



An
Bord
Pleanála

Inspector's Report ABP-307873-20

Development

The proposed development on this site consists of a three to six storey apartment block, comprised of 32 apartment units, car parking, bicycle parking and all associated site works.

Location

149 Braemor Road, Churchtown, D14.

Planning Authority

Dun Laoghaire-Rathdown County
Council

Planning Authority Reg. Ref.

D19A/0439

Applicant(s)

LDB Developments Ltd.

Type of Application

Permission

Planning Authority Decision

Refuse Permission

Type of Appeal

First Party

Observers

Ann Tray
Badgers Glen Protection Group &
Others
Dermot O'Rourke

An Taisce

Date of Site Inspection

8th December 2020

Inspector

Paul O'Brien

1.0 Site Location and Description

- 1.1. The site comprises of a stated area of 0.2553 hectares located to the south west corner/ junction site of the R112/ Braemor Road and Landscape Road, Churchtown, Dublin 14. The site is currently in use as a car washing facility and for secondhand car sales. A large 'garden' type outhouse similar to a playroom and a number of small sheds attached to a canopy are located on site. It is apparent that this was a former petrol filling station, though most of the former structures are removed. A significant number of cars were parked on site on the day of the site visit. A low wall forms the front and side boundaries with a mid-height stone wall to the rear/ south western side which is augmented by mature planting/ trees.
- 1.2. The adjacent area is generally characterized by residential development, consisting of a mix of houses and apartments. The land to the south west is in use as a small public park. There is a steep slope downwards from the back of the site through the park. Access to the park is from both the Braemor Road and Landscape Road.
- 1.3. Along the front of the site/ Braemor Road is an off-road cycle track. Public transport primarily consists of Dublin Bus route 14 which operates every 12 minutes off peak, between Dundrum, the City Centre and Artane on the northside. Dundrum Luas stop and bus interchange is 1.7 km to the south east. Windy Arbour Luas stop is circa 1 km to the east but walking distance is far greater due to a golf course midway between the site/ luas stop preventing a direct route.

2.0 Proposed Development

The proposed development of this site, with a stated area of 0.2553 hectares, consists of:

- Removal of existing car wash sheds, workshop and associated structures.
- The closure of two access points onto the Braemor Road.
- The construction of a single apartment block with three to six storeys over basement level. A total of 32 apartments, with balconies/ roof terraces are proposed as follows:
 - 4 x 1-bedroom units.
 - 24 x 2-bedroom units.

- 4 x 3-bedroom units.
- A new access to the site from Landscape Road.
- Basement car parking for 36 cars and 92 bicycle parking spaces. In addition, the basement area to provide for plant room and refuse storage areas.
- Additional pedestrian access to Landscape Road and 'Badger's Glen'.
- All associated site works and landscape/ boundary treatment.

The proposed density is 125 units per hectare.

A number of documents were included in support of the application:

- Photomontages and CGI prepared by 3D Design Bureau
- Shadow Study prepared by 3D Design Bureau
- Drainage Report by Loscher Moran
- Planning Statement by Downey Planning
- Architectural Design Statement by Downey Planning
- Decommissioning Documentation for Underground Fuel Tanks by Downey Planning
- Construction Management Plan by LDB Projects
- Arboricultural Report by Charles McCorkell
- Appropriate Assessment Screening by Openfield Ecological Services

The further information response resulted in the omission of the top floor and a reduction in height from 18.96 m to 15.68 m. This results in a total of 31 apartments consisting of:

- 4 x 1-bedroom units.
- 23 x 2-bedroom units.
- 4 x 3-bedroom units.

The density is reduced slightly to 121 units per hectare.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to refuse permission for two reasons as follows, following the receipt of further information:

1. 'The proposed development is premature by reason of deficiencies in the existing foul sewage system upon which it relies and the time within the constraints involved may reasonably be expected to cease. The proposed development has also failed to demonstrate a successful regime for management of surface water. To permit the proposed development would be prejudicial to public health and contrary to the proper planning and sustainable development of the area'.
2. 'Adequate legal interest to make the planning application has not been demonstrated, and the applicant has not shown sufficient control of the entire site area to implement the proposed development. Furthermore, the applicant has not demonstrated control of the lands or necessary consents required to facilitate the diversion of the foul sewers needed to facilitate the proposed development. Note: It should be noted that there are a number of additional outstanding issues, as set out in the accompanying planner's report, that require further clarification prior to permission being granted at this location and applicants are advised to address same within any future planning application'.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Report reflects the decision to refuse permission. The Planning Authority Case Officer outlined the planning history of the site and there was no objection to the removal of the existing activity/ buildings from the site. The proposed density of development is acceptable. Concern was raised in relation to the indication that part of the application site was maintained by the County Council as part of the open space area known as 'Badger's Glen'. Generally the design of the apartment block was acceptable though the set back 4th and 5th floors gave rise to some concern as to how these elements relate to the rest of the building and

whereas the height of the development was considered to be appropriate in this location, the fifth floor was recommended for removal. No impact on existing residential amenity was foreseen.

Further information was sought in relation to landownership, request the omission of the fifth floor, provide for an Ecological Impact Statement, provide for improved photomontages/ CGIs, provide for a revised Construction Management Plan, revised open space details, clarify external finishes, foul and surface water drainage details, a revised Quality Audit, parking, road details and revised SUDs details.

3.2.2. Other Technical Reports

Environmental Health Officer: No objection subject to conditions and similar response to the further information request.

Transportation Planning: Further information was requested in relation to the provision of a detailed Quality Audit (to include a Road Safety Audit, Access Audit, Cycle Audit and a Walking Audit) which demonstrates compliance with DMURS, revised pedestrian/ vehicular access, revised car parking quantity due to space shortfall, cycle parking, detailed underground parking, taking in charge details and public lighting information.

Drainage Planning – Municipal Services Department: Further information requested in relation to the proposed Stormtech system, which is not appropriate, and an alternative system was requested. In addition, further details were requested in relation to the proposed green roof to be used, details on surface water drainage and rainwater harvesting. Full details were also requested in relation to the provision of a wayleave so that the Local Authority could divert a 300 mm diameter surface water sewer.

On receipt of the further information, clarification of further information was sought in relation as it appears that the submission was not responded to.

Housing Department: No objection subject to recommended condition.

Parks and Landscape Services: Only reported following the receipt of further information. Trees to be removed are of a mediocre quality but should be replaced

with a greater number of trees which should be of a substantial size. Should be better passive surveillance of Badger's Glen/ public open space. Further information requested.

3.2.3. **Prescribed Bodies Report**

Irish Water: Note the deficiency in foul drainage in the area and further information was requested. In addition, details were sought in relation to the provision of a wayleave to allow for the diversion of existing services. On receipt of the further information response, Irish Water reported no objection subject to condition.

3.2.4. **Objections/ Observations**

A significant number of letters of objection were received to the original application. These included submissions from Councillor D. Dunne, An Taisce, the chair of Dodder Action, the Honorary Chair of the Landscape Road Residents Association, the Badgers Glen Protection Group, a Director of Micropro Computers, the Managing Director of Greendoor property management who manage Crannagh Hall Apartments, and from individual members of the public.

Issues raised include:

- Foul drainage in the area is substandard.
- Water pressure will be reduced due to the proposed development.
- The development will put pressure on existing car parking on Landscape Road.
- The development will also give rise to additional traffic congestion in the area.
- Concern that the developer is claiming part of the open space as their lands. This space is an important amenity for the local area. Queries over the legal status of this section of land.
- The impact on 'Badger's Glen' would negatively impact on wildlife in the area.
- The height of the building is not acceptable, and the upper floor is considered to be visually obtrusive.
- The height of the proposed building will block sunlight to existing houses in the area.

- The height of the proposed development will allow for overlooking of existing residential units in the area.
- The design and external appearance are out of character with the area. Suggested that red brick would integrate better in the area. The development is very different to that on the adjacent Orwell Court site on the opposite side of the road.
- The development will break an established building line.
- The transition between open space and residential development would be very stark.
- Concern about noise/ nuisance/ construction traffic during the construction phase of development.
- The proposal will result in overdevelopment of a restricted site.
- Potential loss of street trees.
- Potential impact on the River Dodder and comments were made in this regard by Inland Fisheries Ireland.
- The submitted development did not address previous reasons for refusal as issued.
- Lack of supporting documents such as a Flood Risk Assessment, Appropriate Assessment and Environmental Impact Assessment.
- Fire escape concerns.

Further objections/ observations were made on receipt of the further information response, issues were similar to those already listed. Some concern was expressed about the responses to the further information request and that issues were not appropriately addressed by the applicant.

4.0 Planning History

P.A. Ref. D16A/0082/ ABP Ref. PL06D.247612 refers to March 2017 decision to refuse permission for the construction of a four storey over basement level nursing home with all associated site works. The following reasons for refusal were given:

1. 'It is considered that, by reason of its scale, height, mass and bulk, the extent of site coverage and the proximity of the building to boundaries, and by reason of the inadequate provision made for servicing and for car parking for staff, clients and visitors in a location that is remote from high capacity public transportation, the proposed development would represent significant overdevelopment of the subject site, would seriously injure the visual amenities of the area, and would be inconsistent with the pattern of development in the vicinity, notwithstanding the brownfield nature of the majority of the subject site. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area'.
2. 'The proposed development would be premature by reason of deficiencies in the existing foul sewage system upon which it relies and the time within which the constraints involved may reasonably be expected to cease. Furthermore, it is considered that the proposed arrangements put forward as part of the application to deal with these constraints and deficiencies would be unacceptable and prejudicial to public health. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area'.
3. 'Having regard to the fact that a significant portion of the subject site is located on lands zoned "F" in the current Development Plan for the area, where the objective is "to preserve and provide for open spaces with ancillary active recreational amenities", and having regard to the fact that significant engineering structures and facilities servicing the proposed development are proposed to be located within this area, it is considered that the proposed development would materially contravene the zoning objective set out in the Development Plan, and therefore would be contrary to the proper planning and sustainable development of the area'.

The following note was also included:

'In deciding not to accept the Inspector's recommendation to grant permission, the Board did not share the inspector's analysis of the issues raised, and in particular noted that the apartment block previously permitted on this site in 2007 was of significantly less

mass and bulk, and involved a smaller site coverage, than the proposed development, and therefore did not accept the Inspector's opinion that this represented an appropriate precedent that would justify the proposed development, particularly since public transportation provision had materially changed in the interim. In addition, the Board was not convinced by the analysis of traffic generation and parking provision, and noted that such provision was not considered acceptable by the planning authority's transportation division. The Board also considered that the issues raised regarding the deficiencies in the foul sewage system serving the development had not been addressed, and was concerned about the proposed options put forward by the applicant, all of which it considered were unacceptable and did not adequately overcome the third reason for refusal cited by the planning authority in its refusal for a similar development on this site under planning authority register reference number D14A/0811'.

P.A. Ref. D14A/0811 refers to a February 2015 decision to refuse permission for the removal of the existing car wash, sheds, workshop and existing associated structures; the closure of the 2 no. existing vehicular entrances from Braemor Road; the construction of a four storey over basement level building consisting of 104 no. bedrooms residential institution (nursing home) with associated ancillary/common facilities and office/administration area; the provision of a new vehicular and pedestrian access onto Landscape Road, basement level car parking (24 no. car parking spaces); ancillary bin storage, 28 no. bicycle spaces (18 no. at basement level and 10 no. at ground level), associated plant areas at roof level, all associated site development, engineering, landscaping works and a new stone wall and railing boundary. Three reasons for refusal were given, as follows:

1. 'A significant portion of the site is located on lands with the zoning objective 'F', 'to preserve and provide for open space with ancillary active recreational amenities' under the Dun Laoghaire-Rathdown County Development Plan 2010-2016. The proposed use is neither 'permitted in principle' or 'open for consideration' under this land use zoning objective and it therefore materially contravenes this development objective of the Dun Laoghaire-Rathdown County Development Plan 2010-2016 and

therefore would be contrary to the proper planning and sustainable development of the area.

2. The proposed development is seriously deficient in open space provision and in its current form provides for a poor level of residential amenity for future occupants. The proposed development would set an undesirable precedent for future development and is therefore contrary to the proper planning and sustainable development of the area.

3. The proposed development is premature by reason of deficiencies in the existing foul sewage system upon which it relies and the time within which the constraints involved may reasonably be expected to cease. To permit the proposed development would be prejudicial to public health and contrary to the proper planning and sustainable development of the area’.

P.A. Ref. D07A/0040/ ABP Ref. PL06D.223471 refers to an October 2008 decision to grant permission for the demolition of all buildings and structures on site associated with an existing petrol station and to construct 27 no. residential units and all associated works.

5.0 Policy and Context

5.1. Development Plan

Under the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022, the majority of the subject site is zoned A ‘To protect and/or improve residential amenity’. Residential development is listed within the ‘Permitted in Principle’ category of this zoning objective. The remainder of the site, along the south western side, is zoned F ‘To preserve and provide for open space with ancillary active recreational amenities’. The open space to the south west, forming the ‘Badger’s Glen’ is also zoned F and includes objective ‘To protect and preserve Trees and Woodlands’.

5.1.1. Chapter 2 – ‘Sustainable Communities Strategy’ of the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022, includes section 2.1 ‘Residential Development’. The Introduction (2.1.1) refers specifically to how future population growth will be accommodated, with one model – ‘Through the continuing promotion of additional infill accommodation in existing town and district centres at public transport nodes, brownfield sites and established residential areas’.

5.1.2. Under 2.1.3.3 ‘Policy RES3: Residential Density’ it is policy to: ‘.. 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’. I also note the following:

‘As a general rule the minimum default density for new residential developments in the County (excluding lands on zoning Objectives GB, G’ and B’) shall be 35 units per hectare. This density may not be appropriate in all instances, but will serve as a general guidance rule, particularly in relation to ‘greenfield’ sites or larger ‘A’ zoned areas. Consideration in relation to densities and layout may be given where proposals involve existing older structures that have inherent vernacular and/or streetscape value and where retention would be in the interests of visual and residential amenity and sustaining the overall character of the area’.

Under 2.1.3.4 ‘Policy RES4: Existing Housing Stock and Densification’ it is policy to:

- Encourage densification of the existing suburbs in order to help retain population levels – by ‘infill’ housing. Infill housing in existing suburbs should respect or complement the established dwelling type in terms of materials used, roof type, etc.

Under 2.1.3.7 ‘Policy RES7: Overall Housing Mix’ ‘It is Council policy to encourage the establishment of sustainable residential communities by ensuring that a wide variety of housing and apartment types, sizes and tenures is provided within the County in accordance with the provisions of the Interim Housing Strategy’.

5.1.3. Section 5.1 refers to ‘Environmental Infrastructure and Management’ and Section 5.2 refers to ‘Climate Change, Energy Efficiency and Flooding’.

5.1.4. Chapter 8 of the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022 refers to 'Principles of Development' and the following are relevant to the subject development:

- 8.2 'Development Management' – with particular reference to section 8.2.3 'Residential Development' and 8.2.3.4 'Additional Accommodation in Existing Built up Areas'.
- Section 8.2.4.12 refers to Electrically Operated Vehicles – One parking space per 10 spaces to provide for electric charging.
- Section 8.2.8.2 refers to Public/ Communal Open Space – Quantity and Section (i) refers specifically to Residential/ Housing Developments. The following is noted/ is relevant:

'Open Space: For all developments with a residential component - 5+ units - the requirement of 15 sq.m- 20 sq.m. of Open Space per person shall apply based on the number of residential/housing units. For calculation purposes, open space requirements shall be based on a presumed occupancy rate of 3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms. A lower quantity of open space (below 20 sq.m per person) will only be considered acceptable in instances where exceptionally high-quality open space is provided on site and such schemes may be subject to financial contributions as set out under Section 8.2.8.2

The Planning Authority shall require an absolute default minimum of 10% of the overall site area for all residential developments to be reserved for use as Public Open and/or Communal Space irrespective of the occupancy parameters set out in the previous paragraph'.

- Section 8.2.8.3 refers to 'Public/ Communal Open Space-Quality' and the following is particularly relevant to this development:

'Where any open space is to be provided on foot of a planning permission, the space in question should be well overlooked and designed and located to

sympathetically complement the layout of the development and should be visible from, and accessible to, the maximum number of dwellings/ units within the proposed scheme. Inaccessible, hidden or otherwise backland open space, and narrow linear strips of open space will not be acceptable. Fragmented open spaces within a development layout, which result specifically from the necessity to protect existing site features (for example a stand of mature trees) may not be included in the calculation open space requirements, as they are necessary to ensure the protection of existing amenities.

Public and/or communal open spaces should be overlooked and designed to ensure that potential for anti-social behaviour is minimised through passive surveillance. 'Sustainable Residential Development in Urban Areas - Guidelines for Planning Authorities' (2009) provides detailed guidance on the provision of open space for new residential developments while the 'Retail Design Manual' (2012) provides guiding principles on how landscaping and open spaces can assist improved public realm and promote attractive retailing centres'.

- Section 8.2.8.4 refers to 'Private Open Space – Quantity' and section (iv) Private Open Space for Apartment Developments is relevant.

5.2. National Guidance

- The National Planning Framework includes a specific Chapter, No. 6 – '*People Homes and Communities*' which is relevant to this development. This chapter includes 12 objectives (National Policy Objectives 26 to 37) and the following are key to this development:
 - National Policy Objective 27 seeks to 'Ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments, and integrating physical activity facilities for all ages'.

- National Policy Objective 33 seeks to ‘Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location’.
- National Policy Objective 35 seeks to ‘Increase densities in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights’.
- Quality Housing for Sustainable Communities (DoEHLG, 2007).
- Design Manual for Urban Roads and Streets (DMURS).
- Sustainable Residential Development in Urban Areas (Cities, Towns & Villages) (DoEHLG, 2009) and its companion, the Urban Design Manual – A Best Practice Guide (DoEHLG, 2009).
- Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (DoHPLG, 2018).

These guidelines provide for a range of information for apartment developments including detailing minimum room and floor areas.

- Urban Development and Building Heights Guidelines for Planning Authorities (DoHPLG, 2018).
- Permeability Best Practice Guide (NTA).

5.3. Natural Heritage Designations

None.

5.4. EIA Screening

Having regard to the nature of the proposed development comprising the provision of an apartment development in an established urban area and where infrastructural services are available, 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 applicant has engaged the services of Downey Planning to prepare an appeal against the decision of Dun Laoghaire-Rathdown County Council to refuse permission for this apartment block/ residential development.

Mains grounds of appeal include:

- The background to the development is provided and the appellant demonstrates that the development is smaller than that previously refused under P.A. Ref. D16A/0082/ ABP Ref. PL06D.247612 and is of a similar scale to the permitted development under P.A. Ref. D07A/0040/ ABP Ref. PL06D.223471. The nature of development has also changed from a nursing home to an apartment development.
- The first reason for refusal refers to deficiencies in the foul drainage system which will serve the development. Irish Water have reported no objection to the proposed development and necessary works are proposed to be completed by 2021. These works are not dependant on any third parties. The proposed development if permitted, would not commence until at least late 2021 and after the drainage works are completed by Irish Water.
- Documents prepared by Ken Kennedy Solicitors have been submitted demonstrating that the applicant has sufficient legal interest in the lands to make this application. It is also noted that the issue of landownership was raised in previous applications and it was considered at the time that these were civil matters.
- A diversion agreement has been drafted by Irish Water and the necessary lands are within the applicant's control.
- Although not reasons for refusal, the Planning Authority report raised other issues of concern.
 - The design of the building was considered to be acceptable in the original report of August 2019 and then was not acceptable in the report of July 2020. It is requested that the design be approved.

- It is considered that the design of an access between the site and 'Badger's Glen' can be agreed by way of condition/ compliance with the Local Authority.
- Issues relating to submitted photomontages are relatively minor and do not impact on the overall proposal.
- A daylight and sunlight analysis was not requested by the Planning Authority at further information stage and it is not foreseen that the development will give rise to concern in relation to this.
- Other issues such as layby design/ material type and design of green roof can be addressed by the applicant.

6.2. Observations

A number of observations have been received including submissions from An Taisce, Kieran O' Malley & Co. Ltd (Town Planning Consultants) on behalf of Badger's Glen Protection Group, Castlepark Residents Association, Orwell Court Management Committee, Landscape Road Residents Association & Redwood Court Residents Association and individual members of the public.

The following comments are made in summary:

- The proposed height and scale of development is excessive in this location.
- Reference to Orwell Court, located to the north of the site, is not appropriate as this building is set back from the roadside edge.
- Concern about foul drainage capacity and water supply capacity to serve this development and existing houses in the area.
- Unsure if the internal layout complies with fire regulations.
- Town houses would be more suitable in this location.
- Letter from Ken Kennedy Solicitors does not include any map indicating the area of land which the applicant has an interest in. Insufficient evidence to demonstrate that they have had possession of these lands for 12 years or more.
- Change of use of the lands zoned 'F' as they will be fenced off and used as open space to serve the development.

- There are deficiencies in the foul drainage network and there is no evidence that work has commenced.
- Loss of residential amenity through overlooking leading to a loss of privacy.

An Taisce have made the following comments:

- Lack of certainty regarding the Irish Water proposal to upgrade the foul drainage network.
- Use of open space for attenuation area is not acceptable.
- Insufficient evidence that the applicant has the right to develop the open space area.
- The proposal would result in overdevelopment of a restricted site.
- The transition between the proposed development and the open space would be abrupt.
- The provision of a controlled gate would restrict the use of the open space lands.

6.3. **Planning Authority Response**

The grounds of appeal do not raise any new matters, so no additional comment is made.

7.0 **Assessment**

7.1. The main issues that arise for consideration in relation to this appeal can be addressed under the following headings:

- Principle of Development
- Legal Interest
- Design and Impact on the Character of the Area
- Impact on Residential Amenity of Future Occupants
- Impact on Existing Residential Amenity
- Drainage and Water Supply
- Traffic and Parking
- Other issues

- Appropriate Assessment Screening

7.2. Principle of Development

- 7.2.1. The majority of the subject site is zoned 'A' for residential development, and it is therefore considered that the provision of a residential development on this site is acceptable in principle. National policy with particular reference to NPF33 & NPF35 and local policy as set out in the Dun Laoghaire-Rathdown County Development Plan seeks to maximise the development potential of serviced urban lands. The proposed development provides for 31 units on a site of 0.2553 hectares, therefore giving a density of 121 units per hectare. This density is considered to be acceptable in an area where public transport is available and within walking distance. Whilst the density appears high, it should be remembered that only 31 units are proposed, and which is unlikely to put any strain on existing services in the area.
- 7.2.2. The Planning Authority reasons for refusal refer to deficiencies in foul and surface water drainage and secondly the applicant has failed to demonstrate that they have sufficient control of the site to implement the proposed development. Other issues were referred to in the Planning Authority Case Officer's report and they will be considered here.

7.3. Legal Interest

- 7.3.1. This issue was raised in a number of the letters of objection, subject observations and by the Planning Authority as a reason for refusal. I note that it was not raised in previous applications on this site, when it was considered that the applicant had sufficient interest to make applications on these lands. The response to the further information request included a letter from Ken Kennedy Solicitors stating that it was '...our view that our client has sufficient legal interest to include the lands outlined in red on the enclosed map in the existing planning application'. No map was included with this letter. A letter from this Solicitor dated 10th August 2020 and in response to the appeal, states again that they 'are satisfied that the Applicant has sufficient legal interest in all of the lands, the subject of this application for planning, to make this application'.
- 7.3.2. I therefore accept that the appellant's legal opinion is that they have the right to include all these lands in their application. I have consulted with the landdirect.ie

website (website of the Property Registration Authority) and the subject lands are not registered, though this site does not indicate if a registration is currently under assessment. From the available information, the Local Authority and no other party have come forward to make a claim on these lands. I therefore have no reason to disagree with the applicant that they have a legal right to make this application.

- 7.3.3. I appreciate that the local community have spent much time and effort in maintaining 'Badger's Glen' and the area of land that is included within the application site. The site is zoned F for open space uses and the proposed development includes this area for use as part of the open space associated with the apartments. Whilst services may pass through this section of the site, it is not intended that any new structures be placed on this area of land. The land will retain its open space use and although the public may no longer have access to this area, this is not unusual in the context of such zoned lands. I note that a golf course and a school are located in the immediate area and are zoned F; these are also areas of land that the public do not have free access to yet retain their open space use. The F zoning allows for a wide range of open space/ amenity uses and is not restricted to open space accessible by the public.

7.4. Design and Impact on the Character of the Area

- 7.4.1. Guidelines in the form of the 'Sustainable Urban Housing: Design Standards for New Apartments' and 'Urban Development and Building Heights Guidelines for Planning Authorities' allow for greater densities in urban areas and with a presumption that taller buildings be allowed, but not at the expense of existing residential amenity. I will comment later in this report on the potential impact on residential amenity.
- 7.4.2. The proposed apartment block is a six-storey building over basement level. Car and bicycle parking is located in the basement. The top two floors are set back in an attempt to reduce the bulk of this building. This results in the centre of the block being six storeys in height. In response to the further information request, the height of this building was reduced to be a five-storey unit and revised elevations/ floor plans were submitted in support of these revisions. Whilst the number of units only reduced by one, the omission of the top floor has resulted in a significantly improved building design. The use of set-back floors does allow for an increase in height and consequent additional floors/ units, but the original proposal included a set-back floor

on a set-back floor, which resulted in a poor-quality design. It is considered that upper floor set-backs should only be provided for architectural or for a technical reason. They should not have to be a standard feature on apartment blocks when this is not necessary. I consider therefore the revised proposal submitted by way of further information to be a superior design and the loss of one unit is not significant. The curved north east corner on the fourth floor is superior to the original proposed square edge corner. This provides for a more integrated top floor with the rest of the building.

- 7.4.3. A number of photomontages/ CGIs have been submitted in support of the application and give an impression of how the building will look post construction. I note that concerns were expressed about the quality/ accuracy of the submitted photomontages, but their function is to give a visual impression of how the development will look and it is accepted that all such photomontages are limited in what they can display. I am satisfied that the submitted information is acceptable and does not mislead.
- 7.4.4. The revised elevations include alterations to the proposed facades in order to accommodate the revised unit numbers and ensure that adequate private amenity is provided per each unit. It is considered that there is an excessive amount of 'Fiber Cement Cladding' on the south east elevation and this could be improved by its partial replacement with brick. The central section for example could be replaced with a brick that may be a different tone/ colour to the main proposed brick finish. The use of metal cladding on the upper floor is acceptable. In the event that permission is granted, the final colours/ material finishes can be agreed with the Planning Authority.
- 7.4.5. The proposed boundary treatments are considered to be acceptable and appropriate to this location. The mix of a dwarf wall and railings over, is acceptable for the boundaries that address the public footpath/ roads.
- 7.4.6. I note that ladders are proposed to the exterior of the building to allow for access to roofing areas. It should be possible to improve the appearance of these and to integrate their design into the overall development. This is not an industrial development and the high quality architectural design that the applicant is promoting would be eroded by the provision of such additions.

7.5. Impact on Residential Amenity of Future Occupants

- 7.5.1. The proposed development provides for adequate room sizes in accordance with the apartment guidelines and adequate storage provision is available to future occupants. The mix of units, which includes one, two- and three-bedroom apartments, will provide for different housing/ tenure needs. A single lift and stair core is provided, serving a maximum of units on the first and second floor level, respectively. This is acceptable.
- 7.5.2. The apartment units are provided with adequate private amenity areas in the form of balconies. The depth of the balconies meets the 1.5 m requirement as set out in the apartment guidelines, except for Unit no. 12 which has a depth of 1.495 m; this can be revised by way of condition.
- 7.5.3. The floor to ceiling heights, at 2.7 m for the upper floors and 2.9 m for the ground floor, are acceptable and are in accordance with the requirements of the apartment guidelines. Overall, I consider that the proposed units will provide for a high quality of residential amenity for future occupants.

7.6. Impact on Existing Residential Amenity

- 7.6.1. The letters of objection/ subsequent observations raise a number of concerns in relation to impact on existing residential amenity. Overlooking leading to a loss of privacy was raised in a number of the observations. There are no units to the south/ south west that would suffer from overlooking. The Badger's Glen is located to the rear and although it will be overlooked from this development, additional passive surveillance is a positive for public open space. The topography of the site is such that an appropriate level of privacy can be maintained for those using this park. Any overlooking from the north/ eastern sides of this development will be of the front of existing houses and I am satisfied that the existing width of the roads adjoining the site, provides for a suitable separation distance.
- 7.6.2. The width of the existing roads adjoining the site are relatively wide and it is appropriate that a suitable height be provided here to provide for definition of this prominent corner. The existing road are wide as are adjoining footpaths possibly to allow for suitable sightlines at this former petrol station site. The orientation and layout of the subject site will ensure that any overshadowing will be minimal as not to

be noticeable. The subject site does not abut any existing residential units and overshadowing is not a concern.

- 7.6.3. The issue of legal interest to make this application has already been considered in this assessment with reference to the development of the F zoned lands. The plans submitted in support of the further information response indicate that this area of open space is to be retained as open space. I note the comments of the Local Authority Parks and Landscapes Department, that existing trees in and around the site are of a mediocre quality. I agree that substantial sized trees should be planted in compensation for any tree removal.
- 7.6.4. The proposed development will result in the incorporation of the open space into the development site but which ensures that this area remains as open space. Due to the steep slopes crossing this section of site, this area of open space is not useable by members of the public and only functions as a buffer/ incidental piece of open space. The loss of its limited public access is off-set by its improvement as a piece of open space and providing for an improved buffer between the development area and Badger's Glen. Access is proposed from the site to the public open space by way of controlled access/ gates. The design of these access points should be agreed with the Planning Authority.

7.7. Drainage and Water Supply

- 7.7.1. Permission was refused due to a deficiency in the foul drainage network. The report from Irish Water dated 3rd July 2020, raised no concerns about the proposed development. Details would be required in relation to the diversion of existing services and to be in full compliance with Irish Water requirements, but these are relatively standard requirements for a development of this nature. No issues in relation to capacity were raised by Irish Water in their report and I therefore have no concerns regarding the provision of suitable foul drainage to serve this development.
- 7.7.2. In relation to surface water drainage, again I note the location of the proposed development on a brownfield site. The site layout allows for an increase in natural drainage. The section of site zoned 'A' is almost 100% hardstanding and the proposed development will significantly increase the amount of land that can be naturally drained. If attenuation in the form of tanks is required, it should be possible

to provide for a suitable proposal that complies with the requirements of the Local Authority or else provide for a suitable alternative. A green roof is proposed and this is desirable and such should be provided where possible in a meaningful way in urban areas.

- 7.7.3. No concerns were raised in relation to the proposed water supply to serve this development. The site is located within a serviced urban area and I note that that existing uses on site include a car washing facility that may use a significant amount of water.

7.8. Traffic and Parking

- 7.8.1. The Dun Laoghaire-Rathdown County Council Transportation Department referenced a number of issues that required further information and not all issues were adequately addressed. The response to the further information request indicates that a total of 31 parking spaces are to be provided; one per apartment and all will have an electrical charging point. In addition, two accessible spaces adjacent to the lift are proposed and one visitor parking space. If revisions to the layout are required, I would have no objection to the loss of the visitor parking space and it should be possible to provide for a parking space per apartment in addition to the two accessible spaces.
- 7.8.2. Bicycle parking is adequate with 32 spaces proposed in the basement in addition to spaces at ground floor level. Motorcycle parking is also accommodated in the basement. I note the concerns regarding access by way of the ramp for cyclists, however it should be possible to address this issue in the final design. It is likely that cyclists may use the lift to access the ground floor and in any case residents of this development will be aware that cyclists will be using the ramp.
- 7.8.3. Concern has been raised about the increase in traffic and on-street parking from the development. As already reported, the site is in an established urban area and where public transport is available. The nearby bus stop to the east of Landscape Road on Braemor Road and existing cycle infrastructure will encourage the use of more sustainable forms of transport over car use.

7.9. Other Issues

- 7.9.1. I note that the Housing Department have no objection to the development and that details can be agreed following a grant of permission.
- 7.9.2. The submitted landscaping plan and associated detail is considered to be acceptable. An Ecological Impact Statement prepared by Openfield Ecological Services identifies no issues of concern following the provision of suitable mitigation measures such as the provision of pollinator-friendly planting to replace the treeline to be removed and after ten years there will be an enhancement of habitat value over and above the current situation. Best practice should be used in relation to nest removal, pollution control and the enactment of the Construction Management Plan.

7.10. **Appropriate Assessment Screening**

- 7.10.1. An Appropriate Assessment Screening report has been prepared by Openfield Ecological Services. Designated Natura 2000 sites considered relevant include South Dublin Bay and River Tolka Estuary SPA (Site Code 004024), South Dublin Bay SAC (Site Code 00210) and Poulaphouca Reservoir SPA (Site Code 004063) is a water source. Dublin Bay and River Tolka Estuary SPA is sufficiently separated from the site that there is no direct pathway for loss/ disturbance of qualifying habitats. Water consumption volumes will not impact on Poulaphouca. South Dublin Bay SAC will not be impacted upon due to the separation distance from the site, the nature of the development will not increase surface water run-off and improvements works to Ringsend Treatment Plant will ensure that no adverse impacts will arise, in any case the scale of development will be negligible in terms of the capacity of Ringsend. The AA Screening concludes that significant effects are not likely to arise, either alone or in combination with other plans or projects that will result in significant effect to the any Natura 2000 site.
- 7.10.2. Having regard to the nature and scale of the proposed development and the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to give rise to a significant effect individually or in combination with other plans or projects on an European site.

8.0 Recommendation

8.1. I recommend that permission be granted subject to the following conditions and reasons.

9.0 Reasons and Considerations

9.1. Having regard to the provisions of the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022, relevant National Guidelines and the zoning of the site for a mix of residential and open space/ amenity purposes, to the location of the site in an established urban area within walking of frequent public transport and to the nature, form, scale, density and design of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential, visual or environmental amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 24th day of June 2019 and as amended by the further plans and particulars submitted on the 19th day of June 2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the Planning Authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>This permission is for 31 no. residential units in the form of four no. one bedroom apartments, twenty-three no. two bedroom apartments and four no. three bedroom apartments. The site layout, elevations and five storey height shall be in accordance with the documentation lodged on the 19th of June 2020 with the Planning Authority.</p>

	<p>Reason: In the interest of clarity.</p>
3.	<p>Prior to the commencement of development, the developer shall provide, for the written agreement of the Planning Authority:</p> <ul style="list-style-type: none"> a) The elevation facing Landscape Road shall be revised such that the central section of 'Fibre Cement Render' be replaced with a brick of a different colour/ texture to the other proposed brick. b) All balconies to provide for a minimum depth of 1.5 m. c) Full details of the proposed external design/ finishes in the form of samples and on-site mock-ups. These details shall include photomontages, colours, textures and specifications. The ground floor shall be finished in brick in a similar colour to the existing houses in Ely Square and the upper floors to be a mix of brick, though of a lighter colour to that used on the ground floor. d) The apartment terrace/ balcony railings/ supports shall be painted/ coated metal and shall not be unpainted galvanised metal railings. e) Full details of the access gates between the site and the open space to the south/ 'Badger's Glen' shall be submitted for agreement. Details to include the design of the access, any pathways required and management details. The developer is fully consider the issue of public access to this area in their submission to the Planning Authority. <p>Reason: In the interest of visual amenity.</p>
4.	<p>The internal road network serving the proposed development, including turning bays, parking areas, footpaths and kerbs, the junction with the existing street network and access/ layout of the underground car park shall be in accordance with the detailed standards of the Planning Authority for such works.</p> <p>Reason: In the interest of amenity and of traffic and pedestrian safety.</p>
5.	<p>Proposals for a development name, unit numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs and apartment unit numbers, shall be provided in</p>

	<p>accordance with the agreed scheme. The proposed name shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.</p> <p>Reason: In the interest of urban legibility and to ensure the use of locally appropriate placenames for new residential areas.</p>
6.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the Planning Authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
7.	<p>The applicant or developer shall enter into water and/or wastewater connection agreement(s) with Irish Water, prior to commencement of development.</p> <p>Reason: In the interest of public health.</p>
8.	<p>a) No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas, or equipment, unless authorised by a further grant of planning permission.</p> <p>b) The access ladders to upper levels/ roof areas shall be incorporated into the design of the building and not be designed as an external addition to the buildings.</p> <p>Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.</p>
9.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between the hours of 0800 to 1400 hours on Saturdays and not at all on Sundays and public</p>

	<p>holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the amenities of property in the vicinity.</p>
10.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, a fully details Construction Traffic Management Plan, noise management measures and off-site disposal of construction/ demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
11.	<p>That all necessary measures be taken by the contractor to prevent the spillage or deposit of clay, rubble, or other debris on adjoining roads during the course of the works.</p> <p>Reason: To protect the amenities of the area.</p>
12.	<p>(a) The communal open spaces, including hard and soft landscaping, car parking areas and access ways, and all areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company</p> <p>(b) Details of the management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.</p> <p>Reason: To provide for the satisfactory future maintenance of this development in the interest of residential amenity.</p>

13.	<p>All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site.</p> <p>Reason: In the interest of orderly development and the visual amenities of the area.</p>
14.	<p>Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.</p> <p>Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.</p>
15.	<p>Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.</p>

	<p>Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.</p>
16.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

Paul O'Brien
 Planning Inspector

17th December 2020