



An
Bord
Pleanála

Inspector's Report

ABP-305148-19

Development	Demolition of structures & construction of 14 dwellings.
Location	Highfield Grove, Oaklands Crescent Road & Saint Luke's Hospital service road together with the existing "Primrose Lodge" property at 28A Highfield Grove, all accessed off Highfield Road, Rathgar, Dublin 6
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	2010/19
Applicant(s)	Crekav Trading GP Limited.
Type of Application	Permission.
Planning Authority Decision	Grant Permission subject to conditions
Type of Appeal	Third Party
Appellant(s)	<ol style="list-style-type: none">1. Mary P Connell2. The Highfield Grove Residents Association. here to enter text.3. Richview Management DAC4. Roy & Orla McGinley

Observer(s)

Tim Dolphin

Dan Coulcher & Paula Fyans.

Date of Site Inspection

7th October 2019.

Inspector

Bríd Maxwell

1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 0.69 hectares incorporating the former Highfield Plant nursery located off Highfield Grove, Oaklands Crescent Road and Saint Luke's Hospital Service Road together with the existing "Primrose Lodge" property at 28A Highfield Grove in Rathgar Dublin 6. The site lies c4km from Dublin City Centre, 1.1km of Rathmines Village Centre and 850m from Rathgar Avenue.
- 1.2. The site is characterised by overgrown greenhouses, plant beds and ancillary nursery structures. The boundaries of the site are enclosed by stone walls and foliage. The site also includes No 28A Highfield Grove which is an infill single storey dwelling fronting onto Highfield Grove to the northern part of the site.
- 1.3. The wider area is characterised by low density housing and institutional uses. Access to the site is off Highfield Road, via Oaklands Crescent and Saint Luke's Hospital Service Road and is bounded on all other sides by rear gardens of adjacent residential properties.
- 1.4. The southern and eastern boundaries of the site abut St Kevin's Park and Sunbury Park, established housing estates of semi- detached two storey houses while the northern site boundary abuts both Highfield Grove (a residential conservation area of single storey houses) and Four Oaks a small gated infill development of two storey residential units built on lands which previously formed part of Highfield Plant nurseries. Opposite to the to the west is St Luke's Hospital Complex which incorporates 2 protected structures. The hospital structures abutting the site are predominantly low-rise single storey outbuildings with a 1.5 storey building of conservation interest which gables directly onto the western boundary wall.
- 1.5. The private road of Oaklands Crescent is currently separated from the hospital service road by a number of temporary bollards thereby inhibiting vehicular access to the appeal site.

2.0 Proposed Development

- 2.1. The proposal involves the demolition and removal of the existing derelict glass greenhouses and related structures (c4450 sq.m) with the existing 1.5 storey, 3 bed dwelling at 28A Highfield Grove to be retained and included as part of the proposal.

The proposal provides for partial demolition of existing site boundaries to provide for a new pedestrian access and entrance gate within the curtilage of the property at 28A Highfield Grove. Vehicular access maintained off Oaklands Crescent and Saint Luke's Hospital Service Road. The proposal involves the construction of 14 no new dwellings comprising 2 no Type A (3 storey 4 bed) end of terrace dwellings, 2 no Type B (3 storey, 4 bed) end of terrace dwellings, 4 no Type B (3 storey 4 bed) terraced dwellings, 2 no Type C (3 Storey 4 bed) end of terrace dwellings, 2 no Type E (3 storey, 4 bed) semi detached dwellings, 1 no Type F (3 storey 4 bed) detached dwelling and 1 no Type G (2 Storey 3 bed) detached dwelling. In curtilage car parking is provided for each dwelling and a communal open space area totalling c509 sq.m. The development provides for all other site development works and site services above and below ground required to facilitate the proposed development including visitor car parking, bike parking, bin storage, incidental open space, boundary treatments, landscaping and surface water attenuation facilities.

2.2 The application is accompanied by a number of enclosures which set out the detail of the proposed development as follows:

- Architectural Drawings and design Report by Ferreira Architecture,
- Landscape drawings by Austen Associates
- Engineering drawings and Engineering Services Report by O Connor Sutton Cronin Consulting Engineers (with attached schedule of documents)
- Traffic drawings and Traffic Impact Assessment report by Traffic Insights.
- Construction Demolition and Waste Management Plan by Marlet Property Group Ltd.

Appropriate Assessment Screening Statement prepared by Altamar Marine and Environmental Consultancy.

2.3 In relation to Part V it is noted that the applicant has engaged in discussions with Dublin City Council and an agreement in principal to comply with Part V has been reached. Dublin City Council's preferred option is to acquire units on the site.

2.4 In response to a request for additional information, details of the proposal were clarified with scope of works to access road specified as less than originally anticipated. These works are limited to the removal of the temporary bollards between Oaklands Crescent and the hospital road and 2 no existing car parking bays. A revision was made to the site layout and landscaping treatment on plots 9, 10 and 14 to improve usability of private open space. The treatment of first floor bedroom windows to house type G was revised to obscure glazing. The applicant indicated a willingness to pay a contribution in reflect of open space shortfall 2.7%. On the basis of a €4000 per unit a charge for 100% non-provision the applicant indicated a willingness to pay a pro-rata financial contribution of €1,080 per unit giving a total contribution of €15,120 for the proposed 14 units.

3.0 Planning Authority Decision

3.1. Decision

3.1.1 By order dated 26th July 2019, Dublin City Council issued notification of its decision to grant permission for the development subject to 14 conditions which included the following of particular note:

Condition 2. Construction management plan to be submitted for written agreement prior to commencement of development.

Condition 3. (a) *“Prior to commencement of development the applicant will contact the Health Service Executive (HSE) and agree in writing, all works required to the Hospital Services Access Road for the purpose of providing safe and satisfactory access to and from the subject site.*

(b) Prior to any works commencing in connection with the development proposal and/or any proposal which seeks to alter or encroach on property title associated with St Luke’s Hospital, the applicant shall engage with St Luke’s Hospital Management and HSE Estates, to agree in writing, plan and schedule all and any works impacting on HSE title, live hospital services and structures.

Reason: In the interest of clarity and proper planning”

Condition 7. *Management and maintenance of the development by a legally constituted management company.*

Condition 9 Development Contribution €4,000 per dwelling unit as a special contribution under Section 482C in respect of open space.

Condition 13. Part V Agreement,

Condition 14. Agreement with Irish Water prior to commencement of development.

I note the permission did not include the standard Section 47 Development Contribution Scheme.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.1.1 Planner's report notes that the proposed density of 21.8 units per hectare is considerably lower than recommended for serviced urban areas, however given the nature of the proposal and surrounding character this is considered appropriate. Housing quality is of a good standard. Overlooking and overshadowing are considered not to be an issue save for proposed house type G on plot 14 where overlooking of first floor bedroom windows to rear gardens of St Kevin's Park. Other instances of potential overlooking e.g. from House type A plot 8 to rear gardens of St Kevin's Park can be addressed by provision of opaque glazing. Contribution in lieu of shortfall in public open space provision. The proposal is considered acceptable in principle however the applicant has not demonstrated that they can implement the physical works necessary including the removal of bollards, parts of existing wall and on street car spaces to accommodate satisfactory vehicular access to the site. Concerns arise regarding the layout of proposed dwellings on plot numbers 9, 10, and 14 with regard to the usability of the private open space to the side and rear and potential for overlooking into small number of dwellings in Kevin's Park. Further information was requested as follows:

- Documentary evidence including written consent of owners of the access road with regard to intended works to provide for satisfactory access arrangements.
- Layout of dwellings 9,10 and 14 to be reassessed in terms of usability of private open space and impact on residential amenity.
- Concerns of overlooking from first floor bedroom windows in Type G dwellings on Plot 14 to rear garden of St Kevin's Park.

- Issue of financial contribution with regard to open space shortfall.

Following submission of further information, the Planner's report asserts that issues have been addressed satisfactorily. Permission was recommended accordingly.

3.2.2. Other Technical Reports

3.2.2.1 Drainage Division, Engineering Department report indicates no objection subject to compliance with standard requirements including Greater Dublin Regional Code of Practice for Drainage works.

3.2.2.2 Roads Streets & Traffic Division report notes location in Area 3 on border of Area 2 on Map J Development Plan with regard to car parking requirements. Maximum permissible car parking spaces is 21 and 30 are proposed. To avoid overspill car parking to surrounding streets the division has no objection to the level of parking proposed. Cycle parking in excess of the minimum standards is welcomed. Pedestrian access from 28A Highfield Grove is welcome.

Note swept path analysis indicates that the existing bollards and part of the existing wall between Oaklands Crescent and St Luke's Hospital service access road will need to be removed. This is not detailed on application documents. Refuse vehicle and fire tender appear also to require the use of on street spaces on St Luke's access road. This needs to be clarified. Construction Demolition and waste management plan to be prepared.

3.3. **Prescribed Bodies**

No submissions.

3.4. **Third Party Observations**

3.4.1 A number of third-party submissions object to the proposal on grounds of

- Misuse of right of way. Contested rights.
- Sightline for traffic existing to Highfield Road restricted.
- Negative impact on Oakland Crescent, Sunbury Park, Four Oaks and St Kevin's Park

- Subsidence and structural damage.
- Negative impact on quality of life,
- Overshadowing, overlooking, overdevelopment.
- Access inadequate. Traffic impacts. Excessive car parking.
- Construction impacts.
- Health and safety issues.
- Lack of public consultation.
- Impact on structural integrity of boundary wall St Kevin's Park,
- Drainage and Flooding concerns.
- Pathway to Highfield Grove should be removed to protect the historical character of the area prevent traffic hazard and maintain residential amenity.
- Negative impact on 28A Highfield Grove.
- HSE – Road inadequate to cater for proposed vehicular traffic, No consent for works to the roadway.
- Having regard to secondary blue line evidencing additional significant landownership, concern arises that future development may seek to springboard off the existing right of way.
- Contrary to Z1 zoning objective
- Excessive car parking traffic
- Impact on property values.

4.0 **Planning History**

4.1 No recent planning history on the site.

0935/99 PL29S111855 Permission granted 1999 by An Bord Pleanála for extension to a potting area and for a loading bay extension to an existing glasshouse complex.

1544/01 PL29S126133 Permission granted 2002 for retention of two storey prefabricated offices at Highfield Nurseries Site.

892/93 Permission for glasshouse.

1237/95 Permission granted for construction of polythene tunnel.

2033/97 Permission for Four Oaks development to the north west of the site. Infill development of four detached 2 storey units.

ABP-305569-19 Concurrent third-party appeal in respect of application at 39 Kevin's Park, Dartry. Permission was granted by DCC for construction of a detached house with pitched roof and rooflight. This follows **ABP302373-18 1263/18** Refusal of permission for demolition of garage and construction of two storey detached house. Development out of character in a residential conservation area.

5.0 Policy Context

5.1 National Policy

5.1.1 Project Ireland 2040- National Planning Framework.

5.1.2 Relevant Section 28 Ministerial Guidelines:

- Sustainable Urban Housing Design Standards for New Apartments, Guidelines for Planning Authorities Department of Housing Planning and Local Government 2018.
- Urban Development and Building Height, Guidelines for Planning Authorities 2018.
- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (including the associated Urban Design Manual. 2009
- Design Manual for Urban Roads and Streets (DMURS)
- The Planning System and Flood Risk Management, Guidelines for Planning Authorities (including associated technical appendices). 2009.
- Architectural Heritage Protection Guidelines for Planning Authorities Department of Arts Heritage and the Gaeltacht 2011.

5.1 Development Plan

The Dublin City Development Plan 2016-2022 refers. The site is zoned Z1 “to protect, provide and improve residential amenities.”

The adjoining properties at St Kevin’s Park and Highfield Grove are zoned Z2 ‘Residential Conservation Area’ while St Luke’s Hospital campus is Z14 ‘Institutional’.

5.2 Natural Heritage Designations

None

5.3 EIA Screening

Having regard to the nature and scale of the proposed development and to the nature of the receiving environment, 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 The Appeal

6.1 Grounds of Appeal

6.1.1 There are four third party appeals which raise a number of common issues. I have summarised the grounds of appeal as follows:

6.1.1.1 The appeal by Mary O Connell, 17 Oaklands Drive objects on the following grounds:

- Access road is too narrow for 2-way traffic.
- Impact on appellant’s dwelling which has gable wall alongside the lane in terms of increased vibration and damage and negative impact on established residential amenity.
- Health and safety impact on vulnerable road users.

6.1.1.2 The second Third party appeal by Highfield Grove Residents Association is summarised as follows:

- No objection in principle to residential development on the site however proposal fails to protect the historical and residential character of Highfield Grove.
- Pedestrian access will threaten the unique character Highfield Grove one of the few surviving tramway cottage developments in the City.
- Traffic hazard. Footpaths are inadequate to accommodate additional pedestrian movement. Below standard 1.8m width required for universal access. Footpath terminates at No 28 Highfield Grove. Access to Highfield Grove should be removed.
- Based on lack of capacity of existing foul water infrastructure 28A Highfield Grove should be connected to new infrastructure.
- Negative impact on wildlife and bat population.
- Erosion of residential amenity of no 28A Highfield Grove (Primrose Lodge) through removal of private open space overlooking and overshadowing.

6.1.1.3 The appeal by Rory and Orla McGinley, 16 Sunbury Park, submitted by Marston Planning Consultancy on their behalf objects as follows:

- Proposal by reason of its inappropriate access as well as overbearing siting scale and form relative to Sunbury Park will result in serious injury to amenity.
- Profound overlooking contrary to section 16.10.7 and 16.10.10 of the City Development Plan.
- Difference in grounds levels and heavily constrained / poor quality of open space serving dwellings on Sunbury Park.
- Dormer windows within the rear roof of the eight terraced houses are not shown on Section drawings. In effect the proposal places three storey houses within 22m and this compounded by the 2m difference in levels. Overlooking and overbearing.
- Right of way is questioned.
- Traffic hazard arising from inadequate pedestrian infrastructure and deficient network.

6.1.4 **The final third-party appeal submitted by Marston Planning Consultancy is on behalf of Richview Management DAC, 21 Oaklands Crescent**, and also includes a technical note by Martin Peters and Associates and a legal opinion from Gavin Ralston SC. The appeal grounds are summarised as follows:

- Decision is inherently flawed.
- Council have failed to acknowledge the clear traffic hazard.
- Applicant has no legal right of way across private road of Oaklands Crescent. Notably no evidence exists that the site accommodated daily customer trips through Oaklands Crescent. Access has not been in use for c 14 years and the applicant initially sought to use the access from Oaklands Drive.
- Letter from HSE is only quasi consent and subject to significant caveats.
- Swept path analysis apparently not based on survey rather on OS Base map. No account taken of on street car parking that takes place to the side (west) of 27/28 Oaklands Crescent.
- Restricted width of roadway within St Luke's and Oaklands Crescent.
- Rationale for pedestrian access is inherently flawed. Site is 1250m from Rathmines and 800m from Rathgar, Route to Rathgar is some 80-100m shorter via St Lukes. Frequency of bus at Rathgar also raises potential for pedestrian use of St Lukes entrance.
- Potential for workers and patients to use shortcut including potential to use Highfield Grove for car parking,
- No grounds for providing for excessive parking in breach of the standards of the development plan.
- Proposal will have a material and significant reduction in property values through material reduction in residential amenity.
- Enclosure from Gavin Ralston SC refers to *Orwell Park Management Limited v Henihan High Court 14th May 2004* in circuit appeal where Herbert J in circuit appeal declared that a certain party was entitled to a right of way over a laneway but not for all purposes. Reference also to *Abraham v Oakley Park Development 2019 IECA 87*

20th March 2019 in relation to the interpretation of a boundary. In the absence of title documents clearly establishing ownership of the laneway, it is not possible to determine what area was transferred to the management company. Also, not possible to say what rights the owners of the nursery have in relation to the laneway if any. If the use is prescriptive it would be limited to access for use as a nursery or whatever business was conducted there and not a general right of way. Insofar as the management company have kept and maintained the laneway over a substantial period of time and to the extent acts of ownership have occurred there is strong evidence of ownership. It is possible that if title was not expressly conveyed to the management company it has acquired such title by adverse possession, any such right should be subject to those rights granted to or exercised by or on behalf of the owners or occupiers of the nursery.

- Martin Peters Associates Consulting Engineers provides a critique of the Traffic Impact Assessment and FI response by Transport Insights Ltd. Significant pedestrian flow through the hospital service road likely rather than the proposed pedestrian link to Highfield Grove. Hospital service road which is approximately 5.5m wide with on street parking permitted on one side only is unsafe for pedestrians. Onward route via Oaklands Crescent also substandard as the southernmost section has no footway. No details provided on how the informal zebra crossing will be maintained post development.
- Security risks to hospital site. Potential for wider traffic distribution not addressed within the TIA.
- Proximity of junctions between the Hospital service road Oaklands Crescent and the newly created Oaklands Crescent side arm would lead to inappropriate levels of junction visibility, driver confusion and a detrimental impact on safety. Further complicated by pedestrian movement within the carriageway.
- Forward visibility between Oaklands Crescent and hospital service road is substandard due to the inability for drivers to see over the boundary wall to be retained. Wall also affects intervisibility.
- The width of Oaklands Crescent is insufficient for large car to pass a large HGV further restricted by high levels of on street car parking beside Nos 1 and 2 and 27 and 28 Oaklands Crescent,

- Tracking of access provides little room for error in terms of swept path analysis. Insufficient evidence present with regard to HGV Service vehicles.
- Road Safety Audit should be carried out.

6.2 Applicant Response

6.2.1 The response submission on behalf of the first party by Hughes Planning and Development Consultants and accompanied by a Traffic and Transport Report prepared by Transport Insights and a statement from Ronan Daly Jermyn Solicitors, and an ecological report by Altemar Marine and Environmental Consultancy seeks to address the grounds of appeal as follows:

- Proposal will provide for the use of an otherwise underutilised site that is zoned to protect, provide and improve residential amenities. Provides housing choice in suitable located area with mix of high quality 3 and 4 bed dwellings.
- Dwellings designed to relevant standards and scaled to respect established residential development within the immediate area.
- Planning Authority did not have any concerns with regard to separation distances achieved on the site. Plots 9 10 and 14 amended during course of application to address residential amenity.
- The number of additional vehicles using the road running along Oaklands Crescent will not result in increased level of vibrations or reduce the enjoyment of appellants garden with regard to noise.
- Generation of traffic an additional 10 trips in morning and an additional 6 trips during evening peak times is considered to be minimal and will not lead to detrimental effect on the residential amenity.
- Private open space remaining to unit 28A Highfield Grove of 78 sq.m is in excess of minimum standards.
- Addition of a pedestrian access through Highfield Grove will not cause a detrimental impact on residential amenities and will not have negative impact on character.

- On site parking will predominantly serve as car storage given the sites high accessibility. Avoidance of overspill to surrounding streets is also necessary,
- Existing footpaths which run along Highfield Grove are considered safe to provide a for the 30 dwellings on Highfield Grove and the additional 14 houses are not considered to have a significant effect.
- Regarding legalities of right of way through Oaklands Crescent submission from Ronan Daly Jermyn Solicitors states that following review of the title of the appeal site it is confirmed that the applicant enjoys unrestricted right of way over Oaklands Crescent.
- Ecology and bat survey report by Bryan Deegan of Altemar Marine and Environmental Consultancy outlines that the development will not have an impact on the wildlife and bat population in the area as there are not roosting opportunities in the abandoned derelict nursery greenhouses and very few trees.
- Capacity of existing foul water sewage design was discussed and agreed with Dublin City Council drainage department and pre connection enquiry submitted to Irish Water to confirm capacity in the network.
- Regarding traffic hazard / vehicular Access route adequacy, supplemental site assessment undertaken in early September 2019 addressed key dimensions of Oaklands Crescent and Oaklands Crescent's junction with Hospital Service access road. Assessment is based on topographical survey of the road. Existing carriageway width currently accommodates hospital service vehicles using the road and is deemed satisfactory in accommodating low additional traffic volumes following completion of the development, subject to works as agreed with HSE
- Regarding Oaklands Crescent Layout and Operational Characteristics, the carriageway is circa 4.8m which locally narrows due to the presence of trees and car parking, is adequate in accommodating existing and proposed low volumes of traffic. Carriageway width is consistent with DMURS for shared surface environment.
- Car parking adjacent to Nos 1 and 2 Oaklands Crescent occurs on double yellow lines which have faded due to the passage of time and or deficient maintenance. The carriageway width is 4.8m at this point and therefore sufficient to accommodate on street car parking and single file low volume traffic movements. Car parking on the

western side of Oaklands Crescent adjacent to Nos 27 and 29 was not observed however this would impede existing vehicular movement at Oaklands Crescent.

- Works proposed include permanent removal of bollards currently in position at the intersection of Oaklands Crescent and St Luks Hospital Service road and permanent removal of 2 no on street car parking spaces (12m) along St Luke's Hospital Service Road.
- Swept path analysis was undertaken on the basis of topographical survey. Findings are robust.
- Potential for redistribution of traffic onto Oaklands Crescent is considered to be limited.
- Pedestrian movement likely to be influenced by the quality of the urban environmental and availability of pedestrian infrastructures. Rationale for the pedestrian access strategy has been subject to detailed consideration and deemed appropriate by DCC Transportation Department.
- Pedestrian crossing located within a heavily traffic calmed section of road with speed ramps within 5m to the east and west. Relevant design speed of 10km/h. The potential for conflict between vehicular traffic and pedestrians using the pedestrian crossing at St Lukes campus is not deemed to represent a road safety risk.
- Car parking rationale seeks to ensure that all parking needs are accommodated within the site with no potential for overspill to the surrounding streets.
- Bat fauna and ecological assessment by Altamar Marine and Environmental Consultant notes results of walkover assessment of the site. No potential bat roosting opportunity within the structures on the site and native biodiversity of the site was poor with opportunist species such as buddleia present throughout the site. No flora or fauna of conservation importance were noted. Several records of the common frog were found in the vicinity but not within the site. A treated stand of Japanese knotweed was marked out and located on the southern boundary. No evidence of badgers or badger activity. Bat survey detected two bats on site with foraging activity for a short period. In terms of predicted and residual impacts it is outlined that as there is no evidence of a current or past bat roost no negative impact

on bat roosting. Foraging activity may be reduced due to increase illumination of the site however will not necessarily be eliminated.

6.3 Planning Authority Response

The Planning Authority did not respond to the grounds of appeal.

6.4 Observations

6.4.1 Observations were submitted by the following

- Tim Dolphin 48 St Kevin's Park
- Dan Coulcher and Paula Fyans, 40 St Kevin's Park

Observations outline objection to the proposal on the following grounds:

- Overlooking
- Development is out of character
- Failure to provide for planting of trees along boundary with St Kevin's Park residences and insufficient setback from St Kevin's Park boundary.
- Drainage and flooding.
- Open space inadequate.
- Circuitous access road to proposed houses 5-8 is unnecessary. The creation of a cul de sac would extend open space, provide traffic calming and mitigate impact on St Kevin's Park,

6.5 Further Responses

- 6.5.1 Response from Marston Planning Consultancy on behalf of Richview Management DAC and is accompanied by a technical note on transport by Martin Peters and Associates.

- Note no evidence of right of way and it is notable that applicant initially sought to provide vehicular access through Highfield Grove but were informed by DCC that this access would be unfeasible.
- Question appropriateness of access via a private road.
- Maintain that the proposed access arrangements are inherently flawed.
- Loss of car parking within St Lukes will result in spill over parking to Oaklands Crescent or Highfield Grove.
- Potential for Oaklands Grove to be used as a rat run for traffic accessing the hospital.
- Permission should be refused on the basis that it will be contrary to the zoning objective for the area due to its diminution of residential amenity. Undesirable precedent in terms of access and traffic hazard a contrary to the proper planning and sustainable development of the area.
- Additional traffic and pedestrian movement will result in the unacceptable reduction in highway and pedestrian safety.
- Significant underestimation of risk arising from pedestrian crossing point at the centre of the new junction
- Failure to address the issue of the proximity of the junction between the hospital services road, Oaklands crescent and the newly created Oaklands Crescent side arm leading to inappropriate levels of junction visibility. This will lead to driver confusion and detrimental impact on traffic safety.
- Priorities at junction of Oaklands Crescent and hospital service road need to be addressed.
- Visibility splays are inadequate. Visibility and intervisibility available for drivers leaving to adverse safety implications,
- Provision of additional car parking encourages greater car ownership and potential use contrary to all policy guidance.
- Roads Safety Audit should be commissioned to enable assessment

6.5.2 Submission from Highfield Grove Residents Association.

- Welcomes the ecological assessment of the site.
- In all other respects the concerns have not been addressed and grounds of appeal remain unchanged. Respectfully request that the Board refuse permission or amend the scheme to protect the historic character of Highfield Grove removing potential to create traffic hazard due to inadequate footpath provision and width and ensure the timely provision of foul water infrastructure and protect the residential amenity of 28A Highfield Grove.

7 Assessment

7.1 Having examined the file, considered the prevailing local and national policies, inspected the site and assessed the proposal and all submissions in detail, I consider that the key issues arising in the appeals of this case can be considered under the following broad headings:

- Principle of Development
- Quality of Design and Layout & Impact on Established Residential Amenity
- Traffic, Access and Parking
- Servicing, Flooding
- Ecology
- Appropriate Assessment

7.2 On the question of contested legal interest in terms of the use of Oaklands Crescent access and the St Luke's access road, I note the submission by Marston Planning Consultancy on behalf of Richview Management, DAC which questions the applicant's legal entitlement to access the site via Oaklands Crescent and also the entitlement with regard to the removal of barriers necessary to reinstate access. The first party in response claims unrestricted right of way over Oaklands Crescent. I cannot adjudicate on the opposing claims by the parties. I would note in response to issues regarding legal interest in both appeals that all the matters raised are

essentially civil matters between the parties and are not strictly matters for determination within the scope of planning legislation. In this regard I would refer the parties to Section 34(13) of the Planning and Development Act 2000, as amended as follows: *“A person shall not be entitled solely by reason of a permission under this section to carry out any development.”*

7.2 Principle of Development

7.2.1 As regards the principle of development the site is zoned Z1 – the objective “to protect, provide and improve residential amenities”. The site is centrally located within easy walking distance of high-quality public transport in an existing fully serviced area. The proposal seeks to replace a currently derelict / vacant site and provide for residential development in order to expedite the more efficient use of currently underutilised serviced land.

7.2.2 The National Planning Framework advocates more compact growth utilising existing infrastructure, improving the visibility of public transport and services and creating an urban environment which facilitates more healthy and sustainable trip patterns. As regards density the proposed density of 22 units per hectare which is low when considered in the context of National Guidelines which state that the greatest efficiency in land usage is in the range of 35-50 dwellings per hectare and recommends that net densities less than 30 hectares would generally be discouraged in the interest of land efficiency. However, having regard to the infill nature and size of the site, its configuration and proximity to established low density residential development, and taking account of capacity issues in terms of access I consider that the proposed density is acceptable in this context. On balance I consider that the proposal results in the creation of 14 high quality modern dwellings, making for better use of zoned serviced land.

7.2.3 I am of the opinion that given its zoning, the delivery of residential development on this prime underutilised site in a compact form is generally consistent with the

policies of the Development Plan the NPF and Rebuilding Ireland – The Government’s Action Plan on Housing and Homelessness in this regard. It is therefore appropriate to assess the merits of the proposal in its detail.

7.3 Quality of Design and Layout and Impact on Established Residential Amenity.

7.3.1 As regards the issue of residential amenity of the proposed dwelling units, I note that the floor areas of the proposed dwellings are reasonably proportioned in terms of internal space standards and meet the standards set out in 2007 Quality Housing for Sustainable Communities Best Practice Design Guidelines and Dublin City Development Plan Standards. Private open space provision varies from 80sq.m to 330sq.m while the reduced garden available to 28A Highfield Grove is 74 sq. m A reasonable standard of residential amenity is provided for in my view.

7.3.2 The proposed design and layout takes some reference from the established character in the area and its evolution is detailed in the architectural design statement by Ferreira Architects. In my view the proposal provides for an appropriate infill. I consider that the overall design approach is acceptable in visual amenity terms.

7.3.3 As regards public open space provision the development plan standard would require 10% of site area. The proposed layout provides a pocket park area of 509 sq.m equating to c7.3% of the site area which is centrally located and overlooked by a number of the dwellings. Having regard to the characteristics of the site and character of development in the vicinity, I consider that it is appropriate that flexibility apply in terms of standards for public open space provision. Based on the site zoning and context and accessibility of the location other existing open space amenities, it is reasonable to accept a lesser on-site provision. I note that Dublin City Council required the payment of a special contribution in lieu of the shortfall and this is appropriate.

7.3.4 As regards the performance of the proposal in terms of analysis in the context of the 12 criteria for sustainable urban development as set out in the Urban Design Manual, I am satisfied that the proposed layout performs positively.

7.3.5 As regards the impact of the development on established residential amenity the third parties and observers raise concerns regarding overbearing impact and overlooking. I note that back to back separation distances to properties on Sunbury Park are in the region of 23m between opposing first floor windows. I note the difference in site levels and that house type B includes a dormer window to roof however I consider that given the separation distance involved undue overlooking does not arise. I note that some level of overlooking is inevitable in any redevelopment of the site however the separation distance is such that it is not significant. As regards proposed house type G the dwelling on plot 14 I note the amendment during the course of the application to mitigate potential overlooking of dwellings in St Kevin's Park. House type F design was also amended to mitigate impact on adjacent dwelling in four Oaks.

7.3.6 I consider that the proposal will not lead to an unacceptable level of overlooking or loss of privacy. As regards the contention that the proposal will have an overbearing impact, I consider that having regard to the design and separation distance an overbearing impact does not arise. As regards construction impacts including noise and disturbance, structural issues or subsidence any such issues arising can be appropriately mitigated by way of best practice construction methods. Having considered the details of the design and layout I consider that the proposed development is acceptable in terms of its impact on established residential amenity.

7.3.7 As regards the contention that the creation of a pedestrian walkway adjacent to 28A Highfield Grove will have a negative impact on residential amenity and heritage I consider that the improvement of pedestrian permeability is a positive benefit and I do not consider that the extent of pedestrian cycle movement arising will give rise to any disturbance or injury to established residential amenity.

7.4 Traffic, Access and Parking

7.4.1 The issues associated with traffic and access are the matters which give rise to the most significant concerns in all the appeals and also submissions by the observers. The creation of the pedestrian / cycle access via Highfield Grove is in my view to be welcomed. As regards the vehicular access via Oaklands Crescent, I note that this is an established private roadway and an existing right of way. The existence of the right of way is disputed by the parties however as noted above this is not strictly a planning matter. Section 34(13) of the Planning and Development Act 2000, as amended as follows: *“A person shall not be entitled solely by reason of a permission under this section to carry out any development”* applies.

7.4.2 The proposal involves access via Oaklands Crescent and a section of the Hospital Service Road which currently only provides access to the hospital maintenance yard. In response to the Council’s request for additional information for clarification, the report by Transport Insights, Transport Planning Consultants sets out the extent of works intended to provide access, involving the removal of bollards at the intersection of Oaklands Crescent and St Luke’s Hospital campus Service Access Road and the permanent removal of 2 on street car parking spaces along St Luke’s Hospital Campus Service Access Road. I note that during the course of the application and appeal additional bollards have been placed at the junction. I note that this roadway and the works (removal of bollards and parking spaces) are not within the appeal site (red line) boundary. A letter from The HSE owner of the hospital service road submitted in response to the request for additional information outlines as follows:

“ Subject to the applicant demonstrating to the local authority, through this planning application process, that works will be carried out to the Hospital Road for the purpose of providing safe and satisfactory access to and from the subject site and for the development purpose of the subject site, then the Health Service Executive will consent to such works subject to the following:

Prior to any works commencing in connection with this development proposal and/or any proposal which seeks to alter or encroach on property title associated with St Luke’s Hospital, then engagement and liaison is required with St Luke’s Hospital

Management and HSE Estates in advance , to agree, plan and schedule all and any works impacting on HSE title. Live hospital services and structures.”

- 7.4.3 I note that the third-party submissions raise concerns with regard to the layout and operational characteristics of Oaklands Crescent as well as the limitations of the junction of Oaklands Crescent and Hospital Service Road and the limitations of the section of hospital service road are also outlined. The first party has addressed these matters in detail within the response to the appeals. Whilst the limitations arising from reduced carriageway width, boundary characteristics and patterns of parking and pedestrian movement are acknowledged the carriageway is a shared surface and is a low speed environment. Having considered the detailed submissions I consider that it has been demonstrated that the additional volume of traffic arising from the proposed development will not give rise to a traffic hazard. It must also be noted that this case as presented involves the reinstatement of an existing right of way. The arguments raised with regard to the potential creation of a rat run (which is in any case considered highly unlikely), or illegal parking within the area are matters of wider traffic management and beyond the remit of the appeal.
- 7.4.4 As regards car parking provision I note that the site is located in Area 3 (bordering Area 2)(on Map J of the Dublin City Development Plan 2016-2022 with regard to car parking. The plan provides that 1.5 spaces per dwelling are permissible (total 21 Spaces). The proposal provides well in excess of this - 30 spaces. (Two per dwelling and two visitor spaces) The justification is based on the desire to avoid overspill parking to the surrounding streets and this was supported by Dublin City Council. I note that the argument is made that the parking will act predominantly as storage given the highly accessible nature of the location. I consider that the exceedance of parking standards is not justified and given the accessible location, and in the interest of the creation of an urban environment which facilitates more healthy and sustainable trip patterns such as cycling and walking in accordance with the National Planning Framework, it is my view that Development Plan standards should not be exceeded. I note that the Dublin City Development Plans states that provision in excess of maximum parking standards “shall only be permitted in exceptional

circumstances". Cycle parking is provided within the curtilage of each dwelling. I am satisfied that the proposed development is acceptable from a traffic and parking perspective.

7.5 Servicing Flooding

7.5.1. As regards servicing, technical reports on file raised no specific concerns in terms of public sewer capacity and public water supply. I note that the applicant indicates that a pre connection enquiry was submitted to Irish Water to confirm capacity in the network. As regards flood risk the site-specific flood risk assessment by OCSC Consulting Engineers notes that the site is located within Flood Zone C. The eastern CFRMS study shows pluvial flood risk in the area, however attenuation is provided for the 1%AEP providing for maintenance of greenfield runoff. On this basis it is asserted that there is no risk of flooding arising from the development.

7.5.2 As regards allegations that the propose development will have a negative impact on property values, I consider that having regard to the nature and scale of the proposal there is no basis for this allegation.

7.6 Ecology

7.6.1 On the issue of impact on local wildlife and biodiversity, I note the reports by Altemar Maine and Environmental Consultancy including survey results which indicate that no flora or fauna of conservation interest on the site. A treated stand of Japanese knotweed was marked out and located on the southern boundary of the site. In terms of impact on bats it was noted that there is no evidence of a current or past bat roost on the site.

7.7 Appropriate Assessment

7.7.1 On the matter of appropriate assessment, I note the AA screening report compiled by Altamar Marine and Environmental Consultancy. The screening report notes the following Natura 2000 sites within 10km

- South Dublin Bay SAC 3.9km
- North Dublin Bay SAC 8km
- Glenasmole Valley SAC 9.1km
- Wicklow Mountains SAC 8.2km
- South Dublin Bay and River Tolka Estuary SPA 3.9km
- North Bull Island SPA 8.2km
- Wicklow Mountains SPA 8.5km

7.7.2 The report notes that there no direct pathway to the South Dublin Bay SAC and North Dublin Bay SAC and the only indirect pathway from the site via surface water flows and foul network to Ringsend WWTP. There is no direct or indirect pathway to Glenasmole Valley SAC or Wicklow Mountains SAC. No direct pathways identified to The South Dublin Bay and River Tolka Estuary SPA, The North Bull Island SPA and indirect pathway via surface water flows and foul network to Ringsend WWTP. No direct or indirect pathway to Wicklow Mountains SPA.

7.7.3 There are no direct pathways from the development to Natura 2000 sites. Watercourses and surface runoff are seen as potential indirect pathways for impacts on Natura 2000 sites however having regard to the distance and lack of direct hydrological pathway or biodiversity corridor to these conservation sites and to the dilution effect with other effluent and surface water runoff it is outlined that the development would not give rise to significant effects to designated sites.

7.7.4 It is reasonable to conclude that on the basis of the information on file, which I consider adequate 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 the South Dublin Bay SAC, North Dublin Bay SAC South Dublin Bay and River Tolka Estuary SPA, The North Bull Island SPA or any other European Site in view of the sites' conservation objectives and a stage 2 Appropriate Assessment and submission of an NIS is not therefore required.

7.8 Recommendation

7.8.1 The proposed development on lands zoned Z1 is acceptable in terms of land use planning and sustainable development. The proposed infill is appropriate in the context of the site and in terms of its impacts on the surrounding area. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be granted for the proposed development for the reasons and consideration and subject to the conditions set out below:

Reasons and Considerations

Having regard to the Z1 zoning objective for the area, the central location, the design and form of the proposed development and the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would be generally in accordance with the Dublin City Development Plan 2016-2022, would not seriously injure the amenities of adjacent residential neighbourhoods or of the property in the vicinity, would not be prejudicial to public and environmental health and would be acceptable in terms of traffic safety and convenience. The proposed development would therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The proposed development shall be carried out in accordance with the plans and particulars lodged with the application as amended by the further information submitted on 1st day of July 2019 except as may otherwise be required in order to comply with the following conditions

Reason: In the interest of clarity.

2. Prior to commencement of development on the site the applicant shall demonstrate that works to Hospital Service Access Road required for the purpose of providing safe and satisfactory access to and from the site have been carried out in accordance with the requirements of the planning authority.

Reason: In the interest of public safety.

3. The proposed development shall be amended as follows:
 - (i) Car parking shall be provided at maximum level of 1.5 spaces per dwelling in accordance with standards of Dublin City Development Plan.

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

Reason: In the interest of visual and residential amenity and in the interest of sustainable transportation.

4. Entrances from the public road and the internal road network serving the development shall be in accordance with the detailed requirements of the planning authority for such works.

Reason: In the interest of amenities and public safety.

5. Prior to the commencement of development details of the materials, colours and textures of all the external finishes of the proposed development shall be submitted to the planning authority for agreement.

Reason: In the interest of orderly development and in the interest of visual amenity.

6. Proposals for an estate / street name, house numbering scheme and associated signage shall be submitted to and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers shall be provided in accordance with the agreed scheme. No advertisements / marketing signage relating to the name of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.

Reason: In the interests of urban legibility.

7. The applicant or developer shall enter into water and/or waste water connection agreement(s) with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

8. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

9. Public lighting shall be provided in accordance with a scheme details of which shall be submitted to and agreed in writing with the planning authority prior to commencement of development. Such lighting shall be provided prior to making available for occupation of any house.

Reason: In the interest of amenity and public safety.

10. The landscaping scheme shown on drawing no 027915_LP_01 as submitted to the Planning Authority on 1st July 2019 shall be carried out within the first planting season following substantial completion of external construction works.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of 5 years from completion of the development shall be replaced within the next planting season with others of similar size and species unless otherwise agreed in writing with the planning authority.

Reason: In the interests of residential and visual amenity.

11. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site. In this regard ducting shall be provided to facilitate the provision of broadband infrastructure within the development.

Reason: In the interest of orderly development and the visual amenities of the area.

12. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

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

13. The management and maintenance of the development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of public open spaces, road and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

14. Prior to the commencement of development, the developer shall submit and obtain the written agreement of the planning authority to a plan containing details for the management of waste within the development.

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

15. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. This plan shall be prepared in accordance with “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

16. The construction of the development shall be managed in accordance with a Construction Management Plan which shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development. The plan shall provide details of intended construction practice for the development, including

hours of working, noise management measures and off-site disposal of construction and demolition waste.

Reason: In the interest of public safety and residential amenity.

17. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of social and affordable housing in accordance with the requirements of section 96 of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 97(7) applies) may be referred by the planning authority or any other prospective party to the agreement to the Board for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan for the area.

18. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting the development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may

facilitate and shall be subject to any applicable indexation provisions of the scheme at the time of payment. Details of the application of the terms of the scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contributions Scheme made under section 48 if the Act be applied to the permission.

- 19 The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2)(c) of the Planning and Development Act 2000 in respect of public open space. The amount of the contribution shall be agreed between the planning authority and the developer, or in default of such agreement, the matter shall be referred to the Board for determination. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with the changes in the Wholesale Price Index – Building and Construction (Capital Goods) published by the central statistics office.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

Bríd Maxwell
Planning Inspector

20th November 2019