



An  
Bord  
Pleanála

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

### **Inspector's Report ABP-305859-19**

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#### **Strategic Housing Development**

Demolition of 'Benoni' and extant single storage buildings, construction of 234 no. apartments, crèche, gym and associated site works.

#### **Location**

Former Doyles Nursery and Garden Centre and 'Benoni', Brennanstown Road, Cabinteely, Co. Dublin.  
([www.brennanstownroadshd2.ie](http://www.brennanstownroadshd2.ie))

#### **Planning Authority**

Dun Laoghaire Rathdown County Council.

#### **Applicant**

Atlas GP limited.

**Prescribed Bodies**

1. The Minister for Culture, Heritage and the Gaeltacht.
2. The Heritage Council.
3. An Taisce.
4. Irish Water.
5. National Transport Authority.
6. Transport Infrastructure Ireland.
7. Inland Fisheries Ireland.
8. Dun Laoghaire Rathdown County Childcare Committee.

**Observer(s)**

79 Submissions noted and 5 responses from prescribed bodies (refer to Appendix 1 for list).

**Date of Site Inspection**

12<sup>th</sup> February 2020.

**Inspector**

Daire McDevitt.

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## 1.0 Introduction

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

## 2.0 Site Location and Description

2.1 I note that the 'Site location and Description' section contained in the Inspector's report for ABP 300144 and ABP 301044 gives a detailed description of the site and the surrounding area. This remains predominantly unchanged over past 12 months. I therefore propose to use the extract from this report for the most part with updates, where relevant. Below is an extract from this description:

2.2 *'The site is located on lands associated with Doyles Nursery and Garden Centre and an adjacent bungalow (Benoni) in Cabinteely, Dublin 18. The triangular shaped site is located to the rear of existing dwellings along Brennanstown Road. The vehicular access to the site is taken from Brennanstown Road opposite the entrance to an existing housing estate.*

*The subject site slopes downwards from the rear of houses in the west to the Cabinteely stream in the east. The western side is a narrow plateau along the rear boundaries of the houses which front onto Brennanstown Road and accommodates disused sheds/offices/greenhouses associated with the garden centre. The sloped area of the site and the eastern edge along the stream is a mixture of wooded areas and disturbed ground. There are areas of heaped spoil at the south eastern portion of the site alongside the stream. The garden centre abuts the south western portion of the site and the remainder abuts the boundary of apartments and houses at Brennanstown Square. The area alongside the stream is relatively flat. The rear boundary of houses associated with Carraig Glen are significantly higher than the public open space on the eastern bank of the stream.*

*Opposite the proposed access to the site is an existing entrance to two housing developments, Holmwood and Lambourne Wood. A narrow footpath on the western side of Brennanstown Road links these developments to Cabinteely Village. A pedestrian entrance to Cabinteely Park is located at a ruined gate lodge opposite Doyles Nursery and Garden Centre'.*

The stated site area is 1.85 hectares net, 2.3 hectares gross.

### **3.0 Proposed Strategic Housing Development**

- 3.1. The proposed development comprises the demolition of 'Benoni' together with the extant single storey buildings associated with the former Doyle's Nursery and Gardens and the construction of 234 residential units, crèche and gym, upgrade of the Brennanstown Road, pedestrian footbridge over the Cabinteely Stream and associated site works at former Doyles Nurseries and Garden Centre and Benoni, Brennanstown Road, Cabinteely, Dublin 18.
- 3.2. The proposal includes the demolition of 'Benoni', a habitable dwelling of stated area 252 square metres.
- 3.3. The proposed density of development is 126 units/hectare (nett).

The development consists 3 no blocks, ranging in height from 1 to 8 storeys as follows:

#### **Block A (1-3 storey)**

6 no. duplex units, gym (c. 248sq.m), circulation Space (c.67sq.m) and a crèche (c.317sq.m).

#### **Block B (2-3 storey):**

23 apartments & 6 duplex (8 no. 1 bed apart., 13 no. 2 bed apart., 2 no. 3 bed apart., 6 no. 3 bed duplex) and a lower foyer (c.254sq.m).

#### **Block C (6-8 storey):**

199 no. apartments (63 1 bed, 136 2 bed).

Balconies on Block A (south and southeast elevation). Block B (east elevation) and Block C (east and west elevation).

## **Part V:**

### **Open Space:**

- Riparian Corridor (c.1690sq.m).
- Play area and all weather MUGA (c. 415sq.m).
- Seating and amenity courts with junior play areas (c. 450sq.m).

### **Parking:**

**Car:** 184 spaces, these include 24 no. EV spaces, 9 no. mobility impaired spaces, 4 no. Car Club spaces, 4 no. visitor spaces and 4 no. crèche spaces.

**Bicycle:** 488 spaces

**Motorcycle:** 10 spaces.

### **Other:**

- Pedestrian route linking Brennanstown Road to the Green network to the east and a range of light fittings through this route.
- Measures to upgrade Brennanstown Road, including works within DLRCC owned lands from the location of the proposed site entrance northwards as far as the junction of the Brennanstown Road with the Bray Road at Cabinteely village. These works are broadly in line with a proposed Part 8 and works permitted under ABP 301044-18,
- Pedestrian and cyclist connections comprising a pedestrian bridge (c, 21m span) over the Cabinteely Stream at a location to the north east of the site. A pedestrian and cycle share path connecting the site into the Brennanstown Avenue estate.

Table 1: Unit Types

	1 bed	2 bed	3 bed	total
<b>Apartment</b>	Block B (8) Block C (63)	Block B (13) Block C (136)	Block B (2)	222
<b>Duplex</b>	-----	Block A (6)	Block B (6)	12
<b>Total</b>	71	155	8	<b>234</b>
<b>% of total</b>	30.4%	66.2%	3.4%	<b>100%</b>

See Appendix 2 for list of documentation submitted with the application.

## 4.0 Planning History

**Section 4 Strategic Housing Application ABP 301044-18** Vomovo Doyles Ltd refers to a 2018 grant of permission for the demolition of 'Benoni' together with the extant single storey buildings associated with the former Doyle's Nursery and Gardens, construction of 115 residential units, upgrade of the Brennanstown Road, pedestrian footbridge over the Cabinteely Stream and associated site works. Subject to 23 conditions.

**D15A/0120 (PL06D.244873)** refers to a 2015 decision to refuse permission for the demolition of 'Benoni' and extant buildings and the construction of 115 units (26 houses and 89 apartments). The reason for refusal was as follows:

1. The proposed development would give rise to additional traffic movements on Brennanstown Road and additional traffic turning movements at the proposed junction of the proposed development with Brennanstown Road. Having regard to the deficiency of footpaths, cycle paths and pedestrian crossings on Brennanstown Road, it is considered that the proposed development would be premature pending the determination of a road layout for the area including convenient and safe pedestrian links to Cabinteely village and to public transport facilities in the area and would, therefore, endanger public safety by reason of traffic hazard.

There were also applications for a number of minor developments on site, unrelated to the proposed development.

### **Nearby Sites:**

I note that permission has been refused on appeal for a number of developments along Brennanstown Road, for reasons relating to traffic and prematurity pending determination by the planning authority of the road layout for the area.

Permission was granted under D09B/0191 for an extension to rear of 'Treethorpe' and for a new dwelling at Hill Court (D17A/0819), both of which back onto the subject site.

**Cherrywood SDZ** is located to the south of the site and has multiple applications.

### **Part 8 Schemes**

#### **PC/IC/01/16- Brennanstown Road Traffic Management Scheme**

Consisted of:

- Provision of a footpath on one side of carriageway over entire length of Brennanstown Road
- A number of traffic calming measures including ramps, raised tables and a roundabout
- General upgrade of all pedestrian facilities including dropped kerbs and tactile paving



- A traffic shuttle system between Lehaunstown Lane and the Egyptian embassy, consisting of traffic light system allowing one-way over a distance of 260 metres

The Elected Members decided not to proceed with this Part 8.

#### **PC/04/14- Cabinteely Linear Park**

Consisted of:

- 1.9km Greenway through Cabinteely Park and adjoining residential estates providing connectivity with existing cycle and pedestrian routes within the local area of Brennanstown and Cornelscourt

Following the display period, this Part 8 was not brought to the Elected Members

#### **Strategic Housing Developments in the vicinity:**

**301614-18** refers to a 2018 grant of permission for 136 residential units, crèche, works to Brennanstown Road, alterations to Brennanstown Road/Glenamuck Road North/Brighton Road/Claremont Junction, connection to a through Cabinteely Park.

## **5.0 Section 5 Pre Application Consultation (304560-19)**

- 5.1. A Section 5 pre application consultation took place at the offices of An Bord Pleanála on the 7th March 2019 with further feedback on additional details provided was received by the prospective applicant via email on the 7<sup>th</sup> May 2019. Representatives of the prospective applicant, the planning authority and An Bord Pleanála were in attendance. Following consideration of the issues raised during the consultation process, and having regard to the opinion of the planning authority, An Bord Pleanála was of the opinion that the documentation submitted constituted a reasonable basis for an application for strategic housing development to An Bord Pleanála. The applicant was advised that the following specific information should be submitted with any application for permission:

1. Additional CGIs/visualisations/3D modelling showing the proposed development relative to existing development, including the surrounding residential development. CGIs/visualisations should be provided showing the 'winter' (no leaf) scenario.
2. A report that specifically addresses the proposed materials and finishes of buildings, landscaped areas and any screening/boundary treatment. Particular regard should be had to the requirement to provide high quality and sustainable finishes and details which seek to create a distinct character for the development.
3. A plan of the proposed open space within the site clearly delineating public, semi-private and private spaces.
4. Additional documentation relating to flood risk having regard to the report of the Drainage Division of the Planning Authority (as contained in Appendix B of the Chief Executive Report dated 25th June 2019) and having regard to the supplementary report of the Drainage Division of the planning authority dated 27<sup>th</sup> June 2019. A Flood Risk Assessment should be prepared in accordance with 'The Planning System and Flood Risk Management' (including associated 'Technical Appendices').
5. Additional details in relation to surface water proposals having regard to the report of the Drainage Division of the planning authority, as contained in Appendix B of the Chief Executive Report dated 25th June 2019.
6. Additional landscaping details having regard to the report of the Parks Division of the planning authority, as contained in Appendix B of the Chief Executive Report dated 25th June 2019.

7. A report that addresses issues of residential amenity (both existing residents of adjoining development and future occupants), specifically with regards to overlooking, overshadowing, overbearing and noise. The report shall include full and complete drawings including levels and cross-sections showing the relationship between the proposed development and adjoining residential development. Furthermore, landscape and architectural drawings that clearly detail the relationship between wind impact mitigation measures and the design of the proposed development shall be included.
8. Daylight, Sunlight and Shadow Analysis.
9. Schedule of accommodation.
10. A site layout plan indicating what areas, if any, are to be taken in charge by the planning authority.

## **5.2 Applicant's Statement**

A statement of response to the Pre-Application Consultation Opinion was submitted with the application, as provided for under section 8(1)(iv) of the Act of 2016. This statement provides a response to each of the specific information required as set out in the opinion

1. Two additional images have been provided to provide a digital representation of the proposed development. 14 verified view in their photomontages documentation. These images consist of a 'before' and 'after' scenario with the proposed development imposed on digital photograph to provide an indication of how the subject proposal will look in the existing landscape.

Three CGI visual images from within the development provides a representation of how the subject proposal will look and feel when it is complete. An additional four were prepared to show materials on the façade of Block C.

2. A report has been submitted that provides full details of the proposed materials and finishes of the proposed development.
3. A plan detailing the proposed open spaces and the functionality of each portion of open space within the development has been submitted. The majority of the open space internal to the site will be public open space with a public pedestrian path connecting Brennanstown Road to a bridge over Cabinteely stream. The play areas will generally be open to public use but this will ultimately be a function of the management company to decide levels of usage once the scheme is operational.
4. A revised infrastructure report has been submitted to address the issues highlighted.

A SSFRA has been completed and submitted.

A legal submission from A&L Goodbody is also included, this submits that there is conflict between the zoning of the site and the designation of part of the site as Flood Zone A and B.

5. An Infrastructure report that addresses the issues raised by DLR draining section has been submitted.
6. Additional details pertaining to a) landscape design proposals, b) open space and play and c) trees have been submitted.
7. A full report examining residential amenities of existing and future residents has been submitted, this addresses amenities available, overlooking, noise, visual impact, overshadowing and wind impact.
8. A daylight and sunlight analysis has been submitted.

## **6.0 Relevant Planning Policy**

### **6.1 National Planning Framework**

Chapter 4 of the Framework addresses the issue of ‘making stronger urban places’ and sets out a range of objectives which it is considered will assist in achieving same. National Policy Objective 4 sets out to ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being. National Policy Objective 13 provides that in urban areas, planning and related standards, including in particular building height and car parking, will be based on performance criteria that seek to achieve well designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.

Objective 57 sets out to enhance water quality and resource management, this includes the requirement to ensure that flood risk management informs place making by avoiding inappropriate development in areas at risk of flooding in accordance with The Planning System and Flood Risk Management Guidelines for Planning Authorities

### **6.2 Section 28 Ministerial Guidelines**

Having considered the nature of the proposal, the receiving environment, the documentation on file, including the submissions from the planning authority, I am of the opinion that the directly relevant section 28 Ministerial Guidelines are:

- ‘Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas’ (including the associated ‘Urban Design Manual’) (2009)
- ‘Design Standards for New Apartments – Guidelines for Planning Authorities’ (as updated March 2018)
- ‘Design Manual for Urban Roads and Streets’ (2013)
- ‘The Planning System and Flood Risk Management’ (including the associated ‘Technical Appendices’) (2009)

- ‘Childcare Facilities Guidelines for Planning Authorities’ (2001)
  - ‘Urban Development and Building Heights – Guidelines for Planning Authorities’, (2018)

### **6.3 Regional**

#### **Eastern & Midland Regional Assembly Regional Spatial & Economic Strategy (RSES) 2019-2031**

#### **Dublin Metropolitan Area Strategic Plan (MASP)**

### **6.4 Local**

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

The bulk of the development site is zoned Objective ‘**A**’ in the development plan, ‘to protect and / or improve residential amenity’. Residential development is ‘permitted in principle’ under this zoning objective.

A sliver of the site contained within the red line boundary, to the north-east and east is zoned ‘Objective **F**’ which seeks to ‘preserve and provide for open space with ancillary active recreational amenities’

The site falls within an area subject to a Section 49 Supplementary Development Contribution Scheme for Luas Line B1.

### **Specific Local Policies and Objectives:**

**SLO46** To create a linear park along the Loughlinstown River incorporating a pedestrian route and cycleway (greenway), which will link Cabinteely Park to the sea at Rathsalagh.

**SLO130** To limit development along the Brennanstown Road to minor domestic infills and extensions until a Traffic Management Scheme for the area has been completed and its recommendations implemented.

In addition, there are policies and objectives that are specific to the area around the site which include, inter alia:

#### **Policy OSR8: Greenways Network**

It is Council policy to develop a comprehensive network of County Greenways linking parks and public open spaces and to liaise with adjoining local authorities and other stakeholders to achieve and improve wider external linkages and corridors.

- Loughlinstown Greenway (Cornelscourt via Cabinteely Park and Cherrywood to the Coast at Shanganagh Cliffs).

#### **Policy ST25: Roads**

It is Council policy, in conjunction and co-operation with other transport bodies and authorities such as the TII and the NTA, to secure improvements to the County road network- including improved pedestrian and cycle facilities

It is an objective of the Council to preserve the existing character of Brennanstown Road whilst undertaking a Traffic Management Scheme that will:

- reduce traffic speeds and improve road safety.
- provide improved facilities for vulnerable road users.
- reduce through traffic.
- facilitate the development of zoned lands.

To limit development along the Brennanstown Road to minor domestic infills and extensions until a Traffic Management Scheme for the area has been completed and its recommendations implemented.

The Brennanstown Road Traffic Management Scheme may determine the future development potential of the area and therefore it is also an objective of the Council to limit developments along Brennanstown Road to minor domestic infills and extensions until the Scheme has been completed and its recommendations implemented (Refer to SLO No. 130 Maps 7 and 9).

The portion of the site that shows amendments to Brennanstown Road is located adjacent to the boundary walls of Cabinteely House (RPS No. 1683).

There are a number of policies and objectives within the operative County Development Plan in relation to residential development which include *inter alia* Development Plan policy **RES 3** “It is Council policy to promote higher residential densities provided that proposals ensure a balance between the reasonable protection of existing residential amenities and the established character of areas, with the need to provide for sustainable residential development.”

Development Plan **section 2.1.3.3** states:

“Where a site is located within circa 1 kilometre pedestrian catchment of a rail station, Luas line, BRT, Priority 1 Quality Bus Corridor and/or 500 metres of a Bus Priority Route, and/or 1 kilometre of a Town or District Centre, higher densities at a minimum of 50 units per hectare will be encouraged.”

Building Height Strategy Adopted as Appendix 9 of the County Development Plan

The site is not located in an area where any specific provisions in relation to building height apply, e.g. an SDZ. A maximum height of 3-4 storeys therefore applies. Section 4.8.1 of the Strategy sets out the Upward Modifiers that may be applied to justify greater height in particular locations. These largely relate to good urban design, proximity to public transport nodes and specific site characteristics. The Strategy states:

“The presumption is that any increase or decrease in height where 'Upward or Downward Modifiers' apply will normally be one floor or possibly two”.



### **Section 5.2.5.2 Flood Risk Management**

**Policy CC15** *It is Council policy to support, in cooperation with the OPW, the implementation of the EU Flood Risk Directive (2007/60/EC) on the assessment and management of flood risks, the Flood Risk Regulations (SI No 122 of 2010) and the Department of the Environment, Heritage and Local Government and the Office of Public Works Guidelines on ‘The Planning System and Flood Risk Management, (2009)’ and relevant outputs of the Eastern District Catchment and Flood Risk Assessment and Management Study (ECFRAMS Study).*

The Council will ensure the implementation of the DoEHLG/OPW Guidelines ‘The Planning System and Flood Risk Management’, (2009) and DoECLG Circular PI2/2014 (or any updated/superseded document) in relation to flood risk management within the County. A Strategic Flood Risk Assessment of the County has been carried out as part of this County Development Plan process (Refer to Appendix 13).

### **Chapter 8 Development Management Standards**

**Section 8.2.3.3** refers to **apartment developments** and standards required in relation to (i) design, (ii) dual aspect, (iii) mix of units, (iv) separation between blocks), (v) internal storage, (vi) penthouse development, (vii) minimum floor areas, (viii) public, private and communal open space standards and (ix) play facilities.

**Section 8.2.3.3 (iii)** refers to unit mix within schemes. Where more than 30 units are proposed, a scheme should generally comprise of no more than 20% 1 bed units, and a minimum of 20% of units over 80 sq.m.

### **Section 8.2.4 Sustainable Travel and Transport**

### **Section 8.2.8 Open Space and Recreation**

### **Section 8.2.10.4 Flood Risk Management**

### **Appendix 13 Strategic Flood Risk Assessment**

## 6.5 Applicant's Statement of Consistency

A Statement of Consistency with local and national policy has been submitted with the application, as per Section 8(1)(iv) of the Act of 2016.

## 6.6 Material Contravention Statement

The applicants have submitted a statement of Material Contravention in accordance with Section of 8(1)(iv) of the Planning and Development (Housing) and Residential Tenancies Act 2016. The applicant has been advertised as a contravention of the development plan.

It is put forward that the proposed development does not materially contravene the zoning of the land. And it is respectfully requested that An Bord Pleanála have regard to the justification set out in this report for a material contravention of the Dun Laoghaire Rathdown County Development Plan 2016-2022 in terms of the height proposed, alteration of Flood Zone A within the site as specified in the Dun Laoghaire Rathdown Strategic Flood Risk Assessment (SFRA) and the upgrade of a section of the Brennanstown Road. This request is made on the basis that:

- The proposed development is of strategic importance in the provision of housing supply.
- There are conflicting objectives in the Dun Laoghaire Rathdown County Development Plan in relation to flooding.
- A grant of permission should be granted for the proposed residential development and associated section of Brennanstown Road upgrade having regard to the Local authority's obligation under section 15(1) of the Planning and Development Act 2000 to *"take such steps within its powers as may be necessary for recurring the objectives of the development"*. The material contravention of SLO 130 is justified by the strategic importance of the provision of housing supply that will result from the proposed development.
- A previous grant of permission under ABP Ref. 301044-18 was granted in 2018 for a similar development with identical flood mitigation works proposed.

- A favourable decision for the proposal can issue given national policy and guidance on the matter of height and specifically the recent publication of the following documents:
  - ‘Urban Development and Building Height - Guidelines for Planning Authorities (2018)’
  - ‘Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2018)’; and
  - ‘Project Ireland: National Planning Framework 2040’.

## 7.0 Third Party Submissions

79 third party submission have been received, there is a significant degree of overlap and reiteration of issues raised throughout the submissions, including a number of templates submitted. I therefore propose to summarise them by issue rather than individually. Appendix 1 contains a list of submissions. The main issues are summarised as follows:

### **DLR CDP Policy:**

- Material contravention of SLO 130 Brennanstown Road
- Material contravention of ST 25 Brennanstown Road
- Material contravention of Building Height Strategy.
- Material contravention of Flood Risk Assessment and Flood Risk Management policies
- Putting residential use on Located on Flood Zone A&B materially contravenes the plan.
- Does not comply with Appendix 13 SFRA.
- Does not comply with RES3, density is too high.

- Contrary to Policy OSR7 (trees and woodland).
- Contrary to policy LHB25 (rivers and waterways).
- Public Meeting held, local Councillors and DLRCC object to the proposed development. Local views are being ignored.
- The 'Greenway' is not near delivery.
- Does not comply with the SPPRs in the 2018 Apartment Guidelines.

### **Housing Provision:**

- Too many housing under construction in the area, no infrastructure capacity for more.
- Contrary to the Core Strategy.
- Inappropriate mix for the area.

### **Design & Layout:**

- In appropriate design, scale and height.
- Monolithic development
- Out of keeping with the character of the area.
- Over development of the site.
- Lack of transition, the development overpowers the adjoining houses.
- No place for apartments in this suburban setting.
- Inappropriate design, scale, materials.

- Visually obtrusive.
- If permission is granted, request that the height is reduced and setback from boundaries increased.
- Negative Visual Impact.
- Negative Impact on existing character of Cabinteely village.
- Poor public realm which is out of sync with the area.

**Planning history:**

- Refusal on the site and along Brennanstown Road on SLO 130 and Design

**Residential Density:**

- Too high.
- Doubles the density permitted in 2018

**Residential Amenities:**

- Overlooking.
- Overshadowing.
- Loss of outlook.
- Loss of light.
- Noise pollution.
- Light pollution.

- Overbearing and overpowering impact.

#### **Traffic and transportation:**

- Add to congestion along Brennanstown Road.
- Insufficient carparking will result in overflow onto adjoining residential streets.
- Misleading to state that the site is close to public transport.
- Premature pending strategic links being developed.
- Piecemeal delivery of upgrades to Brennanstown Road.
- Traffic hazard,
- Danger to pedestrian and cyclists.
- Alterations to the historical walls along Brennanstown Road to facilitate the upgrades.
- Limit access to Lehaunstown Lane until it is upgraded.

#### **Flooding, drainage:**

- Issues with surface water and sewerage overflows in the area, especially to the south east of the site.
- Putting basement carparking below the level of the flood plain is not prudent and will put residents at risk.
- Does not pass the Justification Test.
- Could create potential drainage and flooding problems.

### **Removal of trees:**

- Unacceptable loss of mature trees

### **Other**

- Oral Hearing should be held.
- Better public participation in the process is required.
- No justification in the last 12 months to permit a development that is nearly double the size of the previous application.
- Devaluation of adjoining properties.
- Negative impact on the architectural and historical heritage of the area.
- Taken together with other developments permitted and Cherrywood, there will be a significant negative impact on the quality of life of existing residents of the area.
- Incorrect information submitted.
- The development will not benefit the local area.
- Loss of Wildlife corridor.
- Private sewer on the site.

## **8.0 Planning Authority Submission**

8.1 In compliance with section 8(5)(a) of the 2016 Act the planning authority for the area in which the proposed development is located, Dun-Laoghaire Rathdown County Council, submitted a report of its Chief Executive Officer in relation to the proposal. This was received by An Bord Pleanála on 7<sup>th</sup> January 2020. The report may be summarised as follows:

**Information Submitted by the Planning Authority**

The submission from the Chief Executive includes details in relation site location and description, proposal, zoning, planning history, interdepartmental reports, summary of submissions/observations, summary of views of elected members, policy context and assessment.

**8.2 Planning Assessment**

**Principle of Development:**

- The Planning Authority is satisfied that the principle of accommodation a development of this nature is acceptable in principle at this location. However, the schemes acceptability is subject to the proposal demonstrating a high standard of design which has due regard to its setting and context. It is also necessary to ensure that the proposed architectural response safeguards the residential amenities of properties within the vicinity.
- With regard to SLO130 and notwithstanding the previous granted permission ABP 301044-18 as a Traffic Management Scheme for Brennanstown Road is not yet in place at this time, permission should therefore be refused.
- It is noted that just like ABP 301044-18, the current proposal includes some elements of the measures included in the recent Part 8 application. Issues arose under the Part 8 in relation to the location of the proposed footpath along the eastern side of Brennanstown Road, the preferred option by many is to retain the path along the western side. This was retained under PA Ref. D18A/0763 (ABP 304719-19).



- The PA noted that the proposed development would provide some elements of the measures included in the Part 8 application and matches those included in the permitted ABP 301044-18 scheme. At the southern end of Brennanstown Road other section of Brennanstown Road upgrade were permitted under ABP 301614 and implementation has commenced.
- Notwithstanding, the view of the PA remains unchanged from that under ABP 301044-18, in that permission of anything other than 'minor domestic infill and extensions' until the scheme has been completed and its recommendations implemented is explicitly limited by policy set out in ST25 and SLO130 in the Dun Laoghaire Rathdown County Development Plan 2016-2020. Therefore, notwithstanding the fact that the application proposes a number of works to upgrade the Brennanstown Road, it is the conclusion of the PA the proposed development materially contravenes this policy and objective.

#### Residential density

- The proposed density of c. 126 units per hectare on are site area of c. 1.85ha (excluding c. 0.45ha of lands in separate ownership included within the red line). The PA questions the validity of the applicant's assertion that the subject site is classified as a 'Central and/or Accessible Urban Location' as defined by the Apartment guidelines. The proposal doubles the residential density from that permitted under ABP 301044-18. Although densities within this range may be acceptable at certain locations, the Planning Authority has significant concerns regarding the scale, form and height of the proposal (particularly Block C) and its impact on the residential amenity of properties in the vicinity. Consequently the density proposed is considered excessive and the proposal therefore constitutes overdevelopment of the subject site.

#### Residential Mix

- The Apartment guidelines supersede some sections of the DLR County Development Plan 2016-2022. It is therefore considered that the proposed mix of apartments within this scheme is in accordance with the requirements of the apartment guidelines and will add to the variety of housing types within the surrounding area.

### Residential Amenity

- Block A raises no undue concerns.

#### Block B:

- Overshadowing has been raised as a concern, in particular Block B, and attention has been drawn to potential discrepancies in the details submitted.
- The height of the gym, single storey (c.5.8m high) and its proximity and siting relative to the rear amenity of the property to the north is a concern.
- Overlooking from the second floor windows on the northern elevation of the building (Block B).
- Noise impact from the gym on nearby properties, in particular 'Trethorpe'.
- The PA has concerns regarding the scale, form and height of Block B and its visual impact when viewed from the backyard scape of the properties fronting onto Brennanstown Road. The previous scheme had semi-detached dwellings sites to the south and east of these properties with substantial setback from the boundary. This is in stark contrast to the current scheme, whereby Block B lacks visual relief and will dominate views the rear amenity space of these properties.

#### Block C:

- Significant concerns regarding the scale and form of the proposed block and its impact on the residential amenity of properties to the south of Brennanstown Avenue by reason of being visually overbearing.
- The proposal fails to have regard to the sensitivities of the site as it does not provide an appropriate transition in scale and height. This coupled with insufficient boundary setbacks will severely compromise the residential amenities of the properties to the south and should be refused permission.
- Significant concerns have been raised relating to overlooking of the properties to the south. Under ABP 301044-18 a row of 3 no. storey townhouses was sited within the southern portion of the site, opposite the dwellings on Brennanstown Avenue. The current proposal constitutes a significant intensification of fenestration which will severely compromise the amenity of the existing houses. In this regard, the proposal has failed to have due regard to the characteristic of the surrounds and should therefore be refused permission.
- No CGI submitted for winter (ie no leaf scenario).
- The overall scale and form of Block C is excessive. The monolithic form is not acceptable. Will have a detrimental impact on the rear amenities of properties in Carraig Glen. It has also failed to provide a graduated building height at the sensitive interface with the houses fronting onto Brennanstown Road and should therefore be refused permission.

#### Building Height & Scale

The eastern portion of the site can more readily absorb additional height as the properties further to the east of the site are elevated relative to the Cabinteely Stream. The principle of accommodating height at this portion of the site was established (4 no. 6 storey blocks) under ABP 301044-18. Although it is acknowledged that Blocks A and B are modest in their overall scale, the Planning Authority note that the scheme as proposed fails to have regard to the sensitivities of the site and does not provide an appropriate transition in scale and height to the surrounding residences. The proposed building lines has the equivalent of a 9 storey building in part and in its current form would severely compromise the residential amenities of properties within its vicinity.

While the precedent for height and the application of upward modifiers has been established under ABP 301044-18. The PA is not satisfied that an 8 storey building (9 storey equivalent) can be absorbed at this location and in its current form would severely compromise the residential amenities of properties within the area and is totally at odds with the prevailing neighbourhood character. The proposal is therefore considered contrary to the Building Height Strategy of the current County Development Plan.

Having regard to the requirements of the 2018 guidelines, it is not considered that Block C can be absorbed at this location and would detract from the amenity of adjoining properties and does not comply with the 2018 ministerial guidance.

#### Design/form/materials and finishes:

Block A and B are interconnected and form an inverted 'L' shape which is sited on the western portion of the site.

Block A is located with the entrance and on balance it is considered that the design and form of Block A generally responds to its setting and context and will form an attractive entrance to the larger site.

Block B frames the western side of the new shared garden space. The position of the building has generally taken its location from the position of the detached semi-detached houses permitted under ABP 301044-18. Due to its siting, it is likely to be screened from view from the public realm. Although the PA is satisfied that the design of the block is of a high quality and standard, concerns have been raised regarding its siting and form relative to the properties on Brennanstown Road.

Block C is linear in form, runs in a north-south direction and is sited parallel to the Cabinteely Stream to the east. It reads equivalent to 9 storeys in height. The PA has significant concerns regarding height, scale and monolithic form. Although it is acknowledged that additional height can be absorbed within the eastern portion of the site due to its topography, the proposal in its current form is at odds with the character of the surrounding area and would have a negative impact on the visual amenity of the surrounding area.

#### Apartment Standards:

- The proposed mix of units is in accordance with the Apartment Guidelines and would add to the variety of housing types in the area.
- Floor areas are acceptable.
- 70% dual aspect is acceptable.
- Ceiling heights comply with guidelines.
- Lift and stair cores comply
- While two apartments have less than the recommended 9 sq.m (have 8.2sq.m), this variation to the standards is generally acceptable in this instance.
- Storage is acceptable.

- The proposal fails to comply with separation distances as there are pinch points (c. 14m and c.16m), Overshadowing of the communal open space to the east of Block C is also an issue.

#### Communal and Open Spaces:

Although the Parks and Landscape Services Section are satisfied with the quantum of communal open space proposed, concerns has been raised with regard to the detail and quality of play provision and conditions have been recommended.

#### Trees:

Refer to Parks and Landscape Section report.

#### Drainage:

Refer to the drainage section report.

#### Transportation and Parking:

Refer to the Transportation Planning Section report.

Parking at a rate of 0.786 per unit is not acceptable. The proximity of public transport is noted, in particular along the N11. However, it is considered that based on the suburban location of the development a reduced rate equivalent to 1 car space per apartment is more appropriate to ensure sufficient car storage/car parking provision within the site.

#### Bin Storage and Waste Management:

- Refer to Waste Section report.

#### Public Lighting:

- Refer to Public Lighting Section report.

Part V:

- Proposed to allocate 23 apartments in Block B&C. Matter to be addressed by condition.

Appropriate Assessment/Ecology:

- AA Screening document submitted and noted.
- Ecological Impact Assessment Report submitted and noted.
- EIA Screening Report submitted and noted.

Refer to ABP as the competent authority for AA and EIA.

#### 8.4 Summary of Inter-Departmental Reports

**Transportation Planning Section** (17<sup>th</sup> December 2019). Points of note include:

- The works to Brennanstown Road included as before (ABP 301044-18) would need to be conditioned for delivery prior to first occupation.
- The applicants proposed rate of 0.786 carparking spaces per apartment unit is not acceptable. A reduced car parking rate equivalent to 1 car space per apartment unit is recommended.
- In accordance with DLRCCS for Cycle Parking Section 2 General Principles cycle parking should be located at the most accessible level.
- The provision of a public permeability route for pedestrians and cyclists 4m in width to comply with NTA level A quality of service is welcomed.

A list of recommended conditions are attached to the report

**Drainage Planning Section** (9<sup>th</sup> December 2019). Significant concerns and Refusal recommended.

The flood risk on the site was only identified and quantified following the submission of the SSFRA for ABP 301044-18 application, ie after the adoption of the County Development Plan 2016-2022. Therefore it is likely that the applicant site would have retained its zoning status even if rezoning of lands at risk of flooding had been adopted. The substance of the A&L Goodbody legal submission is that there are conflicting objectives or objectives that are not clearly stated in the Development Plan and that hence the Board is allowed, under section 9 of the Planning and Development (\*Housing) and Residential Tenancies Act 2016 to grant permission.

With Regard to the FRA:

A part of the site is located on Flood Zone A and B. The applicant has submitted a SSFRA in which it is proposed to building in part of Flood Zones A&B by modifying existing ground levels in the parts of the site located on Flood Zones A and B and by the provision of compensatory flood storage, thus ensuring that all highly vulnerable development would be located outside the altered Flood Zones A&B. This would be contrary to the requirements of section 4.7.1.1 (New development) 'It is not appropriate for new, highly vulnerable development to be located in Flood Zones A&B, particularly outside the core of a settlement and where there are no flood defences. Such proposals do not pass the Justification Test. Instead a less vulnerable use should be considered.

Section 4.10.2 'modifying ground levels to raise land above the design flood level is a very effective way of reducing flood risk to the particular site in question. However, in most areas of fluvial flood risk, conveyance or flood storage would be reduced locally and could have an adverse effect on flood risk off site. There are a number of criteria which must all be met before this is considered a valid approach. This includes that development at the site must have been justified though this SFRA based on existing (unmodified) ground levels.

The applicant has not demonstrated that the proposal passes the (Development Plan) justification test and thus is not in accordance with the requirements of Section 4.7.1.1 and 4.10.2 and therefore should be refused permission.



Should the Board accept that the development footprint, based on modified flood extents can be considered in principle at this location, then Drainage Planning is of the opinion that the analysis contained in the AECOM FRA is appropriately detailed and provides sufficient evidence to pass the Development Management Justification Test, subject to proposed conditions.

On Plus Architecture site Drawing No. 393\_WS\_05\_01 the flood extent for both the 1.0%AEP and 0.1% AEP events, with a corresponding depth of water of c.0.75m, are shown at the edge of Block C. Drainage Planning is not able to determine if this is a drafting error or what is actually being proposed, as the submitted AECOM Drawings do not provide the necessary section details of the stream to the building boundaries. This was also the subject of Item No. 9 of the Drainage Planning Pre-Application Consultation Report (For ABP information: the level of detail required, clearly showing raised ground levels adjacent to buildings, see AECOM drawing No. 60541707-SHT-10-C0404 submitted for the previously approved scheme ABP 301044-18).

In the absence of Further Information, the Drainage Section concluded that the matter cannot be resolved as part of this report.

Suggested conditions are attached.

1. Prior to the commencement of development, the applicant is required to submit cross sections to a suitable scale, at the section locations shown on AECOM Drawing No. PR396202-ACM-XX-Dr-CE-10-0402, to show the existing and proposed ground levels, existing and proposed flood extents (with levels) and to extend the sections to include the proposed apartment blocks. The applicant is also required to show cut and fill locations (with levels) and the flood extents (with levels) for the 1.0% and 0.1% AEP events on the Architectural Section and to ensure consistent between the Architectural and Engineering drawings, all to show that there will be a raised area between the stream and the apartments to avoid encroachment of flooding currently shown on Plus Architecture site Drawing No. 393\_WS\_05\_01. The SSFRA is to be redrafted to include specific reference to all of these revised drawings and that the modelling has been undertaken in accordance with these drawings.

2. The flood storage and flow path areas should not contain any Engineering, Architectural or Landscaping features that would have the potential for obstruction of flowpaths. All Engineering, Architectural or Landscaping specification, schematic, drawings, etc, shall clearly show that unobstructed flow paths are being provided (in accordance with section 3.3.1 Appendix B of the Planning System and Flood Risk Management Guidelines).
3. Prior to the commencement of construction the applicant shall submit to the Planning Authority for its written agreement and CMP and a Programme of Works that provides for:
  - (a) the completion of the proposed flood storage works and flood routing works in advance of other construction works, or other acceptable temporary proposal(s) supported by hydraulic analysis, such that it can be clearly demonstrated that the full flood storage routes area available at all stages of the proposed development and
  - (b) the construction of the proposed bridge in such a manner that the full flood storage volumes and flood routes are available at all stages of the proposed development.

The applicant shall thereafter, unless otherwise agreed with the Planning Authority, be required to construct the works in accordance with the agreed CMP.

**Housing Department** (20<sup>th</sup> November 2019). Appropriate Part V condition to be attached.

**Parks and Landscape Services** (16<sup>th</sup> December 2019). Recommend Refusal of permission for the following reasons:

- There is no construction Environmental Management Plan.

- The site currently has a borehole well located at the nursery/garden centre which is significantly higher than the remaining site. Groundwater pathways at this location and elsewhere may be affected from their current natural pathway which is highlighted by the Ground Investigations Ireland Report. This Report has not been submitted for any discussion, conclusions or recommendations by a qualified chartered Geo technical engineer which the Parks and Landscape Services consider essential.
- A thorough Hydrological and Ground Investigation of soil and bedrock survey has not been fully investigated from this application to support the impact assessment on the existing tree survey. Will there be an impact on fluvial flooding.
- A Foundation Structure Design of the proposed dwellings is necessary to demonstrate the complete and full impact the development may pose.
- There is an absence of soil survey and groundwater/water table analysis. A cut and fill analysis, a soil displacement and replacement analysis.
- Further analysis should be carried out to avoid design changes, it is important for site risk analysis to full assess flood risk from the rising groundwater impacts as well as surface water rather than an analysis of assumptions.
- The Tree Surveys and landscape reports do not include existing topographical levels with proposed new levels that clearly and visibly demonstrate the differences.
- The arborist has stated in his report that he has had no input into the design process. He also states that the arborist report may be deficient for the construction phase. He also stated that the arborist report is not based on a detailed design or construction design.
- The arborist also highlighted a number of vulnerabilities, such as excavation works near riparian way, landscape modifications to accommodate the cross over bridge and installation of surface water infrastructure shall encroach on minimum root protection areas.
- An ecologist with experience of aqua ecological creations should oversee the construction and installation stage of the development.

- The application has stated in their application that there may be flooding of the site. It is unclear from the application what 'appropriate maintenance' is required on the Cabinteely Stream and potential impacts on the ecology of the stream whilst also benefitting any flood alleviation.
- Issues highlight in relation to open space and play areas.
- Issues to construction details for the crossover bridge and pedestrian links to Brennanstown Avenue and potential structural impacts on the vulnerable foodrisk and ecology of the area.

A number of items are highlighted that need to be addressed before any grant of approval. These include inter alia :

1. A Hydrogeological and geologist feasibility report (from a qualified chartered hydrology/ecology engineer) to assess fully and objectively the impacts current and existing groundwater pathways may be impacted upon in terms of contamination risk from the proposed development and also may have a potential flood risk following the sites removal of several layers of soil strata and bedrock. Evaluate in greater detail the risk analysis of further flooding for the site in general and the Cabinteely Stream.
2. Provision of an arborist, landscape architects and ecologist consultants along with engineers and architects to have a prominent role in the design and layout of the proposed scheme.
3. CEMP that clearly incorporates the advice of all consultants.
4. Management and cost of the Cabinteely Stream, following an investigation on the impacts on aquatic life.
5. Provision of play areas for all age groups.
6. Construction and maintenance details for the overhead bridge and assessment of impacts on the Stream and surrounding landscape.
7. Location of all proposed services along with comparing existing and proposed excavation topographic levels. Highlighting any ground stability issues or not that may require further analysis.

**Waste Section** (28<sup>th</sup> November 2019). No objection subject to conditions.

**Public Lighting Section** (17<sup>th</sup> December 2019).

- A full lighting report is not submitted.
- Need to comply with Guidelines and Standards.
- Lighting should be address in conjunction with the Public Lighting Section.

**8.5 Recommendation**

Recommendation that permission be refused for the following reasons:

1. Policy ST25 and SLO 130 of the Dun Laoghaire Rathdown County Development Plan 2016-2022 (shown on maps 7 and 9 of the Dun Laoghaire Rathdown County Development Plan 2016-2022) state that it is an objective of the Council to limit development along the Brennanstown Road to minor domestic infills and extensions until a Traffic Management Scheme for the area has been completed and its recommendations implemented. It is considered that the proposed development materially contravenes these policy objectives of the Dun Laoghaire Rathdown County Development Plan 2016-2022 and in the absence of these objectives being fulfilled the proposal is premature.
2. It is evident from the flood reports and hydraulic modelling submitted with the planning application that the section of the development lands directly adjacent to the Cabinteely Stream (including a portion of Block C) lies in Flood Zone A. As this development is residential in nature, it is therefore classified as being highly vulnerable form of development. The applicant has not demonstrated that the proposal passes the Development Plan Justification Test and thus is not in accordance with the requirements of Section 4.7.1.1 and 4.10.2 of Appendix 13 (Strategic Flood Risk Assessment) of the Dun Laoghaire Rathdown County Development Plan 2016-2022. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3. The proposed development, by reason of the scale, height and monolithic form of the proposed development, particularly Block C, would be detrimental to the character of the surrounding area and would significantly compromise the residential amenity of the properties located in the immediate vicinity by reason of overshadowing, overlooking and by being visually overbearing. The proposal is not in accordance with section 8.1.1.1 of the Dun Laoghaire Rathdown County Development Plan 2016-2022 with respect to Urban Design Principles (UD1) and would be contrary to the policies and guidelines of the Building Height Strategy contained in Appendix 9 of the Dun Laoghaire Rathdown County Development Plan 2016-2022. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

In the event the Board is minded to grant permission, a schedule of 37 recommended conditions is attached.

## **9.0 Prescribed Bodies**

9.1 The applicant was required to notify the following prescribed bodies prior to making the application:

- The Minister for Culture, Heritage and the Gaeltacht
- The Heritage Council
- An Taisce
- Irish Water
- National Transport Authority
- Transport Infrastructure Ireland

Inland Fisheries Ireland

- Dun Laoghaire Rathdown County Childcare Committee.

Four bodies have responded and the following is a brief summary of the points raised. Reference to more pertinent issues are made within the main assessment.

**An Taisce** (11<sup>th</sup> December 2019). Points of note included:

- The Scale and height of the proposal is inappropriate for the location.
- Inappropriate housing mix.
- The development would have a negative impact on the residential amenities of existing properties in the vicinity.
- Concerns highlighted pertaining to traffic and transportation

**Irish Water** (6<sup>th</sup> December 2019). Based on the details provided by the developer and the Confirmation of Feasibility issued by IW. IW confirms that, subject to a valid connection agreement being out in place between IW and the developer, the proposed connection to IW networks can be facilitated.

**Transport Infrastructure Ireland** (20<sup>th</sup> November 2019). The main points are summarised as follows:

- The development shall be undertaken in strict accordance with the recommendations of the transport assessment. And a section 49 supplementary condition should be attached in the event of a grant of permission.

**Inland Fisheries Ireland** (25<sup>th</sup> November 2019). The following points were highlighted:

- The proposed development is located on the catchment of the Carrickmines/Shanganagh system. This system is exceptional among most urban river systems in the area in supporting migratory sea trout in addition to resident Brown trout (both *Salmo trutta*) populations. The presence of these fish populations highlights the sensitivity of local watercourses and the catchment in general. The presence of these fish populations highlights the sensitivity of local watercourses and the Carrickmines catchment in general.
- All works will be completed in line with a CMP which ensures that good construction practices are adopted throughout the works period and contains mitigation measures to deal with potential adverse impacts identified in advance of the scheme.
- Should development proceed, best practice should be implemented at all times in relation to any activities that may impact on surface water or riparian habitats. Comprehensive surface water management measures must be implemented at the construction and operational stage to prevent any pollution of local surface waters. Precautions must be taken to ensure that there is no entry of solids, during the connection of pipe-work, to the existing surface water system.
- Any dewatering of ground water during the excavation of the basement area must be treated by infiltration over land or onto an attenuation area before being discharged off site.
- The short term storage and removal/disposal of excavated material must be considered and planned such that risk of pollution from these activities is minimised. Drainage from the topsoil storage area may need to be directed to a settlement area for treatment.
- IFI welcomes the decision to leave the eastern side riparian zone of the Cabinteely stream unaltered. This was based on IPI and DLR policy to maintain and protect the natural character of the stream, banks and riparian zone.



- The planned pedestrian crossing and installation of a headwall must be in accordance with method statements agreed with the IFI.
- All discharges must be in compliance with the European Communities (Surface Water) Regulations 2009 and the European Communities (Groundwater) Regulations 2010.
- Reference to mitigation measures contained in chapter 7 of the EIAR. ***I would draw the Boards attention to the fact that no EIAR is included with this application.***

## 10.0 Oral Hearing Request

Nine submissions included requests for an Oral Hearing.

Section 18 of the Act provides that, before deciding if an oral hearing for a strategic housing development application should be held, the Board:

- (i) Shall have regard to the exceptional circumstances requiring the urgent delivery of housing as set out in the Action Plan for Housing and Homelessness, and
- (ii) Shall only hold an oral hearing if it decides, having regard to the particular circumstances of the application, that there is a compelling case for such a hearing.

Having regard to the nature, scale and location of the proposed development, the particular issues raised in the submissions do not give rise to a compelling case for an oral hearing as set out in section 18 of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended.

## 11.0 EIA Preliminary Assessment

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

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

- Construction of more than 500 dwelling units
- Urban developments which would involve an area greater than 2ha in the case of a business district, 10ha in the case of other parts of a built up area and 20ha elsewhere,

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

11.3 The proposed development is for 234 residential units, a crèche, a gym, road upgrade works, crossover bridge and reprofiling of a riparian corridor on a site within an overall area of c.2.3 hectares. It is therefore considered that it does not fall within the above classes of development and does not require a mandatory EIA.

11.4 As per section 172(1)(b) of the Planning and Development Act 2000 (as amended), EIA is required for applications for developments that are of a class specified in Part 1 or 2 of Schedule 5 of the 2001 Regulations but are sub-threshold where the Board determines that the proposed development is likely to have a significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or an EIA determination requested, a screening determination is required to be undertaken by the Competent Authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effect on the environment. This preliminary examination has been carried out and concludes that, based on the nature, size and location of the development, there is no real likelihood of significant effect on the environment. The need for EIA is therefore precluded and a screening determination is not required.

## 12.0 Assessment

12.0.1 The Board has received a planning application for a housing scheme under section 4(1) of the Planning and Development (Housing) and Residential Tenancies Act 2016. My assessment focuses on the relevant section 28 guidelines. I examine the proposed development in the context of the statutory development plan and the local plan. In addition, the assessment considers and addresses issues raised by the observations on file, under relevant headings.

12.0.2 I refer the Board to the an extant permission on this site under ABP Ref. 301044-18 whereby permission was granted in 2018 for 115 residential (Strategic Housing Development). Many elements of the proposed development are similar including broadly the overall layout, the proposed upgrade works of Brennanstown Road , the proposed pedestrian bridge over the stream, together with pedestrian link onto Brennanstown Avenue form elements of this current application. The main differences between that previous permitted development and the current application relate number of units (increase from 115 to 234), density (increased from 62dph to 126uph) and the provision of one apartment block (8 storeys) in place of 4 no. 6 storey blocks in the eastern section of the site and the replacement of houses with 2 apartment blocks on the western portion.

12.0.3. The assessment is therefore arranged as follows:

- Principle, Quantum and Density of Development
- Design and Layout
- Residential Amenities
- Traffic and transportation
- Flooding & Drainage
- Ecology
- Other matters.
- Appropriate Assessment.

## **12.1 Principle, Quantum, and Density of Development**

12.1.1 The site is zoned under land use objective A for residential development. The principle of residential development on the site was deemed acceptable under ABP 301044-18. I am satisfied that the principle of residential development on the site is acceptable.

12.1.2 Notwithstanding the issue of material contravention of SLO 130 and ST25 of the current County Development Plan formed an intrinsic component of the assessment under ABP 301044-18 I am required to address the matter in this report as it applies to the current proposal.

12.1.3 The applicant has set out their argument for material contravention of the current Development Plan in section 6.4 of this report. The proposal for 234 residential units is considered not to be a minor domestic infill or extension and a Traffic Management Scheme for the area has not been completed or implemented. Such an unambiguous departure from a clear provision in a development plan should probably be regarded as a material contravention. The contravention does not relate to the zoning of the land, so the Bord may grant permission by applying section 37(2)(b) of the Planning and Development Act 2000. Under this legislation, the Bord is precluded from granting permission for development that is considered to be a material contravention, except in four circumstances. These circumstances, outlined in Section 37(2)(b), are in the national, strategic interest; conflict with national/regional policy; ambitious policy within the development plan and the pattern of permissions in the vicinity since the adoption of the development plan. I also note section 5(6) of the Planning and Development (Housing) and Residential Tenancies Act, 2016, which relates to material contravention of the development plan, other than in relation to the zoning of land.

12.1.4 The Core Strategy for the county, as set out in the operative County Development Plan, recognises that approximately 3800 units per annum are required over the period to 2022 and it states that any significant delay in delivering on pivotal capital infrastructure could see the County being in the position of being unable to fulfil the housing 'targets' set out for it in the 2010-2022 RPGs. The traffic management scheme in its current format cannot be implemented by the planning authority, and there appears to be no alternative proposal available to them at the present time. It could therefore be argued that the failure to carry out a traffic management scheme for this area will result in the failure to comply with the Core Strategy, which is reliant on zoned, serviced lands to achieve housing targets set out in operative County Development Plan.

12.1.5 There has been no change in circumstances since the assessment of ABP 301044-18 relating to the progression of a Part 8 for Brennanstown Road and a Traffic Management Scheme. The applicant has attempted to address this matter by including proposals for the upgrading of a section of Brennanstown Road as part of the current application, these are broadly in line with those granted permission by the Board under ABP 301044-18. I consider the crux of the matter in the current application is the assessment of the capacity of these proposed works to accommodate a development of 234 residential units, not the 115 as permitted in 2018. This matter is dealt with in more detail in section 12.4 of this report. With regard to the issue of material contravention I consider that the rationale presented in the current application, which is in line with that previously presented remains acceptable. There have been no change in circumstances to warrant a reversal of this opinion. I consider in the absence of a Part 8 scheme, that the proposal for a developer lead delivery of traffic management measures on an incremental basis, and having regard to conditions pertaining to same attached to applications in the area, that this is a reasonable mechanism to deliver the requirements of SLO 130 and policy ST25.

- 12.1.6 As is stated in section 12.1.3, under the Planning and Development Act 2000, the Bord is precluded from granting permission for development that is considered to be a material contravention, except in four circumstances. These circumstances, outlined in Section 37(2)(b), are in the national, strategic interest; conflict with national/regional policy; ambitious policy within the development plan and the pattern of permissions in the vicinity since the adoption of the development plan. The zoning objective for the subject site is primarily 'Objective A' residentially zoned lands and the policy in relation to residential development in such areas has been clearly set out in the operative Development Plan, which is clear, concise and lacks ambiguity. The operative Development Plan is relatively recent, being adopted in 2016 and there have been no pattern of developments for reference in the area since its adoption.
- 12.1.7 Regarding whether the proposed development is in national/strategic interest or does it conflict with national/regional policy. The proposal is located on a brownfield site, within 350m of the N11 QBC and within 1km of the Laughanstown LUAS stop (once planned connections are available) and would therefore fall within the definition of public transport corridor, as set out in Section 5.8 of the Sustainable Residential Development in Urban Areas Guidelines. The aforementioned Guidelines recognise that where such sites exist, in particular close to existing or future public transport corridors, the opportunity for their redevelopment to higher densities, subject to safeguards, should be promoted. The site is also located within a short walking distance of the facilities and services on offer within Cabinteely village and also Cherrywood SDZ. Having regard to the above, the proposal is considered to be in keeping with the general principles of sustainable residential development, as set out in section 1.9 of the aforementioned guidelines referenced above and as a result is considered to be in accordance with national policy in this regard.

- 12.1.8 I am of the opinion that given its residential zoning, the delivery of residential development on this prime, infill, underutilised site, in a compact form comprising well-designed, higher density units would be consistent with policies and intended outcomes of the NPF and Rebuilding Ireland – The Government’s Action Plan on Housing and Homelessness. The site is considered to be located in a central and accessible location, it is within easy walking distance of good quality public transport in an existing serviced area. The proposal serves to widen the housing mix within the general area, and would improve the extent to which it meets the various housing needs of the community. The proposed development, which includes for the road upgrade works, will assist in overcoming the barrier to development currently impacting the deliverability of residential development on Brennanstown Road. The proposed development has been lodged under the strategic housing process, which aims to fast-track housing development on appropriate sites in accordance with the policies and objectives of Rebuilding Ireland. This legislation recognises the strategic importance of such sites in the provision of housing in meeting both current and future need. It is therefore my opinion that the Bord is not precluded from granting permission in this instance, despite the material contravention of the operative development plan.
- 12.1.9 In relation to the conflict arising between land use zoning and Flood Zones, I draw the Board attention again to the extant permission on the site (ABP 301044-18), the proposed flood mitigations measure which the Board adjudicated on and considered acceptable in 2018.

12.1.10 The flooding policies and objectives do not relate to land use. They set out that SSFRA and justification tests should be carried out for development on flood Zone A and B lands. As highlighted above when the contravention does not relate to the zoning of the land, the Bord may grant permission by applying section 37(2)(b) of the Planning and Development Act 2000. Under this legislation, the Bord is precluded from granting permission for development that is considered to be a material contravention, except in four circumstances. These circumstances, outlined in Section 37(2)(b), are in the national, strategic interest; conflict with national/regional policy; ambitious policy within the development plan and the pattern of permissions in the vicinity since the adoption of the development plan. I also note section 5(6) of the Planning and Development (Housing) and Residential Tenancies Act, 2016, which relates to material contravention of the development plan, other than in relation to the zoning of land.

12.1.11 With regard to building height and compliance with Appendix 9 of the current Plan, I refer the Board to the 2018 Ministerial Guidance relating to Building Heights.

12.1.12 The development of 234 units on a site with a stated area of 1.85ha (excluding the road) has a density of 126 units per hectare (uph). The previously permitted scheme under ABP 301044-18 of 115 units had a density of 62uph. RES£ of the Development Plan set out that higher densities may be encouraged on sites close to public transport corridors. The proposed density of 126uph is nearly double than that previously permitted, however I consider given the context of the site that higher densities can be accommodated on this site in accordance with the guidance for sites within 1km of public transport corridor.



12.1.13 I consider the unit mix is good with 71 x 1 bed units (30.4%), 155 x 2 bed (66.2%), 18 x 3 bed (3.4%) proposed. The development offers a mix of duplex and apartments. This would lead an acceptable population mix within the scheme, catering to persons at various stages of the lifecycle, in accordance with the Urban Design Manual. Furthermore it would add a variety of housing type to an area predominantly characterised by traditional 3 and 4 bed suburban houses. The proposed units type will improve the range of housing types available in the area which is predominately characterised by low density suburban housing. The proposed housing mix is acceptable and is in accordance with SPPR 4 of the Urban Development and Building Heights Guidelines for Planning Authorities. The provision of apartments within the scheme and at this location is also in accordance with the guidance set out in the Guidelines for Planning Authorities on Sustainable Residential Development.

## **12.2 Design & Layout.**

12.2.1 The proposal consists of three apartment blocks. Block A and B are linked and form an inverted 'L' shape along the western portion of the site. Block A frames the entrance with Block B running parallel to the existing houses that front onto Brennantsown Road. Block C is a linear block that occupies the eastern portion of the site along Cabinteely Stream and the proposed re profiled riparian corridor. The levels of the site drop significantly from west to east. Carraig Glen estate located to the northeast is at a higher ground level than the site as is Brennanstown the southeast.

- 12.2.2 As noted previously there is an extant permission on this site under ABP Ref. 301044-18 whereby permission was granted in 2018 for 115 residential units under Section 4(1) of the Planning and Development (housing) and Residential Tenancies Act 2016. A significant portion of the proposed development is broadly similar to that permitted under said permission. Many elements of the proposals are similar including layout, the proposed upgrade works of Brennanstown Road, the proposed pedestrian bridge over the stream, together with pedestrian link onto Brennanstown residential scheme also form elements of this current application. However, the main differences between that previous permitted development and this current application relate number of units, density and the provision of 2 block in lieu of houses on the western portion fo the site and a single 8 storey apartment block in place of 4 no. 6 storey blocks along the Cabinteely Stream. A common thread throughout the third party submissions and by the Planning Authority relates to the potential for the proposed development to be overbearing when viewed from adjoining properties, in particular Block C which is 8 storeys in height.
- 12.2.3 I note that the distance from the upper floor of Block A the closest dwellings is. 17.3m and Block B is set back between 3.7m and 12.7m from the boundaries of houses fronting onto Brennanstown Road which have their rear amenity spaces bounding the application site. The two blocks are site broadly in line with the permitted layout of the houses under ABP 301044-18, the overall massing and height is also broadly in line with that of the permitted houses. Block A and B contain a number of the non-residential uses.
- 12.2.4 I am of the view that taking into account the proposed height, massing and design and setback from the boundaries, separating the proposed Block A and B from the houses fronting onto Brennanstown Road and the public realm within the proposed scheme would reasonably serve to ensure the proposals would not have an overbearing impact from these houses to the west. Therefore, I consider that Bock A and B would not have a significantly overbearing impact from neighbouring properties.

12.2.5 Ground levels drop from south to north, moving northwards towards the boundary of the site with Cabinteely Stream, ground levels then rise significantly towards the houses of Carraig Glen to the north and rise towards Brennanstown to the south. There is a fall in levels within the site from west to east creating a valley effect, where Block C is located. The proposed buildings would have a maximum height of c.10.7m (parapet) for Block A, c. 10.6m (parapet) for Block B and c.18.8m (parapet) for Block C and the surrounding area is dominated predominantly by a mix of single and two-storey houses of varying designs. Given the overall design of the blocks and their containment within the site I am of the view that they take cognisance of the two storey and single storey dwellings in the immediate vicinity given the difference in ground levels. I am satisfied that this variation in height would assist in reducing the mass and bulk of the buildings and assist in absorbing them into the landscape.

12.2.6 I note that computer-generated images of the proposed development have been submitted. However, they do not show the relationship of the proposed scheme with the existing built environment during the winter months. I inspected the site on the 12<sup>th</sup> of February 2020 and observed current conditions. The Planning Authority concluded that taking into account the difference in ground levels with adjoining sites, the height and bulk of the proposed development would be overbearing due to its setback from the site boundaries. While I accept that the proposed development would introduce taller buildings along the eastern side of Brennanstown Road. I do not consider that the proposal, in particular Block C, located at a lower level within the site where it can be better absorbed into the area, would have an overbearing impact on the surrounding area. Taking in to account the difference in ground levels, I consider that the height and design of the proposed development is appropriate in the context of application site and the relationship of the proposed buildings to the public realm and adjoining properties.

- 12.2.7 The site is challenging due to its prominent location to the rear of houses that front onto Brennanstown Road, the difference in levels across the site and its proximity to Cabinteely Stream and a number of pocket parks along its riparian corridor, The applicant has attempted to address the sensitivities and constraints of the site through the use of a contemporary design solution. In this instance, I am satisfied that the proposal is an appropriate design intervention at this location as it adequately addresses the sensitives of the immediate vicinity which include a variety of architectural styles and scales.
- 12.2.8 The varied architecture of immediate area includes the Brennanstown Apartments, traditional 2 storey suburban housing estates and a number of individual houses with individual accessed off Brennanastown Road. Apartment schemes have been permitted in the immediate vicinity and Cherrywood SDZ is c.200m from the site. In this context the scale and height of the proposed apartment block would not be out of context with the established height of some of the structures within the immediate area.
- 12.2.9 The design of the proposed residential units are contemporary in style with quality materials and finishes proposed. The overall form, massing and design of the scheme is acceptable and I do not agree with the Planning Authority's view that the residential units would be visually incongruous at this location. I am satisfied that the site can absorb the proposed residential development given its location and context and with appropriate landscaping will further assimilate into the urban grain of the area.
- 12.2.10 In my view, the use of high quality materials and finishes and contemporary design offers an opportunity for an aesthetically pleasing development at this location. I recognise that the proposal would have a visual impact when viewed from the surrounding area. Indeed any new development would have a visual impact. However, in my opinion, this could be a positive one. And a contemporary design which would be a welcomed addition at this location.

12.2.11 Given the context of the site and the provisions of policy UD1 (urban design) of the County Development Plan, It is my view that the proposed development in terms of design, scale, massing, provision and location of public and private amenity space, boundary treatment and overall form represents a well thought out site specific design response to the site conditions. The contemporary style of the buildings, the provision of a basement carpark and the set back from the boundaries have regard to the constraints of the site and the adjoining uses. . The site layout provides for interconnected spaces through the use of communal courtyards and play areas. Soft and hard landscape features create a sense of place within the scheme. The design, internal layout and orientation facilitate dual aspect units. I consider the design and layout of the blocks is well thought out given the constraints of the site.

12.2.12 The proposal includes a childcare facility and a gym with a combined area of c. 568.6sq.m in Block A, their location and design are considered acceptable subject to conditions if the Board are of a mind to grant permission.

12.2.13 The development provides a stated total of c. 5.505sq.m of open space, communal areas, a riparian corridor and a MUGA are provided. Given the proximity of the site to Cabinteely Park I consider the proposal acceptable in terms of quantum and quality. Private open space is considered to be generally acceptable.

12.2.14 There is good connectivity and permeability within the site and from the site to adjoining amenities and the village centre are provided. Footbridges over Cabinteely Stream are included to open up access to the north and southeast of the site, where there are existing pocket parks and paths, in places. The footbridge connects to DLRCC owned lands which have been identified as a future walking and cycling route (Cabinteely Greenway). These will greatly improve accessibility and linkages in the area, increase their usage and by association security through active usage.

12.2.15 On balance I consider that the proposed development results in a good design concept that is acceptable in its form and layout; provides high quality usable open spaces; establishes a sense of place; would result in an acceptable standard of development that offers variety and distinctiveness, all of which would not lead to conditions injurious to the residential amenities of future occupants and accords with national and ministerial guidance.

### **12.3 Residential Amenity**

12.3.1 Section 8.2.8.4 (ii) set out the requirement of 22m for separation distances between upper floor opposing windows which would normally result in rear garden depths of 11m for back to back housing. There are no rear gardens proposed and the County Development Plan does not include a requirement for a setback of 11m for 'habitable' room windows from boundaries they face. Third parties have raised overlooking as an issue between the proposed apartment blocks and houses bounding the site, in particular due to the height of the buildings, the presence of balconies and their set back from the site boundaries.

12.3.2 I consider that the design of the elevations of the apartment blocks, internal configuration of apartment layouts, the relationship of the buildings to the site boundaries and each other and the separation distance from the nearest adjacent residential properties would serve to mitigate the potential for overlooking. Privacy would be further enhanced with proposals for landscaping/screening to the boundaries to reduce the impact on adjoining properties to the west. This matter can be addressed further by condition if the Board is of a mind to grant permission.

12.3.3 I consider that the separation distances between buildings, the design of the proposed buildings and the buffer formed by existing and proposed areas of public open space, along with the proposed landscaping would serve to suitably address potential for overlooking amenities spaces associated with the residential properties to the residences to the north, west and east.

- 12.3.4 The Submissions raised concerns that the development would result in excessive overshadowing of neighbouring properties. I am of the view that while there is a degree of overshadowing it is not of an extent that would detract from the residential amenities of adjoining properties and warrant a reason for refusal. The orientation and layout of the proposed development would not lead to excessive overshadowing within the scheme. Consequently, I do not consider that the proposed development would lead to excessive overshadowing of proposed apartments, neighbouring properties or the adjacent open space.
- 12.3.5 I am satisfied that the scheme, would provide for good quality development, providing a relatively high level of amenity for any future occupiers. The design, scale and setback of the proposal is such that it would not detract from the residential amenities of adjoining properties. The site in its current state adds nothing to the character and amenities of the areas. The proposal development would be an appropriate use of a serviced brownfield suburban site, zoned for the residential development.

## **12.4 Traffic and Transportation**

- 12.4.1 The issue of material contravention of SLO 130 and ST25 has been addressed previously in this report.
- 12.4.2 The Inspector under ABP 301044-18 dealt with in detail the history of the Part 8 process associated with the Brennanstown Road traffic management scheme and I do not propose to revisit the principle of carrying out works to Brennanstown Road. The works to Brennanstown Road are broadly in line with those permitted by the Board under ABP 301044-18 with a footpath now along the western side of the Road. My assessment shall concentrate on the capacity of the proposed works to accommodate the increase in demand arising from the proposed increase from 115 to 234 residential units, crèche and gym.
- 12.4.3 A single access is proposed off Brennanstown Road, access via a proposed roundabout. The access is located within the 50kph speed limit zone. The proposal (in line with ABP 301044-18) includes proposals to enhance pedestrian linkages to the centre of Cabinteely, introduce traffic calming measures and enhance the pedestrian environment along Brennanstown Road.

- 12.4.4 The proposal has regard to its location adjacent to Doyles Garden Centre and the use of its access by larger vehicles.
- 12.4.5 A Traffic and Transportation Impact Assessment (including statement of compliance with DMURS) and Road Safety Audit are submitted with the application, the TII and DLR Transportation Planning Section noted no objection on traffic grounds subject to the implementation of the recommendations of the TTA.
- 12.4.6 Based on the available information there is no evidence that the proposed access arrangements and increase in traffic movements associated with the proposed development would have a negative impact on the carrying capacity of the upgraded Brennanstown Road or have a negative impact upon the development potential of other sites along this Road
- 12.4.7 184 no. car parking spaces are proposed, these include 24 no. EV spaces, 9 no. mobility impaired spaces, 4 no. Car Club spaces, 4 no. visitor spaces and 4 no. crèche spaces. They are provided in a mix of surface and basement carparking. I consider provision of 184 car spaces for 234 residential units and crèche acceptable. 488 bicycle spaces and 10 motorcycles spaces are proposed. This is acceptable given the location and context of the site and its proximity to public transport routes with a QBC c. 550m away on the N11.
- 12.4.8 Based on available information I consider the proposal acceptable and can accommodate the potential increase in traffic, vehicular, pedestrian and cyclist, arising from the proposed development and would not present a traffic hazard or an obstruction to road users, cyclists or pedestrians.



## 12.5 Flooding & Drainage

- 12.5.1 While at the outset I acknowledge that there is an extant permission on the site for 115 residential units and a SSFRA was submitted under 301044-18. The current proposal differs from that previously permitted in terms of location of the proposed residential units, type and number of units. I note that the overall footprint of the development has altered, in particular Block C which impinges on a portion of the site that is included in Flood Zone A and B. This is contrary to advice contained in the Section 28 guidance. A Justification Test has been carried out, the Planning Authority have raised concerns with regard to this test and details shown on drawings submitted.
- 12.5.2 I note that the Planning Authority in the Chief Executives Report received by An Bord Pleanála on the 7<sup>th</sup> January 2020 sets out that the flood risk on the site was only identified and quantified following the submission of the SSFRA for ABP 301044-18 i.e after the adoption of the current County Development Plan. Therefore it is likely that the site would have retained its zoning status even if rezoning of lands at risk of flooding had been adopted. Reference to the A&L Goodbody legal submission relating to conflicting objectives or objective that are not clearly stated is noted.
- 12.5.3 79 no. submissions have been received, including from adjoining properties owners, the issue of flooding was not to the fore in issues identified. I note that the issue of the site flooding or history of flooding in the vicinity was not raised. Three submission referred to the issue, two of which related to non-compliance with CDP requirements and the Justification Test.
- 12.5.4 Flooding information for the Cabinteely Stream is lacking in the Eastern CFRAM mapping. The Strategic Flood Risk Assessment (SFRA) as contained in the operative County Development Plan (Appendix 13), this indicates limited flooding beyond the banks of the Cabinteely Stream within Cabinteely Park and along the boundary of the proposed development. These areas are identified as Flood Zone A and B. A section of Block C impinges on this area is proposed within Flood Zone A. The OPW mapping website, [www.opw.ie](http://www.opw.ie) shows no recorded flooding in the vicinity of the site.

- 12.5.5. A part of the site is located on Flood Zone A and B. The applicant has submitted a SSFRA in which it is proposed to build in part of Flood Zones A&B by modifying existing ground levels in the parts of the site located on Flood Zones A and B and by the provision of compensatory flood storage, thus ensuring that all highly vulnerable development would be located outside the altered Flood Zones A&B.
- 12.5.6 I note that the proposed mitigation measure would result in the entire site being 'Flood Zone C' equivalent as was the scenario under ABP 301044-18 where there were smaller scale apartment blocks (4 no. 6 storey) on the portion of the site affected by the re-profiling. The Planning Authority raised concerns in relation to the justification test and whether this can be carried out on the site post proposed remedial works or should be undertaken in accordance with section 4.10.2 which states that the site must have been justified through this SFRA based on the existing (unmodified) ground levels.
- 12.5.7 In terms of Flood Risk Assessment and Flood Risk Management and notwithstanding that there is an extant permission on this site I consider that an assessment from first principles is required. In that is residential development acceptable on Flood Zone A lands. I note that the applicant has submitted a SSFRA that includes a Justification Test. The Planning Authority is of the opinion that the proposed development does not comply with the Development Plan Justification Test. I note that the current Development Plan was adopted in 2016. At this time a SFRA was carried out. The application site is zoned Residential 'A' and includes lands identified as Flood Zones A&B. This has been justified by the Planning Authority in that the Plan contains robust policies and objectives that ensure that appropriate development is permitted (in principle) at appropriate locations. By virtue of a site being zoned residential does not imply that it is suitable for residential development and that site specific analysis will be required. The policy underlying the Section 28 Flood Guidelines finds practical expression through the medium of Development Plans. Therefore the starting point of any FRA should be the provisions of the relevant Development Plan.

12.5.8 As the application includes residential development (highly vulnerable development) on Flood Zones A and B a Justification Test was required. This is contained within the SSRFA submitted with the application. I note that the Flood Risk Management and Mitigation Measures mirror those granted under ABP 301044-18. The applicant has argued that following the proposed ground re-profiling works, none of the residential block will be on flood zone A or B.

Best practice acknowledges that for the purposes of Flood Risk Assessment a proposal for a residential development, should be considered as a whole and not in a piecemeal manner.

12.5.9 I have concerns relating to some discrepancies contained in the information submitted. For example on page 29 of the SSFRA under *section 5.2.1 Impact of development* there is reference to houses and apartments. There are no houses in the current application.

In addition, on Plus Architecture site Drawing No. 393\_WS\_05\_01 the flood extent for both the 1.0%AEP and 0.1% AEP events, with a corresponding depth of water of c.0.75m, are shown at the edge of Block C. It is unclear if this is a drafting error or what is actually being proposed, as the submitted AECOM Drawings do not provide the necessary section details of the stream to the building boundaries.

This was also the subject of Item No. 9 of the Drainage Planning Pre-Application Consultation Report (the level of detail required, clearly showing raised ground levels adjacent to buildings, see AECOM drawing No. 60541707-SHT-10-C0404 submitted for the previously approved scheme ABP 301044-18). The Planning Authority's Drainage Section have highlighted that in the absence of further information, this matter cannot be resolved as part of their report.

12.5.10 Based on the available information I am not satisfied that the applicant has clearly demonstrated that the proposed development complies with the requirements set out in the Section 28 Guidance on The Planning System and Flood Risk Management in terms of a sequential approach to residential development on Flood Zones A&B and therefore should be refused permission. The Drainage Section noted in their report that the applicant has not demonstrated that the proposal passes the (Development Plan) justification test and thus is not in accordance with the requirements of Section 4.7.1.1 and 4.10.2 and therefore should be refused permission. However, should the Board accept that the development footprint, based on modified flood extents can be considered in principle at this location, then Drainage Planning is of the opinion that the analysis contained in the AECOM FRA is appropriately detailed and provides sufficient evidence to pass the Development Management Justification Test, subject to proposed conditions relating to revised drawing, revised SSFRA and a CMP. If the Board is of a mind to grant permission I would advise that I do not consider that this matter can be addressed by condition as it would involve an assessment of the proposal subsequent to a consent.

12.5.11 I further note that the Parks and Landscape Services report has highlighted a number of issues that need to be addressed, this are set out in detail in section 8 of this report. While I am satisfied that a number of the outstanding issues raised by the Parks and Landscape Services could be addressed by condition. I am of the view that it would not be appropriate to address by condition the requirement for a 'A Hydrogeological and geologist feasibility report (from a qualified chartered hydrology/ecology engineer) to assess fully and objectively the impacts current and existing groundwater pathways may be impacted upon in terms of contamination risk from the proposed development and also may have a potential flood risk following the sites removal of several layers of soil strata and bedrock. Evaluate in greater detail the risk analysis of further flooding for the site in general and the Cabinteely Stream' and the matter should be resolved in any future application

12.5.12 If Board consider that clarification on these matters is required I would direct them to Section 18 of the Planning and Development (Housing) Residential Tenancies Act 2016 which allows for an Oral Hearing to be held in exceptional circumstances.

12.5.13 While I acknowledge that this is a serviced, appropriately zoned site at an urban location. I consider that having regard to all of the information before me, including the guidance contained within the relevant Section 28 guidelines on flood risk management that outstanding matter cannot be adequately dealt with by means of condition and permission should therefore be refused.

12.5.14 In terms of services, a new water connection to the public mains to proposed, together with new connection to the public sewer. An Irish Water Pre-Connection Enquiry in relation to water and Waste Water has submitted. A submission from Irish Water has been received which raises no objections to the proposal, subject to conditions.

## **12.6 Ecology**

12.6.1 Third parties have raised concerns that works (re-profiling) to the riparian corridor will result in a loss of a wildlife corridor on the western side of the stream. This stream is recognised within the documentation as containing important biodiversity with otters, which are protected under the Habitats Directive and Wildlife Acts, and trout having been noted downstream. I note that no breeding sites or resting sites for otters were noted on site. The report of the IFI is noted. I note the various reports submitted with the application including inter alia, a CEMP and Ecological Impact Assessment. The Ecological Impact Assessment concludes that based on the successful implementation of the mitigation measures and proposed works to be carried out in accordance with that document and the CEMP, it is likely that there will be no significant ecological impact arising from construction and the day to day operation of the proposed development. It is recognised that the otters are not impacted upon during construction and that the stream continues to be an effective biodiversity corridor. The measures proposed, particularly in the riparian corridor would be of benefit to the long term biodiversity and residents of the site. There is no report on file from the Planning Authority's Biodiversity Officer. The Biodiversity Officer raised no concerns under ABP 301044-18.

12.6.2 A Bat Survey report was submitted with the application which showed that while the existing house and buildings contain features suitable for roosting bats, no such roosts were found and no evidence of bats were noted. Bat activity surveys showed that in total, five bat species were recorded within the subject lands. These bats were foraging and commuting within the subject lands, with no evidence of a bat roost within the subject lands. Mitigation measures are proposed, which appear reasonable and I recommend that if permission is being granted for the proposed development, this issue be dealt with by means of condition.

## **12.7 Other Issues**

### **12.7.1 Heritage**

Concerns were raised regarding damage to the historic walls along Brennanstown Road. The Planning Authority raised no concerns on architectural or archaeological heritage grounds. I consider that any outstanding concerns would be addressed by appropriate condition, if the Board are of a mind to grant permission.

### **12.7.2 Trees**

Issues relating to the removal of trees on third party lands are a legal matter outside the remit of this planning application. I draw attention to Section 34(13) of the Planning and Development Act 2000 (as amended) which stipulated that a person shall not be entitled solely by reason of a planning permission to carry out any development.

With regard to the extensive removal of trees from within the site. I refer the Board to the arborist report on file and the DLR Parks and Landscape Services report. The existing site has a substantial amount of mature trees and other vegetation, which formed part of the original site of Doyles Nursery. Extensive ground works are necessary to facilitate the proposed development, including changes in ground level and site services, along with the requirement to maintain minimum residential density at the site, preclude the retention of many of the existing tree population. Any future application should address issues raised in the Parks and Landscape Services report and lacunae in the arboricultural input in the assessment of the site.

### 12.7.3 Part V

It is proposed to provide 23 no. units to meet the requirements of Part V. These consist of 9 no.1 bed, 13 no.2 and 1 no. 3 bed units. If the Board is disposed to grant permission a condition should be attached requiring the development to comply with the provisions of section 97 of the Planning and Development Act 2000 as amended.

## 12.8 Appropriate Assessment

- 12.8.1 The proposed development is located on a brownfield site on lands zoned for residential development. As is stated above, the subject application includes an Ecological Impact Assessment, together with a Screening for Appropriate Assessment.
- 12.8.2 The AA Screening Report submitted with the application considered designated Natura 2000 sites within 15km of the proposed development. It concluded that there would be no negative impacts on the qualifying interests of any Natura 2000 sites within a 15Km radius of the proposed development. Based upon the information provided and by applying the precautionary principle, it was determined that it was possible to rule out likely significant impacts on any Natura 2000 site and therefore it was not deemed necessary to undertake any further stage of the Appropriate Assessment process.
- 12.8.3 The Board carried out an appropriate assessment screening exercise under ABP Reference No. 301044-18. The Inspector at the time noted that given the localised nature of potential impacts, the fact that this development is located within a developed area and the lack of direct connectivity to Natura 2000 sites, only sites within 10km were investigated. I concur with the previous Inspector and I note that given the localised nature of potential impacts that sites within 10km of the application site are considered
- 12.8.4 Designated sites within 10km of the site:
- South Dublin Bat SAC (site code 000210) c. 3.87km from the site.

- Rockabill to Dalkey Island SAC (site code 003000) c. 3.95km
- Ballymahon Glen (site code 00713) c. 5.64km.
- Knocksink Wood SAC (site code 000725) c. 6.11km.
- Wicklow Mountain SAC (site code 002122) c. 7.88km.
- Bray Head SAC (site code 000714) c. 7.90km.
- South Dublin Bay & River Tolka SPA (site code 004024) c. 9.37km.
- Dalkey Island SPA (site code 004172) c. 4.14km.
- Wicklow Mountains SPA (site code 004040) c. 7.88km.
- North Bull island SPA (site code 004006) c. 9.54km.

12.8.5 Having regard to the AA Screening Report and to the Additional Biodiversity studies carried out. I note that the development is not connected to any of the identified designated sites and there are no know indirect connections to these sites. I acknowledge the previous screening exercise carried out by the Board in 2018 and I note the urban location of the site, the lack of direct connections with regard to the source-pathway-receptor model, the intervening distances between the application site and the above designated sites and the nature of the development. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any European site and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

## **13.0 Conclusion and Recommendation**

I consider the principle of residential development to be acceptable on this site. The site is a zoned, serviceable site within an established suburban area where a range of services and facilities exist. I have no information before me to believe that the proposal, if permitted, would put undue strain on services and facilities in the area. I am satisfied that the proposal will not impact on the visual or residential amenities of the area, to such an extent as to warrant a reason for refusal.



However, notwithstanding the above I have serious reservations in relation to the flood risk assessment based on the information submitted. Given the nature and scale of the development, its location on Flood Zones A and B and the requirement to satisfy the requirements set out in the guidelines relating to justification test. In addition to the discrepancies in the details submitted, which I do not consider can be addressed by condition, as they would involve the submission of a revised SSFRA and therefore an assessment subsequent to a consent.

I recommend that permission be refused.

## **14.0 Reasons and Considerations**

1. Having regard to the provisions of Objective 57 of the National Planning Framework, and having regard to guidance as set out in 'The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009)', in relation to development proposals in areas at risk of flooding. The Board is not satisfied that adequate site specific information has been presented in relation to proposals for flood risk management, noting the discrepancies in the information submitted. In the absence of the required information, and having regard to the topography of the site, level of re-profiling works proposed, location of portion of the site on flood zones A and B. the Board is not satisfied that the applicant has clearly demonstrated that the flood risk arising from the development can be limited. In the absence of adequate information relating to the risk of flooding, analysis of such risk, and appropriate mitigating measures to address any risk, the proposed development would be contrary to the proper planning and sustainable development of the area.

## **15.0 Recommended DRAFT Board Order**

**Planning and Development Acts 2000 to 2019**

**Planning Authority: Dun Laoghaire Rathdown County Council**

**Application:** for permission under section 4 of the Planning and Development (Housing) and Residential Tenancies Act 2016, in accordance with plans and particulars, lodged with An Bord Pleanála on the 7<sup>th</sup> day of November 2019 by Atlas GP Limited.

**Proposed Development**

Permission for a strategic housing development on lands at the former Doyle's Nurseries and Garden Centre and Benoni, Brennanstown Road, Cabinteely, Co. Dublin.

The proposed development will comprise 234 residential units in a mix of apartments and duplexes in three blocks (Blocks A, B and C) ranging in height from 1-8 storeys with associated residential facilities including open space, a Gym, a creche and a Lower Foyer. Block A will consist of an approx. 248sqm Gym, approx. 67sqm of circulation space and approx. 317sqm of a creche facility all at Ground Floor level, with 6no. 2-bed duplex residential units at first and second floor. Block B will consist of an approx. 254sqm Lower Foyer at Ground Floor Level and 29no. apartments comprising 8no. 1 bed apartments, 13no, 2-bed apartments, 2no. 3-bed apartments and 6 no. 3-bed duplex apartments from Lower Ground to Second Floor level. Block C will consist of 199no. apartments comprising 63no. 1-bed units and 136no. 2-bed units from lower ground to sixth floor level. Balconies are to be provided on Blocks A (south and southeast elevation), Block B (east elevation) and Block C (east and west elevations). The proposed development includes for the demolition of 'Benoni' (c.252 square metres - a habitable dwelling proposed for demolition to facilitate the proposed development and main vehicular access), together with the extant single storey buildings associated with the former Doyle's Nursery and Gardens (c.690 square metres); vehicular access to the site is proposed at the location of the existing entrance to the new Doyle's Nursery Garden Centre facility adjoining the south of the subject site which is to be realigned and improved and which will serve both the Garden Centre and the proposed development (note: the new Garden Centre is not part of subject application site). Car parking is to be provided in the form of on-curtilage car parking, on-street parking and a basement car park over three levels for 184 spaces; the proposed development will also provide all ancillary and associated site development and landscape works including open space (c.9,859sqm) internal to the site, play areas, the removal of existing obstructions in the Cabinteely Stream adjoining the east of the site and the reprofiling of the riparian corridor located west of the stream, and the provision of 2no. Electricity Supply Board sub-stations (c.44 square metres), and all necessary bin and bicycle storage including basement level stores for the apartment units.

The proposed development includes for measures to upgrade the Brennanstown Road including works within Dun Laoghaire Rathdown County Council (DLRCC) owned lands from the location of the proposed site entrance northwards as far as the junction of the Brennanstown Road with the Bray Road at Cabinteely Village and these works are to comprise road widening and realignment works, widening and resurfacing of the existing footpath located on the western side of the Brennanstown Road as per the DMURS guidelines to a maximum of c.1.8m in width where physical constraints permit, the introduction of controlled pedestrian measures in the form of a 4-arm mini-roundabout at the proposed site entrance at the junction with the Brennanstown Road and Lambourne Wood Estate, the construction of a c.2.5m wide pelican crossing at the north arm of this roundabout, the construction of a c.2.5m wide raised crossing at the south arm of this roundabout, and the construction of a raised table at the junction of the Brennanstown Road and the Carraig Glen Estate further north of the subject site. The proposed development also includes for improved pedestrian and cyclist connections comprising a pedestrian footbridge to a c.21m span over the Cabinteely Stream at a location to the north east of the subject site to be of steel construction with recycled plastic non-slip boarding with c.1.4m high safety railings providing connectivity for the site to Cabinteely Village, the Stillorgan QBC, and DLRCC owned lands to the east of the subject site identified as a future walking and cycling route ('The Cabinteely Greenway'). The connectivity proposals also include for a new c.3m wide pedestrian and cycle shared surface path connecting the site into the Brennanstown Avenue Estate to the south of the site. The new shared surface path will be c.55m long and connects into an existing footpath along Brennanstown Avenue.

All on lands measuring c.1.85 hectares nett (c.2.3 hectares gross including third party owned lands) bounded generally to the east by Cabinteely Stream, to the south by the new Doyle's Nursery and Garden Centre and residences at Brennanstown Avenue and to the west by the existing houses fronting on to Brennanstown Road at the Former Doyle's Nursery and Garden Centre and 'Benoni', Brennanstown Road, Cabinteely, Dublin 18.

## **Decision**

Refuse permission for the above proposed development based on the reasons and considerations set out below.

### **Matters Considered**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

### **Reasons and Considerations**

1. Having regard to the provisions of Objective 57 of the National Planning Framework, and having regard to guidance as set out in 'The Planning System and Flood Risk Management Guidelines for Planning Authorities (2009)', in relation to development proposals in areas at risk of flooding. The Board is not satisfied that adequate site specific information has been presented in relation to proposals for flood risk management, noting the discrepancies in the information submitted. In the absence of the required information, and having regard to the topography of the site, level of re-profiling works proposed, location of portion of the site on flood zones A and B. the Board is not satisfied that the applicant has clearly demonstrated that the flood risk arising from the development can be limited. In the absence of adequate information relating to the risk of flooding, analysis of such risk, and appropriate mitigating measures to address any risk, the proposed development would be contrary to the proper planning and sustainable development of the area.

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Dáire McDevitt  
Planning Inspector

20<sup>th</sup> February 2020

## **APPENDIX 1**

### **List of Submissions received:**

1. Ray Green (OH request).
2. Sarah Carty (OH request).
3. Joseph Buckley (OH request).
4. Residents of Lambourne Wood (OH request).
5. Kevin & Mary O'Boyle (OH request).
6. Holmwood Residents (OH request).
7. Cabinteely & District Residents Association (included signatures of other residents associations as an appendix) (OH request).
8. David Cooper (OH request).
9. Karen Keaveney (OH request).
10. John Weir.
11. Frank McGee.
12. Tara O'Brien.
13. Aideen O'Brien.
14. Kerrie O'Brien.
15. Elaine Cameron.
16. Neil Reid.
17. Ann McElduff.
18. John & Ailbhe Roche.
19. Cleo & Leslie Ellis.
20. Gerard & Angela Roche.
21. Caroleann Buckley.
22. Richard & Mary Cusack.
23. Park Residents Association.
24. David Kenny.
25. Emma Hamilton.
26. Niall & Nicola Murphy.
27. Richard & Holly Geoghegan.
28. Catherine Allen.
29. Mariane Humphries.
30. Mauro Romano.
31. Mary Geoghegan.
32. Kevin M. O'Brien.
33. Cllr. John Kennedy.
34. Anne O'Brien.
35. Conor O'Toole.
36. Anthony Murray.
37. Andrew Craig.
38. Sinead O'Toole.
39. Peter Humphries.
40. Ivan & Rhona Williams.
41. Paul McKeon.
42. Aidan & Karina O'Connor.
43. Deirdre & Vincent Smith.
44. Oliver Carroll.
45. Therese McDonnell.
46. Adrienne Murphy.

47. Lorraine Fitzpatrick.
48. Elizabeth & Garrett Pilkington.
49. Michael Kenny.
50. Patricia Lynch.
51. Helena Kelly.
52. Charles Delap.
53. Catherine & Andrew McDonnell.
54. Fiona McCarthy.
55. Imelda Gavin.
56. Kerry Clear & Matthew O'Brien.
57. Vicky Pigot.
58. Linda Gallagher.
59. Mark Cotterell.
60. Marguerite Cotterell.
61. Philip Soden.
62. Declan Byrne.
63. Garrett Cronin.
64. Eddy Van Cutsem.
65. David Mulvin.
66. Philip T. Murphy.
67. Brennanstown Management Company.
68. Lisa Ferris.
69. William Fitzpatrick.
70. Sarah Heavey.
71. Fiona Power.
72. Francis Cushion.
73. Catherine Meagher.
74. David Heavey.
75. Gina O'Hare.
76. Niamh Moore.
77. Michael heavey.
78. Claire Gloster.
79. Liam Mulcahy.

**Prescribed Bodies:**

1. Inland Fisheries Ireland (IFI).
2. Irish Water (IW).
3. Transport Infrastructure Ireland (TII).
4. An Taisce.

## **Appendix B**

### **Documentation submitted with the application included inter alia:**

Cover letter.

Section 247 Consultation Meeting Minutes.

A&L Goodbody Legal Submission.

DLR CC Letter of consent.

Copies of correspondence to Prescribed Bodies.

Statement of Consistency.

Planning Report.

Material Contravention Statement.

Response to ABP Opinion.

EIA Screening Report

AA Screening Report.

Operational Waste Management Plan.

Fire Safety and Access & Use Strategy.

Planning Stage Acoustic Assessment.

Landscape and Visual Appraisal.

Newspaper & Site Notice.

Architectural Design Statement.

Architectural Drawings & Schedule.

Housing Quality Assessment.



Part V proposals.

Site Boundary ESRI shapefile.

Landscaping Report

Response to ABP Landscaping items (from opinion).

Landscape Architectural drawings & Schedule.

Road Safety Audit.

Engineering Drawings & Schedule.

Infrastructure Report & Correspondence from IW.

Outlines CDWMP.

Flood Risk Assessment.

Ecological Impact Assessment.

Lighting Layout/Services Layout Drawings.

Energy and Sustainability Statement.

Road upgrade drawings including Autotrack Analysis.

Traffic & Transport Assessment (including reference to DMURS).

Quality Audit.

Photomontages & CGIs.

Building Lifecycle Report.

Estate Management Strategy.

Archaeological Impact Assessment

Operational WMP.

Conservation Report.

Arboriculture Report, Drawings & Schedule.

Wind and Microclimate modelling report.