



An
Bord
Pleanála

Inspector's Report

ABP-305455-19

Development	Construction of twenty-four apartments in 2 four storey buildings.
Location	Nutgrove Avenue, Rathfarnham, Dublin 14.
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD18A/0421
Applicant(s)	Sirio Logistic Services Limited
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Sirio Logistic Services Limited
Observer(s)	Jim Gannon and Niamh Corrigan Ross Shorten and Joan Carty Gary Sheridan and Mary McBride Dave Sheehan and Collette Beagan Stonepark and Longwood Residents Association

Date of Site Inspection

26th February, 2020

Inspector

Stephen Kay

1.0 Site Location and Description

- 1.1. The appeal site is located on the southern side of Nutgrove Avenue on a site that was formerly in use as a filling station. The site has a stated area of 2,832 sq. metres.
- 1.2. The site is bounded to the south by residential development in the Stonepark Orchard estate which comprises two storey residential development, including two houses, Nos. 17 and 18 which are located immediately to the south of the site. To the rear (west) of these two houses is a single storey dwelling 'Whitehall' which directly abuts the boundary wall to the east and has a small garden area to the west. To the east the site is bounded by a two storey building that is in use by the Rathfarnham scout group. The R821 (Nutgrove Avenue) is located to the north of the site and on the opposite (northern) side of this road is two storey housing with the lands of Rathfarnham Golf Club beyond. The section of the Nutgrove Road fronting the site has a cycle path and footpath.
- 1.3. There is a surface water drain that runs along the frontage of the site and then to the south into the Stonepark Orchard estate.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a 2,494sq.m residential development consisting of twenty-four apartments in 2 four storey buildings; Block A with 8 apartments and the combined Blocks B and C with 16 apartments with 24 parking spaces and 20 bicycle spaces and landscaped courtyards at the former Esso filling station. The overall height of the proposed blocks is c. 11.7 metres and the finishes are proposed to be predominately brick.
- 2.2. All 24 no. of the residential units proposed are two bedroom units with floor area of 85 sq. metres each.
- 2.3. The layout proposes a landscaped courtyard areas and the provision of a new pedestrian / cycle access linking the site with Stonepark Orchard / Stonepark Abbey to the south of the site. This access is proposed to run immediately to the rear of the single storey unit that is located at the rear of Nos. 17 and 18 Stonepark Abbey.

2.4. Private amenity space is proposed to each unit in the form of balconies that are on the southern side of the blocks. These private spaces are therefore located facing the existing residential development in Stonepark Abbey. Block A which is on the western side of the site is located within c.7.1 metres of the site boundary and within c.9 metres of the side / gable elevation of the existing house at No.17 Stonepark Abbey.

3.0 **Planning Authority Decision**

3.1. **Further Information**

Prior to the issuing of a Notification of Decision, the Planning Authority requested further information on a number of issues as follows:

- Submission of a design concept.
- Revisions required to the height of the blocks to minimise the impact on the amenity of the residential properties to the south in Stonepark Abbey.
- Concerns regarding the siting and layout of the proposed pedestrian / cycle access way at the rear of the site. This access should be repositioned to the east of the site.
- Revision to the surface water drainage system required such that the issues relating to not increasing the flood risk and wayleave around the surface water sewer are addressed. Sightlines at entrance and swept path analysis are required. Revisions to the parking layout to reflect any reduction in unit numbers.
- Submission of information regarding the decontamination of the site.
- Submission of a landscape design rationale and comprehensive landscape proposals.
- Redesign of the proposed bin storage areas.
- Submission of a comprehensive tree report and tree survey.

- The submission of additional information relating to the public realm, including a Universal Access Map, map showing public, private and semi private areas and details of the play space.
- Landscape Plan and arborists drawings.
- Revisions to the proposed parking and open space layout with additional space provided for communal open space.

The following is a summary of the main information submitted in response to the request for further information.

- A design statement was submitted, prepared by Horan Rainsford Architects and addresses issues of materials, impact on amenity and layout and functionality of the open space areas.
- Submitted that the height, massing and density are appropriate to the site and consistent with the policies of the plan that promote densification and varied building heights.
- That additional screening to the balconies is proposed. A reduction in height of Blocks A and B is not proposed. It is noted that the separation distance between Block B and the houses to the south west is over 26 metres and therefore more than the standard 22 metres referenced in 11.3.1(v) of the development plan and the urban design manual.
- Additional photomontages are provided from Nutgrove Avenue.
- The pedestrian / cycle access is proposed to be revised with it relocated to the south east corner of the site, widened to 1.7 metres and landscaped / lighting proposed.
- The surface water design was revised in line with a report prepared by Punch Consulting Engineers.
- That the revised request for a 3.5 metre wayleave is problematic as the site configuration, need to break down the massing of the development and the provision of a central courtyard area means that it is not feasible to achieve the 3.5 metre wayleave requested.

- Revisions proposed to the level of on site attenuation and proposals for green roofs submitted.
- Sightline of 49 metres by 2.4 metres at the entrance to Nutgrove Avenue indicated.
- Reports prepared prior to and post the decommissioning of the fuel sales use of the site submitted.
- A landscape design rationale and arborist report were submitted, as well as a tree protection plan, a tree impact assessment plan and a tree constraints plan.
- Stated that it is intended that all areas of the site would be privately maintained with no areas taken in charge.
- That the communal open space requirement as per the Sustainable Urban Housing Design Standard for New Apartments (2018) document is 7 sq. metres per 2 bed unit which gives a total of 168 sq. metres. The combined amenity space for the development is 910 sq. metres which equates to 32 percent of the site area.
- Details of boundary treatments and hard landscape design submitted.
- Bin store proposed to remain at the north west corner as the eastern side is within the wayleave for the surface water drain.
- Stated that the design has been undertaken to be consistent with universal access requirements. Details of paths and play areas in the general vicinity of the site submitted.

3.2. Decision

The Planning Authority issued a Notification of Decision to Refuse Permission for 5 Reasons that can be summarised as follows:

1. That the proposed development would be contrary to the RES zoning objective of the site and the development plan policy due to overlooking and overbearing visual impact including the presentation to Nutgrove Avenue.
2. Deficiency in the landscaping proposals including the piecemeal open space provision and the inadequate number of trees.
3. That the proposed development would be contrary to the councils building height strategy as set out at 11.2.7 of the development plan and has not demonstrated due regard to the prevailing building heights, contrary to Policy H9 Objective 3.
4. That the proposed development (terraces) encroaches on the wayleave around the surface water pipe that runs through the site.
5. That the proposed pedestrian and cycle throughway through the site would not be safe for pedestrians or cyclists due to conflicts with cars using the car park.

3.3. Planning Authority Reports

3.3.1. Planning Reports

The initial report of the Planning Officer identifies a number of issues with the proposed development, in particular the proximity of the development to the residential properties to the rear (south) leading to issues of overlooking, overshadowing and visual intrusion, height of the development, particularly Block A and the layout of open / communal open space areas. The elevation to Nutgrove Avenue is considered to be excessively bulky and intrusive and issues raised by Parks and landscape, Drainage and Roads Departments are noted. A second Planning Officer report notes the response to further information but considers that the scale, design and layout of development is such that it would be contrary to the residential zoning objective of the area and would impact negatively on residential amenity.

3.3.2. Other Technical Reports

Parks and Landscape – Initial report identifies deficiencies in the level of landscape detail provided with the application and the configuration of the public open space. Stated that an arborists report and a landscape masterplan should be submitted. Second report states that the quality of landscaping proposals is very poor with deficiencies in retaining existing trees, use of tank attenuation rather than SuDS and refusal of permission recommended.

Water Services - Initial report requires that some redesign to the surface water network be undertaken relating to there is no increased flood risk and there is a wayleave of 3.5 metres either side of the culvert and surface water pipe that crosses the site. No objection subject to conditions.

Roads Department – Initial report states that traffic volumes generated are relatively minor. Preference for access from Stonepark Orchard is stated. Recommends that further information relating to sight lines at the access to Nutgrove Avenue and also swept path analysis for fire appliances be requested. Second report states that the sightlines are acceptable but that there remain issues with the swept path analysis submitted. In the event of a grant of permission conditions are identified. Housing Depart – Part V condition to be attached in the event of a grant of permission.

3.4. Prescribed Bodies

Irish Water – States that there is no objection subject to conditions including entering into a connection agreement with Irish Water.

3.5. Third Party Observations

A significant number of third party submissions were made to the Planning Authority and the following is a summary of the main issues raised in these submissions:

- Concerns at the security and safety implications of the proposed cycle / path connection to the residential areas to the south.
- Increased traffic generation and demand for parking in Stonepark Orchard.

- Inadequate surveillance of the courtyard areas and the pedestrian / cycle connection by the proposed units in the development.
- That the site flooded in 2005 and proposed connection would increase flood risk on Stonepark development,
- No need or precedent for a connection to the site.
- Excessive height that is not in keeping with the surrounding development. Height should be a maximum of 3 storeys.
- That the southern site boundary is part of the old Loreto Abbey site and should be preserved.
- Overlooking and loss of amenity of existing adjoining residential properties.

4.0 Planning History

The following planning history is referred to in the report of the Planning Officer:

South Dublin Ref. SD15A0293; ABP Ref. PL06S.246230 – Permission granted and decision upheld on appeal for the development of a new two storey forecourt building with retail shop, deli and new forecourt layout with canopy, fuel pumps and underground tanks.

Adjoining Sites

South Dublin Ref. SD04/0921 – Permission refused for the demolition of the existing structure on the site of No.50 Nutgrove Avenue to the west of the current appeal site and the construction of a three storey block of 6 no. two bedroom apartments.

South Dublin Ref. SD05A/0269 – Permission refused by the Planning Authority for the construction of a new vehicular and pedestrian access across existing area of open space in the applicants ownership with the aim of providing access to facilitate the development of 63 no. houses on adjoining lands that were formerly part of the Loreto National School.

5.0 Policy Context

5.1. Development Plan

The appeal site is located on lands that are zoned Objective RES under the provisions of the South Dublin County Development Plan with the objective '*to protect and / or improve residential amenity*'.

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

Policy H7 relates to urban design in residential development and seeks to ensure that all new development is of high quality and consistent with the Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities.

Policy H8 relates to residential densities and states that it is the policy to promote higher densities at appropriate locations and ensure that this density is consistent with its location and surrounding context.

Policy H9 relates to residential building heights and states that it is policy to support varied building heights across residential and mixed use areas.

Table 11.21 sets out the minimum standards for apartment developments.

Tables 11.22 and 11.24 set out maximum bicycle and car parking standards.

Paragraph 11.3.2 of the Plan relates to infill development.

Paragraph 11.2.7 relates to building height strategy.

5.2. Other Relevant Policy

- Sustainable Urban Housing; Design Standards for Apartments, 2018.
- Sustainable Residential Development in Urban Areas

5.3. Natural Heritage Designations

The site is not located in or close to any European sites.

5.4. EIA Screening

Having regard to the limited scale of the proposed development (24 no. units), to its location and to the fact that the development would be connected to the public drainage infrastructure in the area, it is considered that there is no real likelihood of significant effects arising on the environment. The need for EIA can therefore be excluded at preliminary examination stage and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The following is a summary of the first party grounds of appeal:

- That the Guidelines on Urban Development and Building Height (December, 2018) support increased height and density in locations with good public transport accessibility. SPPR(A) of the guidance is specifically important and this states that where the applicant demonstrates that the performance criteria set out are met then the planning authority may approve development even where specific objectives of the relevant development plan or local area plan are not met / contravened.
- That the legal status of SPPR3 has been established in recent court decisions and Board decisions where it was determined that it was open to the Board to grant permission that was of a height that exceeded the policies / objectives set out in the relevant development plan and that such proposals should be assessed on performance criteria.
- That the proposed development meets the relevant performance criteria set out in SPPR3 for the relevant city / town, district / neighbourhood and at the scale of the relevant site / building.
- That the height context is of 2 storey houses and 3-5 storey apartments at a distance of 230 metres from the site. Montages and shadow analysis have been submitted.

- The development responds to its natural and built environment and is located at Rathfarnham as a consolidation area.
- Section 11.2.7 of the Plan specifies that the maximum height of any building shall be set by a number of criteria and *'shall be no more than two storeys in height unless a separation distance of 35 metres or greater is achieved.'* Paragraph 11.2.7 also states that *'tall building that exceed five storeys will only be considered in areas of strategic planning importance such as key nodes, along the main street network and along principal open spaces in town centres.'* Submitted that section 11.2.7 is not an appropriate approach under the Urban Development in Building Height Guidelines for Planning Authorities as it specifies a blanket restriction of 2 storeys within 35 metres of any one or two storey housing
- It is noted that reason for refusal No.3 refers to material contravention of the development plan on the basis of height. For the reasons above, it is submitted that the Board should not be bound by the wording of this reason for refusal and reference to material contravention in making its decision.
- Submitted that the visual impact of the development on Nos. 17 and 18 Stonepark Orchard mitigated by a number of factors including location to the north of the houses, buffer created to the road (Nutgrove Avenue), high boundary wall and the fact that the apartments face the gable of the existing dwellings.
- That the development proposal should be seen in the context of permitted development Ref. ABP-303184-18 for the development of three storey residential at the junction of Grange Road, Nutgrove Avenue and Loreto Park at a location where it adjoins single storey and dormer dwellings.
- That the issues raised in the decision regarding the northern boundary wall can be addressed.
- That the location of the bin store is considered appropriate to serve the overall development and having regard to the restrictions on relocating it to the eastern side of the site due to the wayleave on the surface water sewer.

- That to mitigate overlooking, screens are proposed to be installed on the balconies of Blocks A, B and C. Details of these were submitted as part of the response to further information.
- Given the relative locations of the houses and the appeal site there are no issues of overshadowing arise as indicated by the shadow assessment submitted.
- That the communal amenity space provided is of significant scale and such that the break down in areas allows for differentiation in type. That the comment regarding lack of surveillance of this open space area could be addressed by requiring an additional window in the ground floor unit.
- That the condition of existing trees on site has been assessed in the tree survey and arborists report submitted as part of the further information request. The proposed planting and trees for retention are detailed in the Murphy and Sheanon Landscape Architecture Report submitted as part of the further information.
- That there are a number of significant public open space areas located within walking distance of the site including Rathfarnham Castle park and Loreto Park which are within 10 minutes' walk of the site. It is noted that the Design Standards for New Apartments requires a communal open space area of 7 sq. metres per two bedroom unit and that the open space provision within the development significantly exceeds this level.
- That the reference to encroachment into the wayleave for the surface water sewer relates only to small sections where Block A and the south west corner of Block B where the terraces of the ground floor units would encroach by c.370mm into the wayleave area. Submitted that the balcony structures are lightweight and demountable and could be removed in the unlikely event that access to the wayleave is required. It should also be noted that the layout /design of the balconies could be revised to further reduce the impact on the wayleave and also that the sizes could be reduced if the units were re designed to be 3 person rather than 4 person.

- That the pedestrian / cycle connection to the south was included on foot of pre application consultations and as a planning gain for the residential development to the south to access Nutgrove Avenue and the bus stop. The issue regarding negative impact on the shared surface area and traffic pedestrian safety would be contrary to DMURS. The proposed layout has the access into an area where there are only 7 no. parking spaces and the potential for conflicts is therefore limited.
- The provision of the pedestrian / cycle link is consistent with Policy TM3 Objective 2 of the Plan.

6.2. Planning Authority Response

The submission received from the Planning Authority to the grounds of appeal states that the Planning Authority confirms its decision and that the issues raised in the appeal have been covered in the Planners Report. :

6.3. Observations

The following is a summary of the main issues raised in the observations received by the Board:

- That there was no consultation with residents with regard to the proposed connection through the site. The local community is against the provision of such a connection.
- That the proposed connection would lead to the use of residential streets to the rear (south) in Stonepark Abbey and Orchard for parking and traffic connected with the development and therefore lead to traffic and pedestrian safety issues and anti social issues.
- That the precedent sites cited by the developer regarding height (Loreto and Hazelbrook) are significantly different in context than the appeal site. The Loreto site development scales down to two storeys where is adjoins Stonepark estate. These sites are also much larger than the subject appeal site.

- That the lack of public open space and layout of communal open space is noted and will be damaging to the amenity of future occupants.
- That the proposal has failed to show any regard to its surroundings and has completely failed to respect building lines or to provide a transition in scale to surrounding development or adequate separation distances.
- That the submitted photomontages are inadequate and understate the visual impact and height, particularly when viewed from the rear.
- That the scale / height is excessive, particularly relative to No.17 and 18.
- That the development is likely to become the vandalism and anti social behaviour due to the proposed linkage through the site.
- That the issue of a connection through the site was previously considered by the Board in the case ref. PL.06S.104675 and concluded that the proposed vehicular and pedestrian access was a material contravention of the original permission on the site (Ref. S94A/0145).
- That the report of the Planning Officer has not been published on the Council website.
- That contrary to the appeal, there are 3 no. windows in the side gable elevation of No.17 Stonepark Orchard. Balconies are proposed c.8.5 metres from these gable windows and the balconies in the development would overlook the rear garden of No.17.
- That the separation distance of 9 metres from Nos. 17 and 18 Stonepark Gardens would result in a development that would be overbearing.
- That the proposed layout is of no benefit to pedestrians in the residential areas to the rear and would not result in a quicker route to local shopping amenities.
- That the refusal of permission is appropriate and is supported.
- The fact that permission was refused on grounds relating to material contravention of the plan is noted and thus constrains the ability of the Board to grant permission. Noted that the reference to height is only part of the reason cited by the Board and that the provisions of the Building Height

Guidelines do not therefore change the fact that the Board are bound by s.37(2)(b) of the Act.

- That contrary to the contention of the first party, the Urban Development and Building Height Guidelines have not been inappropriately or inadequately taken into account. Section 11.2.7 of the development plan does not provide limits to building height, but rather requires a justification for buildings that are greater than three storeys. This is not therefore the same as a blanket ban on building height as referred to in SPR1 of the guidelines. Contrary to the interpretation of the first party, these guidelines do not give a carte blanche to increased building heights without justification for context. Reason for refusal No.3 is therefore sound.
- That contrary to the contention of the first party appeal, the fact that the refusal reason No.3 relates to material contravention means that permission cannot be granted having regard to a condition of a permission and clear policies contained in the county development plan.
- That contrary to the statement of the first party appeal, the policy on building height set out at 11.2.7 of the Plan does not provide limits to building height. Rather, it requires a justification for buildings that are greater than three storeys in height in the form of a site analysis and statement that addresses the heights proposed.
- That the failure to retain any trees on site is contrary to Policy G2 Objective 9 of the development plan.
- That the proposals for screening of the balconies indicates a development that is excessively close to site boundaries, would be hard to enforce in the future and will result in a lack of passive surveillance of open space areas and the connection to Stonepark Orchard.
- That the proposed dismantling of the balconies to facilitate maintenance activities to the sewer is again indicative of a design that is excessively dense and poorly designed. The proposed removal of private third party balconies would not be practical post completion.

- That the proposed development would result in traffic conflicts between car parking spaces and a requirement for cars to reverse across the pathway and at locations close to the accesses to both Nutgrove Avenue and Stonepark Orchard.
- That the first party appears to be arguing that the poor site layout relating to the bin store is due to the restricted site size.
- That the proposed screening of balconies will not mitigate the perception of overlooking of rear private gardens, especially given the proximity of the balconies.
- That the open space provision, layout and landscaping is deficient in the scheme.
- That the proposed development would have an overbearing and detrimental impact on the street scape of Nutgrove Avenue.
- That the balconies and terraces and impact on the wayleave is contrary to the requirements of Irish Water and the Water Services Section of the council.
- That the link would result in the front of the development on Nutgrove Avenue being used as a drop off for students of the gaelscoil and Loreto NS who would use the pedestrian access.

7.0 Assessment

7.1. The main issues in the assessment of this case are considered to be as follows:

- Zoning and Principle of Development
- Design, Layout and Impact on Visual Amenity
- Height and Impact on Amenity of Surrounding Properties,
- Access, Parking and Linkages to Surrounding Area
- Other Issues
- Appropriate Assessment

7.2. Zoning and Principle of Development

- 7.2.1. The appeal site is located on lands that are zoned Objective RES under the provisions of the *South Dublin County Development Plan, 2016-2022* with the objective *'to protect and / or improve residential amenity'*. Lands located to the south of the site within the Stonepark Orchard residential area are also zoned Objective RES under the provisions of the development plan. The principle of a residential development is acceptable in on lands that are zoned Objective RES. Issues of the impact of the development on the amenity of surrounding residential areas and compatibility with the zoning objectives for these areas are addressed in following sections.
- 7.2.2. There are a number of development plan policies that are in my opinion supportive of infill development and general aims to promote densification of the county. **Policy H8** relates to residential densities and states that it is the policy to promote higher densities at appropriate locations and ensure that this density is consistent with its location and surrounding context. **Housing Policy 17** Residential Consolidation states that *'It is the policy of the Council to support residential consolidation and sustainable intensification at appropriate locations, to support ongoing viability of social and physical infrastructure and services and meet the future housing needs of the County.'*
- 7.2.3. **Paragraph 11.3.2** of the plan specifically relates to residential consolidation and sets out a number of criteria that should be met in infill developments. These issues are addressed in more detail in the following sections and include,
- Compliance with the *Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities DEHLG, 2009* and the companion Urban Design Manual.
 - Subject to appropriate safeguards to protect residential amenity, reduced open space and car parking standards may be considered for infill development..... Public open space provision will be examined in the context of the quality and quantum of private open space and the proximity of a public park.

- 7.2.4. The principle of the form of development proposed is therefore considered to be consistent with the general policies of the development plan relating to promotion of increased densities and urban consolidation.
- 7.2.5. The **density** of the proposed development equates to c.85 no. units per hectare which is significantly above the 35-50 units per hectare specified in the Sustainable Residential Development for Urban Areas; Guidelines for Planning Authorities for outer suburban locations in towns and cities. It is also considered that this density is high in view of the fact that the site is not located in close proximity to a transportation hub in the form of rail or light rail and given the relatively small site area, infill character of the site and the proximity of surrounding residential properties.

7.3. **Design, Layout and Impact on Visual Amenity**

- 7.3.1. The design is based around the construction of two separate residential blocks each of four storeys in height with Block A on the western side of the site and a connected Block B/C located on the eastern side. As part of the response to further information submitted with the application, a Design Statement prepared by Horan Rainsford Architects was submitted. This document sets out the basic design approach followed and the rationale for same having regard to the site layout and constraints in terms of proximity to surrounding properties and the presence of existing services and service wayleaves on the site. The Planning Officer reports on file and the third party observations submitted to the Board raise a number of issues regarding the basic design including the functionality and quality of the open space areas, the safety of the proposed pedestrian / cycle link and the presentation of the development to surrounding areas, in particular to Nutgrove Avenue.
- 7.3.2. With regard to **internal layout and the design** of the residential units, each of the apartments is proposed to have the same layout with two bedrooms providing for 4 no bedspaces, a dual aspect layout and a floor area of 86 sq. metres. Private amenity spaces in the form of south facing balconies are proposed to serve each unit. The scale and layout of the internal and private amenity spaces are such that they comply with the requirements of the Departmental Guidance on Design Standards for New Apartments.

7.3.3. With regard to the overall site layout, I would share a number of the concerns raised by the Planning Authority and third parties to the case. In particular, I appreciate that the layout of the blocks is dictated to a significant extent by the location of existing services that run through the site and specifically the existing water main that runs north-south close to the eastern site boundary and the surface water drain that enters the southern part of the site from Stonepark Orchard and exits into the residential site to the west. Notwithstanding these issues, I consider that the design and layout of the blocks raises issues regarding the appearance of the development, particularly when viewed from Nutgrove Avenue. A number of design issues were raised by the Planning Authority in the assessment of the case, and were included in the request for further information issued. Specifically, the first planning officer report on file raises concerns regarding the bulk and bland appearance that the development would present to Nutgrove Avenue. On the basis of the photomontages presented I would agree with these concerns. In particular, I note the extensive use of brick proposed with limited use of other materials to break this surface. I also note the regular shape of the blocks with no set back or contrasting ridge or building line to break up the bulk of the structures when viewed from Nutgrove Avenue and in particular, the combined Block B/C which would read as a very bland and physically imposing element in the streetscape in this location. The connected Block Layout and heavily staggered building line proposed would in my opinion increase the sense of bulk and the east facing elevation of Block B is noted to be a particularly bland elevation. These issues were requested to be addressed in the request for further information on file, however no amendments were proposed. For these reasons, I consider that the development would have a negative impact on the visual amenity of the area and in particular when viewed from Nutgrove Avenue and this element of Reason for Refusal No.1 attached to the Notification of Decision issued is considered appropriate. .

7.3.4. On the issue of the **stepped building line**, it is noted that an additional effect of this layout is that a number of units in the development, in particular those located on the eastern side of Block B, would be subject to significant additional shading from Block C than would be the case with a more regular building line.

- 7.3.5. Reference is made in the report of the Planning Officer and third party submissions to the bland nature and excessive height of the **boundary wall to Nutgrove Avenue**, in particular the section to the west of the proposed vehicular entrance. This point is noted and agreed with, however the design of the boundary in this location is in my opinion an issue that could be addressed by way of condition.
- 7.3.6. With regard to **communal and public open space** within the development, the Planning Authority assessment raises a number of concerns regarding the quality of spaces provided, the supervision of these areas and the proposals for site landscaping and integration of existing **landscaping features**. With regard to existing features, the information submitted by the first party as part of the response to further information was comprehensive and included a tree survey report, arborist report and landscape layout. From the information provided it is evident that there are limited existing planting on the site that is capable of retention and incorporation into a future development. Specifically, I note that there are a number of trees that are growing out of existing hard surfaced areas and which will not be capable of being retained and others that are diseased or at the end of their lifespan.
- 7.3.7. With regard to the **layout of open space areas** within the development, the Planning Authority have determined that the open space areas provided are not acceptable due to their configuration and lack of passive surveillance in some areas. Overall open space provision within the development is significant with a total of 910 sq. metres of private communal open space proposed to be provided which equates to c.32 percent of the site area. This is exclusive of the shared spaces proposed for parking and vehicular circulation. The case made by the Planning Authority and the third party submissions is that a number of the areas of open space are of restricted dimensions and of questionable amenity value, with the areas to the north, south and west of Block A specifically referenced in the wording of Reason for Refusal No.2. The location and layout of these areas is noted and I would agree that they are relatively tight and, in the case of the area to the west of Block A not particularly well overlooked. The area of open space provision to the south of Blocks A and B is however of a significant area and generous dimensions and at c.575 sq. metres comprises c.20 percent of the overall site area. For these reasons, I do not agree with the assessment of the Planning Authority that the development is deficient in terms of quality or quantity of communal amenity space.

- 7.3.8. While public access to the development would be available the development is stated to be private and would not be taken in charge by the local authority. I note the references in the third party submissions to the absence of any public open space in the development, however the location of the site is such that there are a number of significant public open space areas located within walking distance of the site including Rathfarnham Castle Park and Loreto Park which are within 10 minutes walk of the site.
- 7.3.9. Overall therefore, while the proposals for the landscaping of the site and the level of landscaping detail could be expanded, the basic proposals are acceptable in principle. Similarly, I consider that the proposed provision of private and communal amenity space in the development is acceptable in principle and such that I do not consider that Reason for Refusal No. 2 relating to landscaping and amenity space provision can be substantiated.
- 7.3.10. The siting of the **bin storage area** was raised by the Planning Authority as part of the issues which were to be addressed in the request for further information and forms part of Reason for Refusal No.1 included in the Notification of Decision issued by the Planning Authority. The siting of this bin store at the north west corner of the site is noted by the Planning Authority and I agree that a more central location within the development would be appropriate. The location proposed would open directly onto the public footpath and cycleway in this location and the nature of the traffic flow on Nutgrove Avenue is such that the parking of a refuse vehicle on the road during collection of bins would lead to a traffic hazard and impede use of the cycle way and footpath. The proposed location would also be in immediate proximity to the residential property to the west and likely be visually unsightly. To be acceptable, it is my opinion that a more central location for the bin store is required where collection of bins can be undertaken within the site.

7.4. **Height and Impact on Amenity of Surrounding Properties,**

- 7.4.1. Reason for Refusal No.3 included in the Notification of Decision to Refuse Permission issued makes reference to the Council's building height strategy which is set out in 11.2.7 of the Plan and Policy H9, Objective 3 of the Plan and the fact that the proposed four storeys is considered to be contrary to the plan on the basis that

sufficient justification for the height has not been provided. It is also noted that Reason for Refusal No.3 makes reference to material contravention of the development plan.

7.4.2. Paragraph 11.2.7 of the Plan includes the following:

Development proposals that include 'higher buildings' that are greater than the prevailing building height in the area should be supported by a strong urban design rationale (as part of a Design Statement) and provide an appropriate series of measures that promote the transition to a higher building.

Proposals for higher buildings of over three storeys in residential areas should be accompanied by a site analysis (including character appraisal) and statement that addresses the impact of the development (see also Section 11.2.1 – Design Statements).

The appropriate maximum or minimum height of any building will be determined by: The prevailing building height in the surrounding area. The proximity of existing housing - new residential development that adjoins existing one and/or two storey housing (backs or sides onto or faces) shall be no more than two storeys in height, unless a separation distance of 35 metres or greater is achieved.

Policy H9 Objective 3 states:

To ensure that new residential developments immediately adjoining existing one and two storey housing incorporate a gradual change in building heights with no significant marked increase in building height in close proximity to existing housing (see also Section 11.2.7 Building Height).

7.4.3. My reading of Policy H9, Objective 3 and Paragraph 11.2.7 of the Plan and the implementation of these policy in the case of the proposed development, is that the wording of Reason for Refusal No.3 does not make clear reference to the specification of a separation distance of 35 metres to one and two storey housing and instead refers to an inadequate transition in scale between the existing and

proposed development and integration with the existing area. I do not therefore consider that the refusal of permission is clearly based on the application of an arbitrary height policy but rather on a judgement of the compatibility with the existing scale and character of development in Stonepark Orchard, taking into account the information submitted as further information in the form of the design statement, shadow analysis and proposals for mitigation of overlooking.

- 7.4.4. Notwithstanding this, in cases such as the current appeal where the policies contained in the Plan regarding building height do not clearly meet the requirements of Chapter 2 of the UDBH Guidelines, then the Criteria set out at Paragraph 3.2 and SPPR3 of the Plan are in my opinion applicable. Paragraph 3.2 sets out a number of performance criteria at the level of the city / town, neighbourhood and individual site which must be met in developments. The first party appeal provides an assessment of the proposal under these headings and the following is my assessment of the proposal in the context of the criteria.

At the Scale of the Relevant City/Town

- 7.4.5. The guidelines reference public transport accessibility of the site. The appeal site is located where there are bus services along Nutgrove Avenue and, as highlighted by the first party appeal, these routes connect with the LUAS and DART lines. The routes in question are not part of the quality bus network however the site is relatively well served by public transport.

At the Scale of the District / Neighbourhood

- 7.4.6. Reference is made in the UDBH Guidelines to development making a positive contribution to the urban neighbourhood and streetscape. As set out at 7.3 above, I consider that the presentation of the development to surrounding areas and in particular to Nutgrove Avenue is such that it would be visually intrusive and have a negative impact on the streetscape.

At the Scale of the Site/Building

- 7.4.7. Under this heading, the Guidelines make reference access to natural daylight, ventilation and views and minimise overshadowing and loss of light and that appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlined in guides like the Building Research

Establishment's 'Site Layout Planning for Daylight and Sunlight' (2nd edition). As discussed in more detail below, in the case of the proposed development, impacts in terms of overshadowing and loss of daylight are not considered likely to be significant. The guidelines do not make any reference to overlooking or overbearing impacts at the site or building level which are considered to be of more relevance in the case of the appeal site.

7.4.8. As referenced above, I do not consider that the development plan policies relating to building height (Paragraph 11.2.7 and Policy H9, Objective 3) are consistent with the requirements of the Urban Development and Building Height Guidelines, notwithstanding the fact that the wording of Reason for Refusal No.3 does not make specific reference to any maximum height or set back from existing single and two storey development. It therefore falls for the development to be assessed under the provisions of Section 3 of the UDBH Guidelines and the performance criteria set out therein. As per the assessment undertaken above, while I have some concerns regarding the design and therefore compatibility at the level of the district / neighbourhood level, the scale of development is in my opinion such that the most relevant criteria are those set out at the Site / Building level where the proposal is consistent with the criteria established. In accordance with SPPR3 therefore I consider that it is therefore open to the Planning Authority / Board to grant permission in this case notwithstanding the fact that there are aspects of the development plan height policy with which the development is not compatible. The issue of the impact of the development in terms of overlooking, overshadowing and visual intrusion which forms the basis of Reason for Refusal No.1 is addressed further in the sections below.

7.4.9. On the issue of the wording of Reason for Refusal No.3 and the reference to **material contravention of the development plan**, I consider that the sections of the Plan referenced (Paragraph 11.2.7 and Policy H9, Objective 3) are contrary to the Guidelines on Urban Development and Building Height and that it is not therefore appropriate the refusal of permission on the basis of material contravention of these policies would act to restrain the determination of the Board in this case. Specifically, consideration of the circumstances of the development in the context of the provisions of the UDBH Guidelines indicate that the development is consistent with the criteria set out for the Site / Building scale. As these guidelines are

published under s.28 of the Act it is considered that s.28(2)(b)(iii) is applicable in this case and that notwithstanding the reference to material contravention in Reason for Refusal No.3 it is open to the Board to grant permission.

- 7.4.10. I note the references in the first party appeal submission to the **previously permitted developments at Loreto Abbey and Hazel Brook Square** in the general vicinity of the site and the case presented as to how these developments form a precedent for development of the scale proposed on the appeal site. On this issue, I agree with the submissions of the third party observers that the location and context of these developments is significantly different to the appeal site in terms of the separation to existing residential development.
- 7.4.11. On the issues of overshadowing and loss of amenity due to overlooking and visual intrusion and overbearing I note the following. **Shadowing** is raised as an issue by third party observers, however I note the relative location of the proposed development and the surrounding properties and the shadow diagrams submitted by the first party as part of the response to further information. The appeal site is located to the north of the closest residential properties in Stonepark Orchard and the results of the shadow diagrams indicate no negative impact on these properties and a limited negative impact on the properties to the east (Scout Hall) and west (private residence) of the appeal site.
- 7.4.12. In my opinion, of significantly greater concern in the case of the proposed development are the issues of **overlooking** of the properties to the south, particularly Nos.17 and 18 Stonepark Orchard, and the impact that the scale and proximity of the proposed development to these dwellings would have in terms of **overbearing visual impact and visual intrusion**. It is worth noting at this stage that issues of height and potential overlooking were raised with the first party as part of the request for further information issued by the Planning Authority. This request suggested a reduction in the height of blocks A and B and re configuration of the proposed balconies to mitigate the potential for overlooking of the adjoining residential development to the south. No amendments were however proposed on foot of this further information request and no amendments have been submitted with the first party appeal.

7.4.13. With regard to **overlooking**, the scale of the proposed development and the use of a north – south orientation to the units with balconies proposed on the southern elevation would in my opinion give rise to potentially significant negative impacts on residential amenity for the adjoining residential development to the south, and in particular to Nos. 17 and 18 Stonepark Orchard. In the case of Block A, the separation distances between the balconies on the southern elevation of the building and the site boundary and No.17 Stonepark Orchard are c.7.6 and 8.75 metres respectively. In the case of Block B, the separation distance to the boundary and to the single storey dwelling at the rear of Nos. 17 and 18 Stonepark Orchard are c.7.7 and 8.65 metres respectively. Notwithstanding the relatively high level of the boundary wall in this location, it is my opinion that these separation distances are such as to give rise to a very significant loss of residential amenity for occupants of Nos 17 and 18 due to direct overlooking of their private amenity space and rear elevation to these properties from upper floor balconies in the proposed development. The height of the proposed development at 4 storeys and the proximity to the site boundary is also such that the proposed development would have a significant negative impact in terms of **overbearing visual impact and visual intrusion**, particularly for No.17 Stonepark Orchard.

7.4.14. In response to the request for further information issued, the first party submitted proposals for the use of 1.2 metre wide by 1.8 metre high opaque screens to be located at the corners of the above ground floor balconies in Block A and the western side of Block B. These structures would likely have some effect in mitigating direct overlooking, though I do not consider that a 1.2 metre wide screen on a 4 metre wide balcony would have a significant impact in this regard given the relative position of the balconies to the gardens of Nos 17 and 18 and the proximity. In terms of **visual intrusion and overbearing visual impact**, I do not consider that the proposed screens would have any beneficial impact, and the scale and proximity of the proposed development to the boundary with No.17 Stonepark Orchard is in my opinion such that significant negative impacts on residential amenity would arise.

7.4.15. I note the comment in the first party appeal that the visual impact of the development on Nos. 17 and 18 Stonepark Orchard would be mitigated by a number of factors including location to the north of the houses, buffer created to the road (Nutgrove Avenue), high boundary wall and the fact that the apartments face the gable of the

existing dwellings. I agree that the height of the boundary wall in this location would have some effect in mitigating the impact of ground and first floor units, however I do not consider that the location of the development to the north would have any impacts in this regard. While the development faces the gable elevation of No.17, issues of direct overlooking of the private amenity spaces of Nos. 17 and 18 and the single storey house to the east of Nos.17 and 18 would occur together with angled views towards the rear elevation of these properties. In conclusion therefore, notwithstanding the proposed use of screens, it is considered that the development would give rise to a very significant loss of residential amenity for occupants of adjoining residential properties to the south of the appeal site by reason of overlooking and visual intrusion.

7.4.16. There are a number of potential design that would mitigate some of the negative impacts on the level of residential amenity for properties to the south. These would include the reduction in the height of Blocks A and B in particular and the potential to relocate balconies to the east and west facing elevations of these blocks rather than the south facing elevations where they would directly overlook Nos 17 and 18 Stonepark Orchard. The first party chose not to make these alterations in the response to further information submitted and no changes are proposed as part of the first party appeal. Given this approach, it is not considered appropriate that significant revisions to the design would be proposed to mitigate the potential negative impacts arising and that the design would be assessed as submitted. In any event, it is considered that a reduction in height would still result in significant overlooking issues from the first and second floors arising.

7.5. **Access, Parking and Linkages to Surrounding Area**

7.5.1. **Parking** to serve the proposed development is indicated as being at surface level and a total of 24 no. parking spaces are proposed to be provided which equates to one parking space per residential unit. This is considered to be acceptable and is consistent with the development plan standard for parking set out in Table 11.24 of the plan of 1.25 spaces per two bed unit for Zone 1 and 1.0 spaces per unit for Zone 2. In addition, as per paragraph 11.3.2 of the Plan, reduced parking standards are an option in the case of infill developments, and 11.3.2 also states that car parking

will be examined in the context of public transport provision and the proximity of services and facilities, such as shops. Having regard to the location of the site relative to Nutgrove Avenue and bus services along this route and to the infill nature of the site and restrictions on the feasibility of providing underground car parking by the scale of development feasible and the presence of services through the site, it is considered that the parking provision proposed is acceptable.

7.5.2. The **pedestrian / cycle connection** to the south connecting Nutgrove Avenue and the Stonepark residential estate to the south was included in the design on foot of pre applications consultations undertaken between the first party and the Planning Authority. I would agree with the principle of a pedestrian and cycle connection being desirable in this location, and the improved connectivity to the surrounding area and Nutgrove Avenue is consistent with the design principles set out in the *Urban Design Manual* that accompanies the *Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities*. The provision of the pedestrian / cycle link is also in my opinion consistent with Policy TM3 Objective 2 of the Plan which seeks to ensure that connectivity for pedestrians and cyclists is maximised in new communities and improved within existing areas in order to maximise access to local shops, schools, public transport services and other amenities, while seeking to minimise opportunities for anti-social behaviour and respecting the wishes of local communities. The strong concerns expressed by the residents of Stonepark Estate to the proposed connection are noted, however subject to good design and layout , including passive surveillance of the link, I consider that it is a desirable element in the overall development and a planning gain as suggested by the first party.

7.5.3. The basis for the refusal of permission relating to the **proposed pedestrian and cycle link** (Reason No.5) relates specifically to the potential for users of this route to be in conflict with access to the parking spaces on the eastern side of the site. These concerns are noted, however the number of parking spaces located in close proximity to this route is limited to approximately 7 no. and the potential for significant conflicts to arise would therefore appear to me to be limited and not such as to lead to a safety issue. Similarly, I would not agree with the comments of the third party observers that the provision of such a link would lead to pedestrian or cycle safety issues within the Stonepark estate.

- 7.5.4. Issues relating to the proposed pedestrian and cycle link that are in my opinion of greater concern are the overlooking / passive surveillance of the link through the site, and how the area would be managed given that the development is not proposed to be taken in charge. On the passive surveillance issue, I consider that the proposed location on the eastern side of the development is more appropriate than the originally proposed central location, given the issues regarding residential amenity and passive surveillance with the originally proposed route. In the event that the Board was considering a grant of permission, it may be appropriate that the configuration of the ground floor units on the eastern side of Block C could be revised to provide additional surveillance of the route, perhaps with parking spaces Nos. 18-20 relocated to the eastern site boundary.
- 7.5.5. With regard to the proposed **internal road layout** and the **site access**, it is noted that the site previously operated as a filling station and that there was a pre existing access at this location. As part of the response to further information the first party has demonstrated how the 49 by 2.4 metre sight lines required by DMURS can be achieved. I note the comment of the Planning file from the Roads and Transportation Department which states that consideration could be given to the provision of vehicular access from the Stonepark Estate to the south and that this would avoid impacts on the existing cycle path and footpath fronting the site. This point is noted, however I do not consider that an alternative vehicular access is realistic. The internal road layout proposed would require vehicles accessing the eastern side of the site to make a tight turn and pass to the front (north) of Block B where there is a pinch point of c.4.0 metres in width. As part of the application documentation the first party has submitted a swept path analysis for a car / small vehicle, however it would appear to me that access to the north of Block B is very tight, especially given the proximity of the pedestrian entrance to Block B and a pedestrian access to the site in this location.
- 7.5.6. Issues relating to the proposed location of and access to the **bin store** and the potential issues regarding access to this area were addressed in Section 7.3 above under the heading of Design, Layout and Impact on Amenity. Revisions to this aspect of the development are considered necessary in the event that permission was being considered.

7.6. Other Issues

- 7.6.1. The site is subject to a number of restrictions in terms of existing services that pass through the site. Specifically, there is an existing water main that runs north – south close to the eastern boundary of the site. There is also a trunk surface water sewer than runs from the Stonepark Orchard site to the south, north through the centre part of the site and the west along the site frontage before entering the residential site to the west. As part of the development it is proposed that this surface water sewer would be diverted to run along the southern and western boundary of the site where it would run in areas of communal amenity space to the rear of the residential blocks. One of the conditions of the diversion is that a wayleave of 7 metres would be provided around this surface water drain, and the wording of Reason for Refusal No.4 reflects that there are elements of the proposed development that would encroach into the specified wayleave area.
- 7.6.2. The first party contend that the reference to encroachment into the wayleave for the surface water sewer relates only to small sections where Block A and the south west corner of Block B where the terraces of the ground floor units would encroach by c.370mm into the wayleave area. It is further submitted that the balcony structures are lightweight and demountable and could be removed in the unlikely event that access to the wayleave is required and that the layout /design of the balconies could be revised to further reduce the impact on the wayleave and also that the sizes could be reduced if the units were re designed to be 3 person rather than 4 person. On this issue I agree with the third party observers that the feasibility of dismantling of balconies post construction and when units have been sold is very questionable. The surface water sewer in question is a main one having a diameter of 1.05 metres and the development is already being facilitated by the diversion of the existing line of the sewer through the site. Given the diversion proposed and the nature of the connection I do not consider that the encroachment into the wayleave can be justified and that refusal of permission on this basis is justified.
- 7.6.3. Water supply and drainage are considered to be acceptable to Irish Water who have made a submission stating that there is no objection to the proposed development subject to connection agreements being entered into.

- 7.6.4. Surface water drainage on the site was the subject of some revisions on foot of the request for further information issued by the Planning Authority. As part of the revised proposals submitted in response to this request additional surface water storage capacity was proposed to reflect climate change factors. A range of SuDS measures are incorporated into the proposed design including the use of green roofs to the blocks and permeable paving to the proposed parking areas. On the basis of the information presented the proposed development is considered to be acceptable in terms of surface water drainage and the risk of flooding.
- 7.6.5. As part of the request for further information, the Planning Authority requested details regarding the decommissioning of the site from its previous use as a filling station. A decommissioning report dating from 2014 was submitted along with the results of testing that was undertaken in 2008. On the basis of the information presented it is considered that the site is in an appropriate condition to safely accommodate the proposed residential use.

7.7. Appropriate Assessment

- 7.7.1. Having regard to the nature and scale of the proposed development, including its proposed connection to the public water supply and drainage networks, and its location relative to Natura 2000 sites, no appropriate assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

7.8. Conclusion

- 7.8.1. The restrictions on the development of the site in terms of the presence of services and the close proximity of residential development to the south are acknowledged. The principle of infill residential development of the site to a significant intensity is accepted as is the principle of access to Nutgrove Avenue and the merit of providing a pedestrian and cycle connection through the site is considered appropriate.

- 7.8.2. The proximity of the site to the residential units to the south does however give rise to potential residential amenity issues and it is my opinion that the scale, layout and proximity of the proposed development to existing houses to the south is such that the development would lead to a significant adverse impact on residential amenity. It is also my opinion that the extent of the staggered building line proposed and the degree to which Block B is proposed to be pushed forward in the site to facilitate the wayleave to the rear, is such that combined Block B/C would constitute an excessively bulk and visually incongruous element in the streetscape of Nutgrove Avenue and such as to be contrary to the visual amenities and character of the area.
- 7.8.3. While the restrictions on the development of the site are noted, it is considered that the proposed design does not have sufficient regard to the surrounding context on either the Nutgrove Avenue or Stonepark Orchard sides of the site and that the overall density proposed of 85 units per hectare is indicative of an excessively dense form of development on a restricted site.

8.0 Recommendation

Having regard to the above, it is recommended that permission be refused based on the following reasons and considerations:

9.0 Reasons and Considerations

1. Having regard to the design and scale of the development proposed including the use of balconies, to the proximity of the development to the southern site boundary and to residential development in Stonepark Orchard, in particular Nos. 17 and 18 and the single storey dwelling to the east of these properties, it is considered that the proposed development would have a significant negative impact on the residential amenity of these properties by reason of overlooking of private amenity areas and rear elevations and overbearing visual impact and visual intrusion. The proposed development would therefore seriously injure the amenities and depreciate the value of surrounding residential properties and such that it would be contrary to the RES zoning objective of the site and adjoining residential areas and would be contrary to the proper planning and sustainable development of the area. .

2. The proposed extensive use of brick finish, lack of fenestration particularly in the east facing elevation of Block B and the extent of the staggered building line to Nutgrove Avenue is such that the proposed development would have a bulky and visually incongruous appearance when viewed from Nutgrove Avenue. The proposed development would therefore have a significant negative impact on the streetscape and visual amenity of the area and would be contrary to the proper planning and sustainable development of the area.

3. The proposed development features ground floor terraces and above ground floor balconies in Blocks A and B which are located such that they would encroach on the 7 metre wayleave around the diverted surface water sewer that is proposed to run through the site. This sewer is of 1.05 metres in diameter and the extent of wayleave identified is considered appropriate. The proposed development would therefore be contrary to the requirements of Irish Water and the water Services Section of the local authority, would be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

Stephen Kay
Planning Inspector

7th April, 2020