



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306913-20

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<b>Development</b>	Demolition of warehouse building, construction of 1 three-storey over basement apartment block of 21 no. apartment units
<b>Location</b>	Lands to the rear of 31-34 Baldoyle Road & Elphin Licensed Premises,
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F19A/0636
<b>Applicant</b>	LDC Developments Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse permission (4 no. reasons)
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	LDC Developments Ltd.
<b>Observer(s)</b>	Gerard Keating Eoin and Suzanne Ryan Paul O'Kane Lesley and Ed Lindsay Adele Sleator

John and Anne-Marie Lally

Keith and Maeve Fogarty

C McDaid

Anne Shields

**Date of Site Inspection**

18/06/2020

**Inspector**

Conor McGrath

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## 1.0 Site Location and Description

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

## 2.0 Proposed Development

- 2.1. The proposed development comprises the demolition of existing structures on the site and the construction of a three-storey apartment building, providing 21 no. apartments, over basement car parking. The proposed block generally reflects the design submitted with the previous appeal under ref. ABP-304655-19. Access is to be provided from the laneway to the south. Open space is provided on the eastern and western sides of the residential block. The breakdown of development is as follows:
- 2.2.

Unit	No.
1-bed apt	6
2-bed apt	14
3-bed apt	1

Car parking	23 no. spaces
Bike parking	62 no. spaces

### 3.0 Planning Authority Decision

#### 3.1. Decision

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

1. The existing laneway over which the proposed development is to be accessed comprises an important local pedestrian route. This laneway is considered to be seriously deficient in width along its length and lacks sufficient capacity to safely accommodate the vehicle and pedestrian movements which the proposed development will generate combined with the existing and future pedestrian movements associated with the adjoining public house and Binn Eadair housing estate. In the absence of any comprehensive proposals for the upgrade of this lane and the management of vehicle movements along its length, it is considered that the proposal would constitute ad hoc piecemeal development which would endanger public safety by reason of traffic hazard. Moreover, the applicants have failed to demonstrate that they have sufficient legal interest over the laneway to undertake the necessary upgrade works. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
2. The surrounding area is zoned under objective “RS” – to provide for residential development and protect and improve residential amenity under the Fingal Development Pan 2017-2023, and comprises of single and two-storey dwellings. It is considered that the proposed development would give rise to significant negative impact on visual amenity of existing residents within the surrounding area, be out of character with the pattern of development in the

surrounding area, would be incongruous with the streetscape along the laneway which forms the southern boundary of the subject site and would materially contravene Objective DMS39 and PM44 of the Fingal Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.

3. The proposed apartment building, by virtue of its excessive scale, height and limited set-back from the boundaries of the site would give rise to a significant level of negative impact upon the existing and potential residential amenity of the future residents of the proposed development and the existing residents of the surrounding area in terms of overlooking and overshadowing. Furthermore, the applicant has failed to comply with Appendix 1 (in terms of private open space) and section 3.8 of the Sustainable Urban Housing: Design Standards for New Apartments 2018, and would therefore be contrary to the proper planning and sustainable development of the area.
4. The applicant has not provided the planning authority with an appropriate level of detail relating to the landscaping of the proposed development. Objective DM03 of the Fingal Development Plan 2017-2023 clearly states that application for permission for development in excess of 5 residential units are accompanied by a detailed high-quality open space and landscape design plan. As such, the proposed development would contravene objective DMS03, accordingly and would be contrary to the proper planning and sustainable development of the area.

### **3.2. Planning Authority Reports**

- 3.2.1. Planning Reports: The proposed development is acceptable in principle in this LC land use zone. The site is considered to be an infill residential development as defined in the Sustainable Residential Development Guidelines, and a Central / accessible urban location as described in the Apartment Guidelines. An increase in density above the maximum threshold for this area is justified, subject to the protection of amenities and privacy of adjoining properties.

The report assesses the development against the design criteria set out in the Sustainable Residential Development Guidelines, noting the failure to respond to its

surroundings. The assessment under ref. ABP-304655-19 failed to consider impacts on the character of the surrounding area, which development plan objectives seek to protect. The scheme is not in keeping with the pattern of surrounding single and two-storey development, would negatively impacts on visual amenity of existing residents, be out of context, incongruous on the streetscape of the adjoining laneway and contravene materially objectives of the development plan.

The shortfall in terrace / balcony areas could not be achieved by redesign by condition. The scheme fails to meet the requirement for the majority of units to exceed minimum floor areas by 10%. There are concerns with regard to overlooking of ground floor amenity spaces from the adjoining laneway and footpath. The scheme would give rise to overlooking of the amenity space of Dublin Road properties and no.'s 31 and 32 Baldoyle Road.

The development would give rise to significant overshadowing of amenity space in Binn Eadair View. The design measures cannot be relied upon to overcome potential overlooking, as they could be removed by future residents. Reliance upon such measures suggests that the scheme is not appropriate for this location and would be considered overdevelopment. The development fails to safeguard residential amenity in accordance with Section 3.8 of the Sustainable Urban Housing guidelines.

The content of the Transportation Report is noted.

A sustainable mix of apartment types is provided in accordance with SPPR 1. The applicants should pay a financial contribution in lieu of public open space provision. The design of soakaways are not acceptable in proximity to neighbouring property. and soakaways should be excluded from the area of communal open space. The use of green roofs should be considered. Second floor amenity space will offer limited amenity value. A landscaping plan was not submitted with the application as required by the development plan. Much of the planting identified is not feasible or realistic proposals. A tree survey should also be submitted.

The development would result in over-development of a significantly constrained site and is premature pending works to the entrance laneway.

### 3.2.2. Other Technical Reports

- **Parks:** The applicant is not providing any public open space. It is a requirement that a detailed landscaping plan be submitted in respect of the development. There are no areas suitable to be taken in charge by the Council.
- **Water Services:** Additional information required in relation to surface water drainage, clarification of foul drainage and completion of a flood risk assessment.
- **Transportation:** Parking provision is below development plan standards but is in line with the minimum practical provision. Amendments to bicycle parking provision identified. Some revisions to the basement access ramp are required to facilitate shared access.

Sightlines of between 14 & 23m are required and a width of 6m on the access lane at the proposed access point. It is not clear that the applicants can achieve this. The laneway is not included in the red line boundary of the application. Given the scale of development and associated vehicular activity on this significant pedestrian route, it would be more appropriate for the lane to be upgraded to facilitate not only this but further backland development. A more collective approach would help resolve widening of the lane. Consent to provide the pedestrian route alongside the Elphin Inn has not been provided. A section of the lane should operate as a shared surface given the restricted space. Details of bin collection and associated vehicle movements have not been provided. Refuse vehicle reversing movements along the lane would not be acceptable. Given the constraints on the lane, the development is premature.

### 3.3. Prescribed Bodies

- **Irish Water:** No objection.

### 3.4. Third Party Observations

The planning authority received a number of third-party submissions which are generally reflected in the observations on this appeal.



## 4.0 Planning History

- PA ref. F19A/0132 ABP ref. ABP-304655-19: Permission refused on appeal for development comprising the demolition of existing warehouse building and construction of 24 no. apartment units and associated works for one reason as follows:
  1. The proposed development would endanger public safety by reason of traffic hazard because sightlines at the proposed car park entrance onto the adjoining laneway are deficient for the nature and scale of development proposed. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

The Board direction noted the following point also, however,

The existing laneway over which the proposed development would be accessed comprises a local pedestrian route. This laneway is seriously deficient in width along its length and lacks sufficient capacity to safely accommodate the vehicle and pedestrian movements which the proposed development would generate, along with existing and future pedestrian movements along the lane and those associated with the adjoining public house.

In the absence of any comprehensive proposals for the upgrade of this lane and the management of vehicle movements along its length, it is considered that the proposal would constitute over development of the site and would endanger public safety by reason of traffic hazard.

- PA ref. F18A/0553: Withdrawn application for 8 no. townhouses on the site.
- PA ref. F16A/0444 ABP ref. 06F.248478: Permission refused on appeal for demolition of warehouse and boundary wall and construction of 6 no. houses. The reason for refusal related to overlooking of adjoining property due to the proposed level and proximity of ground floor accommodation and patio areas to adjoining development, which would detract from its residential amenity.
- PA ref. F15A/0559: Application for permission for 6 no. houses withdrawn.

- PA ref. F12A/0214: Permission granted for a new vehicular entrance to serve the existing warehouse from the southern lane exiting onto Baldoyle Road, to replace existing vehicular entrance accessed from private lane north of 'Elphin' licensed premises. This permission was not implemented.

Planning applications in respect of adjoining sites:

- PA ref. F03A/0825 – Planning permission refused for a bungalow to the rear of no. 87 Dublin Road with vehicular access from the laneway. The decision referred to deficiencies in the lane which would endanger public safety and the lack of comprehensive and inclusive proposals for widening and improvement of the lane.
- PA ref. F98A/0674: Permission refused for demolition of existing garage and construction of creche at the rear of no. 96 Dublin Road with access over the laneway. The decision referred to the precedent for other development along the lane and the substandard nature of the access.
- PA ref. F14B/0093: Permission granted for 2-storey side and rear extension to no. 15 Binn Eadair View. This was not implemented.
- PA ref. F19B/0111 ABP ref. ABP-306703-20: Permission granted for extension to rear of no. 91 Dublin Road, including second floor dormer windows.

## 5.0 Policy Context

### 5.1. Fingal County Development Plan 2017-2023

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

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

encourage pedestrians, cyclists and the use of public transport. The development will strengthen local retail provision in accordance with the County Retail Strategy.

Permitted uses in the LC zone include residential. Surrounding lands are otherwise zoned RS Residential, for which the objective is to provide for residential development and protect and improve residential amenity.

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

With regard to Transitional Zonal Areas, section 11.4 notes in zones abutting residential areas or abutting residential development within predominantly mixed-use zones, particular attention must be paid to the use, scale and density of development proposals in order to protect the amenities of residential property. This is reflected in Objective Z04.

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

Chapter 3 encourages the development of underutilised infill, corner and backland sites in existing residential areas. A balance is needed between the protection of amenities, privacy, the established character of the area and new residential infill. The use of contemporary and innovative design solutions will be considered.

Objective PM44: Encourage and promote the development of underutilised infill, corner and backland sites in existing residential areas subject to the character of the area and environment being protected.

Chapter 12 sets out development management standards.

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

Objective DMS28: A separation distance of a minimum of 22 metres between directly opposing rear first floor windows shall generally be observed unless alternative provision has been designed to ensure privacy. In residential

developments over 3 storeys, minimum separation distances shall be increased in instances where overlooking or overshadowing occurs.

Objective DMS39 states that new infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/gateways, trees, landscaping, and fencing or railings.

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

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

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

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

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

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

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

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

5.2.3. The Dublin region is a global gateway to Ireland and the Dublin-Belfast Corridor is the largest economic agglomeration on the island of Ireland and part of the trans-European transport network. Capacity constraints in housing and infrastructure

must be addressed to ensure continued competitiveness as a national economic driver. The key enablers for growth include promoting compact urban growth to realise targets of at least 50% of all new homes, to be within or contiguous to the existing built up area of Dublin city and suburbs and a target of at least 30% for other urban areas. The spatial strategy for Dublin City and Suburbs is to support the consolidation and re-intensification of infill / brownfield sites to provide high density and people intensive uses within the existing built up area.

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

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

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

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

Specific Planning Policy Requirement 3 sets Minimum Apartment Floor Areas.

The requirement for the majority of apartments in a proposed scheme to exceed the minimum floor area standard for any combination of the relevant 1, 2 or 3 bedroom unit types, by a minimum of 10%, does not apply to any proposal with less than ten residential units. For urban infill schemes on sites of up to 0.25ha, where between 10 to 49 residential units are proposed, it shall generally apply, but in order to allow

for flexibility, may be assessed on a case-by-case basis and if considered appropriate, reduced in part or a whole, subject to overall design quality.

Section 3.6 notes that two-bedroom apartments to accommodate 3 persons may be considered. This type of unit may be particularly suited to certain social housing schemes. It would not be desirable if this type of unit displaced the current two-bedroom four-person apartment. No more than 10% of total units in any private residential development may comprise this category of three-person apartment.

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

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

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

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

#### **5.2.7. Design Manual for Urban Roads and Streets (DMURS)**

Section 4.1.2 promotes the concept of self-regulating streets.

Section 4.2.3 notes that designers should seek to promote active street edges to provide passive surveillance of the street and promote pedestrian activity. Increased pedestrian activity has a traffic-calming effect as it causes people to drive more

cautiously. Higher levels of privacy are desirable where residential dwellings interface with streets.

Section 4.3.4 notes that shared surface streets and junctions are particularly effective at calming traffic. Well-designed schemes in appropriate settings can bring benefits in terms of visual amenity, economic performance and safety. Shared surface streets and junctions are highly desirable where:

- Movement priorities are low and there is a high place value in promoting more livable streets, such as on Local streets within Neighbourhood and Suburbs.
- Pedestrian activities are high and vehicle movements are only required for lower level access or circulatory purposes.

The key condition for the design of any shared surface is that drivers, upon entering the street, recognise that they are in a shared space and react by driving very slowly. Shared surface streets can be very intimidating for impaired users, requiring specific design responses.

The total carriageway width on Local streets where a shared surface is provided should not exceed 4.8m, providing for passing movements. Table 4.2 identifies sightlines to be achieved at priority junctions.

### **5.3. Natural Heritage Designations**

5.3.1. The appeal site is not designated for any conservation purposes. The closest designated sites are

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

### **5.4. EIA Screening**

5.4.1. Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity and the absence of direct connection to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for

environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The first party make the following points in their appeal against the decision to refuse permission for the proposed development. The appeal was accompanied by a number of supporting reports and revised drawings.

#### Laneway Access

- The applicant retains a right of way to the lane.
- The narrow section of the lane is short at 25m. Existing and future trip rates and traffic speeds would be low, with a very low risk of cars meeting on the lane.
- Slight widening of the laneway into the site of the pub on its western side provides a two-way (5.1m wide) route permitting passing movements and a vehicle waiting area.
- Space to wait is also provided between the basement entrance and the rear of Elphin Pub.
- Building set-back from the lane provides adequate sightlines at the basement access.
- A shared surface solution is proposed for the laneway, which will provide natural traffic calming and unobstructed pedestrian access.
- Driver courtesy will provide pedestrian priority in the event of two-way vehicular traffic movements, as occurs naturally on shared surfaces.
- The layout provides a 2.6m vehicular access lane and 1.5m wide pedestrian route and will improve visual amenity and safety for all users.
- Inadequate regard was had to the information submitted with the application.
- Traffic signals could be used to manage traffic movements on the lane, but this is not regarded as necessary.
- Evidence is provided of the consent of the owners of the Elphin Bar to carry out upgrade works along their frontage.



- Documentation demonstrates the applicants legal right of way over the lane to its southwestern boundary. Discussions to extend this right of way eastwards along the entire site frontage are underway.
- An alternative design option is submitted with no on-site parking, which would provide for exclusively pedestrian and cyclist use of the lane. This approach is provided for in the Apartment Design Guidelines.
- Planning reports have noted the proximity and accessibility of the site to public transport services and local services.

### **Residential amenity**

- The proposal has no undue impacts on the residential amenities of the area and has due regard for the height and mass of surrounding built form.
- The scheme achieves a viable quantum of development with only a marginal increase in in prevailing building heights.
- The scheme addresses potential for anti-social behaviour on the site and lane.
- The design addresses the planning authority reasons for refusal under F19A/0132, including the omission of three apartments.
- Increased heights are encouraged under the Building Height Guidelines.
- Adequate privacy for ground floor apartments facing the lane is provided, while such units provide passive surveillance of the lane.
- High quality and accessible communal open space is provided within the site.
- The most sensitive properties in terms of overlooking are to the north and east.
- A daylight and shadow report indicates that the development will meet the standards of BRE Guidelines and no undue impacts will arise.
- Existing 1.5 - 2-storey structures on the site are closer to the western site boundary than the proposed block, which is sited to maximise separation from boundaries and minimise impacts.
- Where it is concluded that overlooking of no.'s 31-32 Baldoyle road would arise, a condition to mitigate same would be welcome.
- The use of mitigation measures is standard practise and was accepted under ABP-304655-19.
- The development will contribute positively to local identity and housing provision.

- The increased separation and length of adjoining rear gardens addresses negative impacts on the streetscape of Baldoyle Road. Separation from public spaces in Binn Eadair View is such that visual impacts will be imperceptible.

### **Standard of Accommodation**

- The 7 no. apartments which were marginally below the private amenity space standard have been revised to achieve the appropriate standard.
- Apartment floor areas exceed the minimum guidelines standards and the overall requirements of the Apartment Design Guidelines are met (over 50% >10%).
- Bicycle parking provision is reduced to 37 no. secure basement spaces and 10 garden level visitor spaces.
- Revised basement access ramp design details are provided.
- The proposal provides a high standard of residential accommodation at efficient densities on an underutilised site, in line with national policy.
- Policy seeks to increase densities in urban areas and public transport corridors.
- The landscaping details provided are appropriate.

### **Water and drainage**

- The design of the surface water storage and infiltration solution exceeds requirements. Green or blue roof solutions could be considered if necessary.
- Soakaways are located 3m from boundaries and 1m bgl such that impacts on adjoining properties cannot arise.
- Existing structures drain to a combined sewer and all wastewater will flow by gravity to the existing sewer.

## **6.2. Planning Authority Response**

In response to the first party appeal, the planning authority note the following:

- The planning authority remain of the view that the proposal represents over-development of the site, with impacts on adjoining properties, streetscape and the character of the area.
- The proposal would materially contravene the zoning objective for the area.

- The provisions of the Urban Development and Building Heights Guidelines should only be applied where increased heights would not negatively impact on the amenities of the surrounding area.
- In the context of surrounding two-storey development, increased heights are not considered acceptable at this location.
- A right of way over the laneway has not been satisfactorily demonstrated.
- Notwithstanding the revised proposals for the laneway, given the existing levels of pedestrian use and proposed intensification of use, a shared surface is not appropriate.
- The proposed amendments do not overcome the concerns of the planning authority.
- In the event of a decision to grant permission, a condition requiring the payment of a S.48 financial contribution should be attached.

### 6.3. Observations

The issues raised in submissions from the following observers are summarised together below for conciseness:

- Gerard Keating
  - Eoin and Suzanne Ryan
  - Paul O’Kane
  - Lesley and Ed Lindsay
  - Adele Sleator
  - John and Anne-Marie Lally
  - Keith and Maeve Fogarty
  - C McDaid
  - Anne Shields
- The laneway is deficient in width, creating a traffic hazard particularly for pedestrians, and is below standard for a shared surface.
  - Submitted design proposals ignore steps, plant and services which project onto the lane and do not address its deficiencies.
  - The access is inadequate for use by emergency or commercial vehicles.

- The referenced development in Ranelagh is not comparable.
- Access to the lane is restricted by rush-hour congestion on Baldoyle Road.
- The lane is in private ownership, with only public pedestrian access currently.
- The developers do not have consent for vehicular access to the site or removal of boundary wall to the lane.
- No discussions have taken place regarding extension of the right of way eastwards as stated by the first party.
- The original entrance to the site was via the side of Elphin pub and a previous permission for a new entrance from the lane has expired.
- There is a planning history of refusals based on deficiencies in this lane.
- The height and scale of development is excessive, with overbearing and overshadowing impacts on adjoining residential amenity.
- Covid-19 should result in lower densities and new distancing guidelines.
- Drawings overstate separation from adjoining houses.
- There will be overlooking of adjoining residential properties and creche.
- The shadow analysis confirms that the rear of properties to the east would be in shadow in the afternoon, contrary to the objective to protect residential amenity.
- As a minimum the third floor should be omitted and separation from adjoining properties increased.
- Houses on Baldoyle Road were previously refused first floor windows.
- Basement excavations and construction activity may give rise to structural impacts on adjoining properties.
- The alterations submitted with the appeal are significant and should be subject to a new planning application.
- The development is out of character with the surrounding pattern of development and objectives of the development plan for such development.
- The development is contrary to the RS zoning objective.
- Impacts on wastewater drainage infrastructure in the area.
- Surface water drainage design details are deficient and soakaways reduce the area of usable open space on the site.
- A detailed design statement was not submitted as required by objective DMS03 and no landscaping details were provided.
- Proposals to omit on-site parking will result in parking on surrounding roads.

- Deficiencies in the site notices.

## 7.0 **Assessment**

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

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

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

- 7.2.1. The subject lands are zoned (LC) for local centre use, while lands in the surrounding area are otherwise zoned for residential use (RS). The objective of the LC zone is to provide for or improve local centre facilities, although residential use is permissible in principle. This objective extends to the west / southwest of the site and includes the surface car park serving the adjoining public house. Entirely residential use on such lands would not meet the objectives of the plan, however, I note the presence of commercial uses on adjoining LC lands fronting Baldoyle Road. The planning authority regard the development as acceptable in principle and I otherwise consider the site to be appropriate for residential development, particularly given its proximity to public transport corridors and the surrounding pattern of development.
- 7.2.2. Submissions on the case have raised issues with regard to the right of the developers to access the appeal site over the adjoining laneway. While the first party appeal was accompanied by details of such a right of way, I note that such matters are not within the remit of the Board and the provisions of S.34(13) of the Act are relevant in this regard.

### 7.3. **Design and Layout**

- 7.3.1. The site would comprise a Central and/or Accessible Urban Location as defined in the apartment design guidelines and would be regarded as a suitable location for higher density development. The proposed residential densities equate to approx. 90 units per hectare which is significantly in excess of the minimum guideline for such location. Having regard to the location of the site, national and regional policy guidance and subject to the protection of adjoining amenities, however such densities would be regarded as acceptable in principle.
- 7.3.2. I note the comments of the planning authority regarding impacts on surrounding streetscape. There are examples of three-storey apartment development along Baldoyle Road and at Radcliff apartments to the east of the site, while dwellings on Dublin Road are large, two and three-storey houses. In this regard, three-storey development on the site is not regarded as unacceptable in principle. The proposed development will be visible to the rear of existing housing, including from Baldoyle Road and Binn Eadair view. This does not imply negative impacts on streetscape, however, and the development is not considered to give rise to significant negative impacts on views from surrounding streets and public spaces within this established suburban area. I do not consider impacts on the streetscape of the laneway to be significant negative, particularly having regard to the nature of existing structures on the site.
- 7.3.3. Apartment floor areas generally meet or exceed the standards set out in the Apartment Design Guidelines, however, I note that all two-bed units are designed as 3-bed space apartments despite having overall floor areas adequate for 4 person units. This accounts for over 60% of all apartments in the scheme. Such level of provision would be contrary to the provisions of Para 3.7 of the guidelines on Design Standards for New Apartments. I would recommend therefore that in the event of a decision to grant permission the apartment block be subject to revision to provide internal accommodation in accordance with the provisions of the Apartment Design Guidelines.
- 7.3.4. The application lodged with the planning authority provided apartment balconies / terraces marginally below the minimum guideline standards. Revised drawings accompanying the appeal generally address these deficiencies, with apartments still achieving the required internal floor areas. These revisions are regarded as relatively minor in nature and the development generally accords with the other

provisions of the Apartment Design Guidelines including in relation to ceiling heights and dual aspect provision.

- 7.3.5. An increased set-back of the block from the adjoining laneway of up to 2.4m has been provided such that ground floor terraces are provided with 1m separation from the inside of the proposed footpath along the site frontage. Combined with the ground floor level being elevated somewhat above street level, an adequate standard of residential amenity can be achieved for these units, while achieving active frontage and surveillance along the lane.
- 7.3.6. The plans indicate the provision of communal landscaped open space of 860-sq.m., plus additional landscaped areas, which exceeds the minimum standards for such development. Additional access to the eastern area of communal open space from the central core would be appropriate. The location of soakaways within the space would not compromise or reduce the usable space open space significantly. The development is provided with a second-floor terrace of 23-sq.m., however, having regard to its enclosure and orientation, this would not provide a high quality amenity space. Having regard to the nature of the scheme, there is no public open space provision, however, the development plan provides for the payment of a contribution in lieu thereof. I note also the proximity of the site to the seafront and the significant amenity which this provides for residents of the area.
- 7.3.7. I note the report from the Parks Section on the proposed development. Having regard to the nature of existing vegetation on the site, I do not consider a tree survey to be necessary in this case. Significant excavation and sub-ground works are proposed as part of the scheme and I would concur with the concerns expressed by the planning authority in relation to the feasibility of the landscaping proposals set out in the architectural drawings. In the absence of detailed landscaping and planting specification in this regard, it is not clear that these planting proposals can be fully and successfully implemented within the scheme.
- 7.3.8. Bin storage facilities are provided at basement level, however, no other communal facilities are provided within the development. The Apartment Design Guidelines note that waste storage areas in basement car parks should be avoided where possible, but where provided, must ensure adequate manoeuvring space for collection vehicles. It is not clear what provision is made for waste collection

services in the development and accessibility for larger commercial / service vehicles has not been demonstrated (see section 7.5 below).

#### **7.4. Adjoining Residential Amenity**

- 7.4.1. This backland site is bounded by residential properties to the north, east and west, with residential properties at a somewhat greater remove to the south on Dublin Road. The predominant building form in the area is two-storey, however, properties to the west on Baldoyle Road comprise single-storey detached houses and commercial units. As noted above, there are examples of three storey development in the surrounding area.
- 7.4.2. Overlooking of the rear of no. 92 Binn Eadair View to the north should not arise due to the layout of apartments and opaque glazing to living room and northern side of balconies serving apartments no. 15 and 21. Separation from the eastern boundary with no.'s 15 – 19A Binn Eadair View varies from approx. 6m to 15.8m. At the closest point, at its southern end, the block reduces to 2-storeys. Apartments are not provided with windows or balconies facing the rear of these adjoining properties and it is not considered that the proposed angled and high-level windows would result in overlooking. Such angled windows are not the primary windows for these spaces and are acceptable in terms of residential amenity. Glazing to the corridor along the eastern elevation should be opaque in nature. Some amendments would be required to obviate overlooking of the rear of no.'s 15 – 16 Binn Eadair View from the east facing second floor window serving apartment no. 18.
- 7.4.3. The block does provide windows and balconies on the western elevation within approx. 10m of the site boundary and approx. 30m from the rear elevation of no.'s 31 and 32 Baldoyle Road. There will be a change to the aspect of these houses, however, having regard to the separation distance, I do not consider that second floor level accommodation would unduly impact on adjoining residential amenity.. The west facing balconies for first and second floor apartments no. 8 & 16 are provided with louvred privacy screens. Such panels would reduce the amenity value of the balcony space somewhat and having regard to the commercial nature of uses at no. 33 and 34 Baldoyle Road, I do not regard such panel as necessary.



- 7.4.4. While many of the houses on Dublin Road have been extended, they still retain long rear gardens of 40m+. Having regard to separation from the rear of elevation of Dublin Road properties and intervening structures and vegetation, I do not consider that undue impacts on the amenities of these properties in terms of overlooking will arise from the proposed three storey development.
- 7.4.5. With regard to overlooking, I note that the Fingal County Development Plan states that all proposals for residential development over three storeys high, shall provide for acceptable separation distances between blocks to avoid negative effects and provide sustainable residential amenity conditions and open spaces. The minimum standard distance of 22 metres between opposing windows will apply in the case of apartments up to three storeys in height.
- 7.4.6. Having regard to the proposed height and separation from the rear of existing adjoining residential properties, particularly those to the east, detrimental effects on daylighting are unlikely. The appeal is accompanied by a report on Daylight Analysis and Overshadowing, based on the "BRE Site Layout and Planning for Daylight and Sunlight: A Guide to Good Practice (2011)". Based on the analysis provided, I do not consider that the impacts arising in terms of overshadowing would be so significant as to warrant a refusal of permission in this instance.

## **7.5. Access and Transportation**

- 7.5.1. Access to the site is proposed over the existing mews laneway to the south. This is not the original vehicular access to the site, which lay to the north of the Elphin Bar and Restaurant and which route is now in use as an outdoor seating area. A revised entrance to the site from the southern lane was permitted under ref. F12A/0214 to serve the existing warehouse buildings, however, that permission was not implemented and has since lapsed.
- 7.5.2. The lane is currently used as a pedestrian route connecting adjoining residential areas, local services and public transport links. There are no footpaths along its length or in the vicinity of the Elphin pub and car park, and surface condition also varies. The lane is very narrow at points particularly at its western end. Over a distance of approx. 25m, the laneway is approx. 4m wide, however, this width is further reduced at points to approx. 3.8m by lampposts and projecting plant

associated with the adjoining pub. I note also that entrances to the pub premises open directly onto the lane, where the width is approx. 4.2m, while there is one entrance to a mews shed opening directly onto the southern side of the lane. Opposite the appeal site, structures to the south of the laneway are set back so that the available width increases to approx. 6.3m for a section of the lane, however, the carriageway surface does not extend to these structures and this increased width appears to fall within the curtilage of properties on Dublin Road. Further to the east, the width reduces again to approx. 3.8m. Precise ownership boundaries along the lane are not clear and this has been raised in third party submissions. At its western end leading to the junction with the Baldoyle Road, the lane is bounded on its southern side by surface car parking serving the public house for approx. 19m.

- 7.5.3. The development proposes 23 no. car parking spaces at basement level. While this is below the standards set out in the development plan, I consider that such provision would be acceptable for this location proximate to public transport services, local services and cycle routes in this area. The planning application provided 62 no. bicycle parking spaces at basement level, which is in excess of development plan and Guideline requirements. The revised details submitted with the appeal submission reduce this to 37 no. residential spaces at basement level, and 10 no. ground level visitor spaces, which achieves the required minimum level of provision. These revisions are in line with Transportation Section comments and are regarded as acceptable in principle.
- 7.5.4. Access to the basement car park is proposed in the southwestern corner of the site, approx. 10m further east of the entrance location previously proposed under ABP-304655-19. The block has also been set-back further into the site such that sightlines in a westerly direction are now increased to 14m. Following from the single reason for refusal under ABP-304655-19, traffic and speed surveys undertaken by the applicants were submitted in support of this reduced level of sightline provision in accordance with DMURS. I do not regard such sightlines as unacceptable and I note that the planning authority did not identify sightlines as a reason for refusal in this case. While this would appear to address the single technical reason for refusal under ABP-304655-19, these proposals do not address the broader issue included in the Board direction relating to capacity of the laneway to accommodate the likely vehicular and pedestrian movements arising, and the

absence of comprehensive proposals for its upgrade and the management of vehicle movements along its length

7.5.5. The basement car park entrance is located to the east of / beyond the extent of the right of way identified in Appendix E of the first party appeal. The appeal submission states that “discussions regarding the extension of this right-of-way eastwards to encompass the entirety of the site’s southern boundary are currently in progress”, however, it is not clear that the developers can provide the proposed access in the manner proposed.

7.5.6. The planning application provided a footpath along the frontage of the development site, within the red line site boundary. The site plans also suggested the presence / provision of a footpath along the frontage of Elphin House although this was not referenced explicitly in the application. The planning application contained no formal proposals for the upgrade or improvement of the lane, however, revised design proposals for the treatment of the laneway have been submitted with the first party appeal, Appendix D. Note the scale on the A3 drawing submitted in this regard appears incorrect and the design details are not wholly reflected in the architectural drawings submitted with the appeal. These proposals provide for the following:

- A shared surface between the appeal site and the front of Elphin pub.
- 1.5m wide demarked pedestrian route along the northern side of the lane / Elphin pub frontage and a 2.6m vehicular route, within this shared surface.
- Priority for eastbound / inbound traffic along the lane.
- Space east and west of the Elphin pub building for vehicles to wait for opposing traffic to pass / clear the laneway.
- Signage and road markings.

7.5.7. The shared space design proposals extend only to the southwestern corner of the site and the proposed layout omits the footpath previously proposed along the frontage of the appeal site. While the proposals refer to the removal of steps at a blocked-up door on the Elphin frontage of the laneway, there is no reference to other entrances, projecting plant or utility structures on the lane. I consider that the interaction of pedestrians, cyclists and vehicles at the basement car park entrance requires some consideration and the available width at this location does not achieve the minimum requirement identified in the report of the Transportation Section. The

revised proposals contained in the appeal submission provide additional detail on the treatment of the route between the lane and Baldoyle road and its relationship with the adjoining car park. Traffic management measures within this area may still be required, however, to obviate potential conflicting vehicle movements, which may include revisions to the car park layout. No details regarding access for service or emergency vehicles have been provided, including waste collection services for the development.

- 7.5.8. I note the provisions of DMURS with regard to shared surfaces, wherein it is stated that the carriageway width should not exceed 4.8m. The manual states that it complements other guidance documents, including the Traffic Management Guidelines (2003). Those guidelines previously noted that the minimum width of a shared surface should be 4.8m. In support of their appeal the first party refer to a shared surface solution implemented previously in Ranelagh (ref. PL29S.244985). While I note this reference, there are material differences between these developments in terms of the scale of development proposed, the width of the lane and level of pedestrian activity thereon and I do not therefore regard this as a valid precedent for development in this case.
- 7.5.9. The first party appeal also includes a further alternative proposal, omitting the basement level and all on-site car parking, in order to overcome access issues on the lane. This is proposed on the basis of proximity of the site to public transport services and cycle commuting distance of a range of destinations. While I acknowledge the location of the site in this regard, I do not regard this as a practical solution to the site access issues and consider that it would result in over-spill parking on the surrounding local road network.
- 7.5.10. The scale and layout of development proposed on the site is substantially the same as that previously refused under ref. ABP-304655-19. Revised sightlines are now achieved which are appropriate to the likely prevailing traffic speeds at this location. I note the broader conclusion of the Board in that case, however, that in the absence of comprehensive proposals for the management of traffic along the lane, the scale of development proposed would not be acceptable in terms of traffic and pedestrian safety. I consider that this conclusion remains valid. The revised access arrangements in this case do not achieve a satisfactory standard having regard to

the scale of development proposed and the existing function of this laneway. I therefore regard the development as unacceptable.

## 7.6. Drainage and Flooding

- 7.6.1. It is proposed to connect to mains foul drainage and water services in this area which will require works along the laneway to connect to such services on Baldoyle Road. Connections are by gravity and no foul pumping is required. I note that there was no objection raised to this aspect of the development from Irish Water or internal planning authority reports. I note observers' comments in this regard, however, there should be no interference with existing services in Binn Eadair View.
- 7.6.2. It is proposed to discharge surface water run-off to ground within the site and two large soakaways are proposed within areas of communal open space. The application notes that run-off from existing buildings on the site is discharged to combined sewers and that the proposed development will therefore result in a reduction of surface water discharge to sewers. Soakaways are stated to be designed for a 1:100-year event plus an allowance for climate change of 20%. The appeal submission has indicated that green roofing could be utilised within the development if required.
- 7.6.3. While no site-specific infiltration tests have been carried out, application documentation states that percolation tests carried out on other sites in the vicinity indicate that percolation conditions are generally good. No details of the nature or location such tests have been provided. Having regard to the proximity of the proposed soakaways to adjoining residential properties (3m), albeit in line with minimum distances identified in BRE Digest 365, I would consider that site specific infiltration test results should be submitted in order to ensure a satisfactory standard of design for this urban infill site.
- 7.6.4. The proposed finished floor level of 4m AOD complies with previous planning authority requirements in relation to flood risk. The revised basement car park ramp is at 2.9m OD, which is slightly above existing ground levels, and the finished floor level in the basement is 1.05m AOD. As note din planning authority reports, no assessment of the risk of flooding of the basement has been undertaken in the application, however, I note that the site is not located within an area identified as a

being at risk of coastal or fluvial flooding for the low, medium or high probability scenarios.

## **7.7. Material Contravention**

- 7.7.1. Reason no. 2 of the planning authority decision to refuse permission states that the development would materially contravene objectives DMS39 and PM44 of the development plan. Specifically, the reason states that the proposed development would give rise to significant negative impacts on visual amenity of existing residents within the surrounding area, be out of character with the pattern of development in the surrounding area and would be incongruous with the streetscape along the laneway which forms the southern boundary of the subject site.
- 7.7.2. S.37(2)(a) of the 2000 Act, as amended, states that the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates. Sub-section (2)(b) states that where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that—
- (i) The proposed development is of strategic or national importance,
  - (ii) There are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or
  - (iii) Permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or
  - (iv) Permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

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

- (i) The development is not of strategic or national importance
- (ii) With regard to PM44, I note that this objective encourages such backland development subject to the character of the area and environment being protected. The surrounding area is characterised by single and two-storey houses, with larger houses fronting Dublin Road to the south. While this is an attractive residential area, the architectural character of the area is not of particular merit. Objective PM44 does not require that the existing pattern of development be replicated in backland / infill development.

Objective DMS39 requires that new infill development respect the height and massing of existing residential units. In this regard I note the surrounding pattern of development as single and two-storey housing, with higher development in the wider area. I do not regard three-storey development as unacceptable in principle at this location or consider that the objective requires that existing building heights be replicated. At the southeastern corner of the apartment block, building heights step down to 2-storeys close to the rear of no. 15 Binn Eadar View. There are no physical features worthy of retention on the site.

I note the broad nature of these objectives and having regard to the more detailed analysis contained above, I do not consider that the proposed development would result in significant negative impacts on the character of the surrounding area and therefore materially contravene the objectives of the development plan.

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

consolidation and re-intensification of infill/brownfield sites to provide high density and people intensive uses within the existing built up area

These the guidelines emphasise the need to protect the amenities of adjoining neighbours and the character of the area and its amenities. Having regard to the analysis contained above, , it is considered that permission could be granted in the light of national policy notwithstanding possible conflicts with local development plan policy.

- (iv) the current development plan is the Fingal County Development Plan 2017. Since its adoption, there has been no change to the pattern of development in the vicinity which would require that permission be granted in this case.

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

## 8.0 Appropriate Assessment Screening

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

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

The qualifying interests and conservation objectives for these closest sites are:

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

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

**North Dublin Bay SAC:** Mudflats and sandflats not covered by seawater at low tides, Annual vegetation of drift lines, Salicornia and other annuals colonising mud



and sand, Atlantic salt meadows, Petalwort, Mediterranean salt meadows, Embryonic shifting dunes, Shifting dunes along the shoreline with white dunes, Fixed coastal dunes with herbaceous vegetation (grey dunes), Humid dune slack. The objective is to maintain or restore the favourable conservation condition of the habitat.

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

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

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

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

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

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

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

the sites conservation objectives and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

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

## 9.0 Recommendation

- 9.1. That permission be refused for the proposed development of the reasons and considerations set out below.

## 10.0 Reasons and Considerations

1. The existing laneway over which the proposed development is to be accessed comprises an important local pedestrian route. Notwithstanding the revised access arrangements submitted with the appeal, this laneway is seriously deficient in width along its length and lacks sufficient capacity to safely accommodate the vehicular and pedestrian movements which the proposed development will generate along with existing and future pedestrian movements along the lane and associated with the adjoining public house.

In the absence of any comprehensive proposals for the upgrade of this lane and the management of vehicle movements along its length, it is considered that the proposal would constitute over development of the site and would endanger public safety by reason of traffic hazard.

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Conor McGrath

Senior Planning Inspector

23/06/2020