particular more environmentally sensitive zones, in assessing development proposals for lands in the vicinity of zoning boundaries

Chapter 2 notes that Sutton lies within the Consolidation area in the Metropolitan area. The development strategy identified in Chapter 4, Urban Fingal, is to strengthen and consolidate the role of the existing centre while promoting the retention and provision of a range of facilities to support existing and new populations. The promotion and implementation of sustainable transport practices is also required.

Chapter 12 sets out development management standard.

Objective DNS03 requires the submission of a detailed design statement for all developments of more than 5 dwelling units.

Objective DMS90 requires balconies, ground floor private open space, roof terraces or winter gardens be suitably screened so as to provide an adequate level of privacy and shelter for residents.

Tables 12.1 - 3 and 12.6 set out Dwelling and Apartment Standards. Objective DMS57A requires a minimum 10% of a proposed development site area for use as public open space. Objective PM42 notes the requirement for the planning authority to apply the provisions of Guidelines for Planning Authorities 'Sustainable Urban Housing: Design Standards for New Apartments'.

The Council has the discretion to accept a financial contribution in lieu of outstanding open space requirement required under Table 12.5.

## **5.2. National and Regional Policy**

### **5.2.1. National Planning Framework**

Acknowledging demographic trends, the aim is to see a roughly 50:50 distribution of growth between the Eastern and Midland region, other regions.

An emphasis on renewing and developing existing settlements will be required, with a target of at least 40% of all new housing to be delivered within the existing built-up areas of cities, towns and villages on infill and/or brownfield sites.

### **5.2.2. Regional Planning Guidelines for the Greater Dublin Area.**

The settlement strategy policy concepts include focusing new housing within the existing built up footprint of Dublin City and suburbs within the metropolitan area. The policy emphasis for the Metropolitan area is to gain maximum benefit from existing assets – public transport, social, infrastructural- through the continuation of consolidation and increasing densities within the exiting built footprint of the City, suburbs and Consolidation & Large Growth towns.

### **5.2.3. Sustainable Residential Development in Urban Areas - Guidelines for Planning Authorities (2009)**

The guidelines encourage higher densities on residential zoned lands, particularly on inner suburban and infill sites and along public transport corridors, identifying minimum densities of 50 / ha in such corridors, subject to appropriate design and amenity standards.

In the case of large infill sites or brown field sites, public open space should be provided at a minimum rate of 10% of the site area. Section 4.21 encourages a more flexible approach to quantitative open space standards with greater emphasis on the qualitative standards. Close to the facilities of city and town centres or in proximity to public parks or coastal and other natural amenities, a relaxation of standards could be considered. Alternatively, planning authorities may seek a financial contribution in lieu of public open space within the development.

#### **5.2.4. Sustainable Urban Housing: Design Standards for new Apartments Guidelines for Planning Authorities (March 2018)**

Specific Planning Policy Requirement 3 sets Minimum Apartment Floor Areas. The majority of all apartments in any scheme shall exceed the minimum floor area standard for any combination of the relevant 1, 2- or 3-bedroom unit types, by a minimum of 10%.

Specific Planning Policy Requirement 4 refers to the provision of dual aspect apartments. The guidelines set minimum standards for ceiling heights and number of apartments served by a core. The importance of well-designed communal amenity space is noted. Section 4.6 notes that Communal or other facilities should not generally be imposed as requirements by the planning authority in the absence of proposals from and / or the agreement of an applicant.

Appendix 1 identifies the minimum standards for apartment design as well as both communal and private amenity space.

#### **5.2.5. Urban Development and Building Heights - Guidelines for Planning Authorities**

It is Government policy that building heights must be generally increased in appropriate urban locations. There is therefore a presumption in favour of buildings of increased height in town / city cores and in other urban locations with good public transport accessibility. The Guidelines identify broad principles to be considered for buildings taller than prevailing building heights in urban areas and criteria for consideration at the level of the City / town, district / neighbourhood / street and the site / building.

### 5.3. Natural Heritage Designations

The closest designated sites are

- North Bull Island SPA & North Dublin Bay SAC, approx. 100m south of the site.
- Baldoyle Bay SPA and SAC approx. 400m northeast of the site.

### 5.4. EIA Screening

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

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The first party make the following points in their appeal against the decision to refuse permission for the proposed development.

- An alternative design approach is submitted, however, the design originally submitted to the planning authority should be considered in the first instance.
- The revised design includes the following changes:
  - Omission of third floor, reducing development to 22 no. units.
  - Set-back of ground floor apartment terraces to improve sightlines and provision a footpath along the site frontage.
  - Screening on balconies to reduce overlooking and improve appearance.
  - New window provision to increase number of dual aspect apartments.
  - Revisions to basement car parking and additional bicycle parking.
- The development will provide much needed dwellings on valuable infill lands.

- While parking provision is below development plan standards, it is appropriate for this infill development in proximity to public transport.
- The development provides separation of min 22m from opposing windows.
- The development accords with the Design Standards for New Apartments.

#### Refusal Reason no. 1

- The decision incorrectly identifies the zoning as RS, instead of Local Centre.
- Set-back from boundaries reduces any overbearing impact. The 4-storey element adjoins the rear of commercial units and rear laneway access.
- Guidelines encourage increased building heights in such locations.
- The development provides surveillance and activation of the laneway and provides a pedestrian footpath to improve safety.
- The proposal is compliant with the zoning and with national policy guidance.
- The revised design omits the third floor, addressing overshadowing impacts.
- The reduced height is 2.3m higher than the ridge of the Elphin pub and 1.9m higher than that of Binn Eadair View houses to the east.
- Shadow analysis of this revised proposal indicates that there will be no daylight / sunlight impacts rising.

#### Refusal reason no. 2

- Current traffic volumes on the lane are low. Given the limited parking provision, the original proposed sightlines are sufficient and do not endanger public safety.
- The alternative design sets-back the front terraces to address sightline issues.

#### Refusal Reason no. 3

- Stepped design and set back from site boundaries addresses overlooking impacts from upper floors. The closest property on the Dublin Road is 44.5m from site boundary, with intervening trees and vegetation obscuring potential views.
- The revised design accommodates angled windows and screening to address any concerns in this regard.
- Ground floor terraces will provide active frontage to the lane, with amenities protected by balcony screening proposals.

- The development provides high quality communal open space with ample space for high quality planting.

Reason no. 4

- A landscaping plan could have been requested by way of further information and the appeal is accompanied by a detailed plan.

Reason no. 5

- The level of car parking provision is adequate for this location.
- The revised design provides 48 no. bicycle parking spaces, in compliance with the development plan, including 8 no. ground level visitor spaces.

## 6.2. Planning Authority Response

The planning authority make the following comments in response to the appeal:

- The original and amended designs represent over-development of the site, comprising a visually dominant, overbearing building for adjoining occupiers.
- The proposal would overshadow those properties, impacting on residential amenity, streetscape and the character of the area.
- The development would materially contravene the zoning objective of the surrounding area. The decision does not refer to the site being zoned RS.
- The Building Height guidelines encourage increased building height only where they would not impact negatively on existing amenities.
- Even with the amended design will impact on adjoining properties.
- The amended sightline drawings are incorrect. When assessed properly, available sightlines at the entrance are less than 5m.
- Vehicle speeds of less than 10kph would be required for this to be acceptable. Given likely vehicle speeds on the lane, sightlines of 15m would be appropriate.
- A report from the Transportation Section accompanies the appeal response.
- The previous permission on this site located the entrance further east.
- There is a reasonable level of pedestrian activity along this lane, however, no footpath is provided in this development proposal.
- There would be a significant increase in vehicle movements on the lane.

- A comprehensive approach to the functionality of the lane should be undertaken given the potential for significant backland development along its length.

### 6.3. Observations

A number of observations on the appeal have been received from:

- Gerard Keating
- Frank Knightly and Pam Dowdall
- John and Anne-Marie Lally
- Keith and Maeve Fogarty
- Adéle Sleator

The observations raise the following points

- The laneway is in private ownership and there is no right to use the lane as proposed. The application is therefore invalid.
- The laneway is deficient in width and there is no pedestrian provision at the narrower / western end of the lane.
- There is currently almost no vehicular traffic on the lane and it was not previously used to access the warehouse site.
- Precedent cases cited by the first party are not comparable with this case.
- Use of the lane for construction site access raises safety concerns.
- Construction activity may have structural impacts on adjoining properties.
- Parking provision is inadequate with a risk of overspill parking on adjoining roads.
- The Daylight / Sunlight analysis only considers the revised design proposals and still indicates serious impacts on adjoining properties to the east and west.
- The impact of the development should be assessed relative to current daylight and sunlight levels.
- The development will result in significant overlooking of adjoining properties.
- The alternative design proposals give rise to further overlooking with windows close to site boundaries contrary to development plan requirements.

- First and second floor balconies are within 10m of the western site boundary and proposed balcony screens do not address impacts.
- Separation from adjoining properties is inadequate.
- The development is contrary to the zoning objectives of the site and of the surrounding area. No regard was had to policies for transitional zones.
- This is a material contravention of the development plan and the Board is precluded from granting permission in this case.
- The proposal contravenes many development plan development management objectives.
- The Board should not consider unsolicited revised development proposals, submitted contrary to S.134, as there was inadequate opportunity for public review and comment.
- Impact on adjoining amenities or character of the area contrary to the Residential Density Guidelines.
- The scale and mass of the development is inappropriate and overbearing and will have negative visual impacts on the surrounding area.
- Basement car parking is proposed below sea level.
- The development will give rise to devaluation of property values.

## 7.0 **Assessment**

7.1. It is proposed to consider the appeal under the following broad headings:

- Land use and development principle
- Proposed residential amenity
- Adjoining residential amenity
- Access and transportation
- Drainage & flooding
- Material Contravention



## **7.2. Land use and development principle**

- 7.2.1. The subject lands are zoned (LC) for local centre use, while surrounding lands are otherwise zoned for residential use. The objective of the LC zone is to provide for or improve local centre facilities and this objective extends to the west / southwest of the site and includes the surface car park serving the adjoining public house. Residential use is permissible in principle and while I do not consider that the development plan zoning objective envisages entirely residential use on such lands, I note the presence of commercial uses on adjoining LC lands fronting Baldoyle Road. The planning authority regard the development as acceptable in principle and I otherwise consider the site to be appropriate for residential development, particularly given its proximity to public transport corridors and the surrounding pattern of development.
- 7.2.2. Submissions on the case have raised issues with regard to the right of the developers to access the appeal site over the adjoining laneway. Such matter is a not within the remit of the Board and the provisions of S.34(13) are relevant in this regard.
- 7.2.3. Revised design proposals were submitted with the first party appeal. These comprise amendments to the original design in order to address the planning authority reasons for refusal. I do not consider that these amendments fundamentally alter the nature of the proposed development or give rise to additional impacts on the surrounding area. I therefore believe that these amendments may be considered by the Board in determining this appeal.

## **7.3. Proposed Residential Amenity**

- 7.3.1. The site would comprise a Central and/or Accessible Urban Location as defined in the apartment design guidelines and would be regarded as a suitable location for higher density development. The proposed residential densities equate to approx. 103 units per hectare which is significantly in excess of the minimum guideline for such location. Having regard to the location of the site and subject to the protection of adjoining amenities, such densities would be regarded as acceptable in principle.

- 7.3.2. Apartment floorareas are compliant with minimum standards set out in the apartment guidelines. I note in this regard that two-bed units are provided as three-bedroom apartments. Private amenity space for a number of units is marginally below the minimum guideline standards. The area of terrace / balcony provided for many of the units is less than the area stated on the plans (units 1, 4, 5, 8, 9, 12, 13, 16, 22). It is considered that such shortfall could be addressed through revisions to the proposed design in the event of a decision to grant permission in this case.
- 7.3.3. The plans indicate the provision of communal landscaped open space of 860-sq.m., plus additional landscaped areas, which exceeds the minimum standards for such development. Additional access to the eastern area of communal open space from the central core would be appropriate. I note also the proximity of the site to the seafront and the significant amenity which this constitutes. The development is provided with a second floor terrace of 23-sq.m. I concur with the assessment of the planning authority with regard to the low levels of amenity which this would provide, having particular regard to its orientation. Bin storage facilities are provided at basement level, however, no other communal facilities are provided within the development.
- 7.3.4. The apartment design guidelines require that at least 33% of units be provided as dual aspect units, equating to 8 no. units in this case. Only four of the proposed apartments are dual aspect units, which the applicants justify in order to avoid overlooking of adjoining properties and having regard to the orientation of those apartments. The revised plans submitted at appeal stage introduce angled and high level windows to units no. 4, 15, 12 & 13, and additional windows to units no. 8, 16, 19 and 22 to address this issue. I note the constraints of this backland site and the need to protect adjoining residential amenities and regard the proposed amendments as generally acceptable in this regard.
- 7.3.5. The adjoining laneway serves as a pedestrian route between residential areas to the east and the Baldoyle Road. There is little vehicular traffic traversing the lane. Three ground floor apartments front onto the laneway with minimal set-back of their terrace / balconies from the lane, particularly units no. 2 and 3. I would echo the concerns of the planning authority with regard to the quality of this ground floor private amenity space. The revised design proposal submitted at appeal stage have moved these balconies / terraces back into the site and now provide for a footpath

along the frontage of the site. These balconies / terraces appear to still almost directly front onto this footpath, notwithstanding reference to screen hedges provided. At first and second floor levels, balconies will overhang this footpath which is not regarded as an appropriate design solution. The proposed revisions to the design are unclear in this regard and appear to indicate that this footpath will be enclosed by railings and therefore not publicly accessible. Clarification in this regard and an overall increase in set-back from the lane would be appropriate.

#### **7.4. Adjoining Residential Amenities**

- 7.4.1. This backland site is tightly bounded by residential properties to the north, east and west, with residential properties at a somewhat greater remove to the south on Dublin Road. The predominant building form is two-storey, however, properties to the west on Baldoyle Road comprise single-storey detached houses and commercial units.
- 7.4.2. The development comprises a linear block predominantly three-storeys in height, rising to four storeys at the southern end. Overlooking of the rear of no.'s 15 – 19A Binn Eadair View to the east & no. 92 Binn Eadair View to the north should not arise due to the layout of apartments and fenestration. Revised fenestration detail was submitted with the appeal to enliven these elevations, which is presumed to comprise opaque glazing and as such would not impact on residential amenity. Similarly, it is not considered that proposed angled and high level windows would result in overlooking.
- 7.4.3. The block does provide windows and balconies on the western elevation within approx. 10m of the rear boundary of properties on Baldoyle Road and approx. 30m from the rear elevation of these houses. Having regard to the separation distance, I do not consider that second floor level accommodation would unduly impact on adjoining residential amenity. The amended design submitted at appeal stage provides new louvre panels on first and second floor balconies of apartments no. 9 & 23. Such panels would reduce the amenity value of the balcony space somewhat and, having regard to the commercial nature of uses on no. 33 Baldoyle Road, I do not regard such panel as necessary.

- 7.4.4. Having regard to separation from the rear of properties along Dublin Road and intervening structures and vegetation, I do not consider that undue impacts on the residential amenities of these properties will arise particularly having regard to the proposal at appeal stage to omit third floor accommodation.
- 7.4.5. Any development on this urban site is likely to have some impacts on adjoining residential properties. A report on shadow analysis undertaken in respect of the revised design proposals was submitted with the first party appeal. Based on this analysis, it would appear that the original four-storey scheme would result in undue overshadowing impacts on adjoining residential properties. Having regard to the inner suburban location of the site, however I would not regard a three storey block as an inappropriate scale of development and based on the analysis provided, I do not consider that the impacts arising in terms of overshadowing would be so significant as to warrant a refusal of permission in this instance.

## **7.5. Access and Transportation**

- 7.5.1. Access to the site is proposed over the existing mews laneway to the south. This is not the original vehicular access to the site, which lay to the north of the Elphin Bar and Restaurant. A revised entrance to the site from the lane was permitted under ref. F12A/0214 to serve the existing commercial premises, however, that permission was not implemented and has since lapsed. I note that no objection to use of the lane to access the site was raised in subsequent applications including (PL06F.248478). The subject development provides 24 no. residential units on the site which is a significant intensification of activity from that previously considered, however, and I therefore consider that the capacity of the laneway to cater for such development is a valid consideration in this case.
- 7.5.2. The laneway is used primarily as a pedestrian route to adjoining residential areas and toward Sutton Dart Station. There are no footpaths along its length or in the vicinity of the Elphin pub and car park, and surface condition also varies. The lane is very narrow at points particularly to the west of the appeal site. The narrowest point appears to be where it passes between the Elphin public house and an adjoining storage structure on its southern side. Over a distance of approx. 25m, the laneway is approx. 4m wide on average, however, this width is further reduced to approx.

3.8m by lampposts and projecting plant associated with the adjoining pub. I note also that entrances to the adjoining premises open directly onto the lane, where width is approx. 4.2m. Opposite the appeal site, structures on the southern side of the laneway are set back so that the available width increases to 6.5m+ for a section of the lane before reducing again to approx. 3.8m further east. Precise ownership boundaries along the lane are not clear.

- 7.5.3. In proximity to the Baldoyle Road, the lane is bounded on its southern side by the car park serving the public house for approx. 19m. The precise ownership boundaries in this location are not clear. Intensification of vehicular use of the lane gives rise to potential for conflicting vehicle movements in this area and in the interests of pedestrian and traffic safety, I consider that the overall management of traffic movements along this route requires consideration.
- 7.5.4. The application contains no proposals for the upgrade or improvement of the lane. Having regard to the reduced width over an extended distance and its relationship with the adjoining public house and associated car park and current pedestrian movements along its length, I consider the lane in its current format to be wholly deficient in capacity to safely accommodate the vehicular and pedestrian movement movements which would be generated by the proposed development.
- 7.5.5. The development proposes 24 no. car parking spaces at basement level. While this is below the standards set out in the development plan, I consider that one space per unit would be acceptable for this location proximate to public transport services and the cycle routes. I note the revised bicycle parking arrangements accompanying the appeal submissions and consider them to be acceptable.
- 7.5.6. Access to the basement car park is proposed in the southwestern corner of the site, immediately adjacent to the rear of the Elphin bar. The planning authority decision refers to deficiencies in sightlines at the entrance and the first party have amended the development layout slightly to increase sightlines in an easterly direction. I consider that the critical sightline is to the west however, where the layout fails to achieve an acceptable standard. I consider that the road design requirements identified by the planning authority for the proposed development are realistic and reasonable and the development remains critically deficient in this regard.

7.5.7. The site comprises a substantial area of zoned backlands. Access is key to unlocking its development potential, however, this requires a more comprehensive approach to the design of this laneway and management of traffic thereon in conjunction with adjoining lands. The proposed development in its current form comprises an ad hoc approach in this regard which fails to achieve an adequate standard of development.

## 7.6. Drainage and Flooding

- 7.6.1. It is proposed to connect to mains foul drainage and water services in this area which will require the works along the laneway to connect to such services on Baldoyle Road. I note that there was no objection raised to the proposed development in this regard.
- 7.6.2. It is proposed to discharge surface water run-off to ground within the site and two large soakaways are proposed within areas of communal open space. The application notes that existing structures on the site discharge run-off to combined sewers and that the proposed development will therefore result in a reduction of surface water discharge to sewers.
- 7.6.3. Limited surface water design details were provided with the application, however, I note that the design is based on a 30-year return period. The planning authority water services department identified significant deficiencies in the design of surface water management system for the site and requested revised design proposals. Having regard to these matters and proximity of the proposed soakaways to adjoining residential properties (3m), I do not consider the development to be acceptable in its current form.
- 7.6.4. The site is not located within an area identified as being at risk of flooding, however, I note that the proposed finished floor level at 4m AOD complies with previous requirement of the planning authority in relation to flood risk. The basement car park ramp is at 2.8m OD and the finished floor level in the basement is 1.05m AOD. No assessment of the risk of flooding of the basement has been undertaken in the application.

## 7.7. Material Contravention

7.7.1. Reason no. 1 of the planning authority decision to refuse permission states that the development would materially contravene the zoning objective for the surrounding area. S.37(2)(a) of the 2000 Act, as amended, states that the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates. Sub-section (2)(b) states that where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that—

- (i) The proposed development is of strategic or national importance,
- (ii) There are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or
- (iii) Permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or
- (iv) Permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

7.7.2. With regard to these matters I would comment as follows:

- (i) The development is not of strategic or national importance
- (ii) The reason for refusal refers to contravention of the zoning objective for the surrounding area rather than that of the appeal site. That objective (RS) seeks to “Provide for residential development and protect and improve residential amenity”,. The subject site is subject to the (LC) Local Centre zoning objective, however.

Whether the development would negatively impact on residential amenity is considered in section 7.4 above. A development which is in accordance with the LC zoning objective may materially impact on adjoining residential amenity and therefore contravene other provisions of the development plan. This is not necessarily a material contravention of the zoning objective of those adjoining lands, however.

I also note that the issues identified in reason no. 1 might be overcome by revisions to the design and layout of development such that impacts on residential amenity might be suitably mitigated. In this regard, it cannot be clearly stated that a development would materially contravene the zoning objectives for the surrounding area.

(iii) The National Planning Framework promotes delivery of housing within the existing built-up areas of cities, towns and villages on infill and/or brownfield sites. Similarly, guidance available under the Sustainable Residential Development in Urban Areas - Guidelines for Planning Authorities (2009), Sustainable Urban Housing: Design Standards for new Apartments Guidelines for Planning Authorities (March 2018) and Urban Development and Building Heights - Guidelines for Planning Authorities, promote higher densities and more efficient use of urban lands.

All of these the guidelines emphasise the need to protect the amenities of directly adjoining neighbours and the general character of the area and its amenities. Subject therefore to the protection of adjoining residential amenities and avoidance of impacts on the character of the area, it is considered that permission could be granted in the light of national policy notwithstanding possible conflicts with local development plan policy.

(iv) the current development plan is the Fingal County Development Plan 2017. Since its adoption, there has been no change to the pattern of development in the vicinity which would justify over-turning the decision of the planning authority in this case.

Having regard to the foregoing, I conclude that where it was so minded, the Board could grant permission for the proposed development having regard to S.37(2)(b)(ii) and (iii).



## 8.0 Appropriate Assessment Screening

The appeal site is not located within any European site. The closest sites are:

- North Bull Island SPA (004006) & North Dublin Bay SAC (000206), approx. 100m south of the site.
- Baldoyle Bay SPA (004016) and SAC (000199) approx. 400m northeast of the site.

The qualifying interests for these closest sites are:

**North Bull Island SPA:** Light bellied Brent Goose, Shelduck, Teal, Pintail, Shoveler, Oystercatcher, Golden Plover, Grey Plover, Knot, Sanderling, Dunlin, Black-tailed Godwit, Bar-tailed Godwit, Curlew, Redshank, Turnstone, Black-headed Gull, Wetlands.

The objective is to maintain the favourable conservation condition of the species or habitat.

**North Dublin Bay SAC:** Mudflats and sandflats not covered by seawater at low tides, Annual vegetation of drift lines, Salicornia and other annuals colonising mud and sand, Atlantic salt meadows, Petalwort, Mediterranean salt meadows, Embryonic shifting dunes, Shifting dunes along the shoreline with white dunes, Fixed coastal dunes with herbaceous vegetation (grey dunes), Humid dune slack.

The objective is to maintain or restore the favourable conservation condition of the habitat.

**Baldoyle Bay SPA:** Light-bellied Brent Goose, Shelduck, Ringed Plover, Golden Plover, Grey Plover, Bar-tailed Godwit, Wetland and Waterbirds.

The objective is to maintain the favourable conservation condition of the species.

**Baldoyle Bay SAC:** Mudflats and sandflats not covered by seawater at low tides, Salicornia and other annuals colonising mud and sand, Atlantic salt meadows, Mediterranean salt meadows, Wetland and Waterbirds

The objective is to maintain the favourable conservation condition of the habitats.

Other sites in the vicinity but at a greater remove include Howth Head SAC (000203) and South Dublin Bay and River Tolka Estuary SPA (004024), Rockabill to Dalkey Island SAC (003000).

The appeal site is located within the existing built up urban area and is currently occupied by commercial / warehouse buildings. There will be no loss of qualifying habitat arising from the proposed development. The extent of undeveloped land on the site is limited and it would not provide for ex-situ grazing for any species of conservation interest in the nearby SPA's. The proposed development will replace existing structures with new residential development which will connect to mains water and sewerage services. There will be no direct connection to natura sites and separation distance would ensure that disturbance during construction activity are not likely to arise.

Having regard to the foregoing, it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development individually or in combination with other plans or projects would not be likely to have a significant effect on European Site - North Bull Island SPA (004006), North Dublin Bay SAC (000206), Baldoyle Bay SPA (004016) and Baldoyle Bay SAC (000199) or any European Site, in view of the sites conservation objectives and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

In reaching this conclusion, I took no account of mitigation measures intended to avoid or reduce the potentially harmful effects of the projects on any European site.

## **9.0 Recommendation**

9.1. That permission be refused for the reasons and considerations set out below.

## **10.0 Reasons and Considerations**

1. The existing laneway over which the proposed development is to be accessed comprises an important local pedestrian route. This laneway is seriously

deficient in width along its length and lacks sufficient capacity to safely accommodate the vehicle and pedestrian movements which the proposed development will generate along with existing and future pedestrian movements along the lane and associated with the adjoining public house.

In the absence of any comprehensive proposals for the upgrade of this lane and the management of vehicle movements along its length, it is considered that the proposal would constitute ad hoc piecemeal development which would endanger public safety by reason of traffic hazard. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

2. The proposed development would endanger public safety by reason of traffic hazard because sightlines at the proposed car park entrance onto the adjoining laneway are deficient. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

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Conor McGrath

Senior Planning Inspector

05/11/2019