



An
Bord
Pleanála

Inspector's Report ABP-308075-20

Development

To block up the four existing windows in the east-side gable, remove a 1.5 square metres, single-storey toilet at the rear ground floor, install two new windows in the rear elevation (one at first floor and one at ground floor), install two new Velux rooflights to the existing first floor bathrooms (all of the foregoing to the existing house), demolish the existing single-storey, double-garage and to construct a new three-storey, three bedroom house in the eastern side garden together with associated site works, including the provision of a total of four car parking spaces.

Location

60 Barclay Court, Blackrock, Co. Dublin.

Planning Authority

Dún Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

D20A/0413

Applicant(s)

Rita O'Sullivan

Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party v. Decision
Appellant(s)	Rita O'Sullivan
Observer(s)	None.
Date of Site Inspection	10 th February, 2021
Inspector	Robert Speer

1.0 Site Location and Description

- 1.1. The proposed development site is located at No. 60 Barclay Court, Blackrock, Co. Dublin, approximately 500m southeast of the Frascati Shopping Centre and to the immediate west of Rockfield Park, where it occupies a position at the end of a small cul-de-sac within an established residential area characterised by conventional suburban housing predominantly composed of two-storey, semi-detached dwelling houses. It has a stated site area of 0.039 hectares, is irregularly shaped, and comprises the housing plot occupied by an existing semi-detached property (and an associated domestic garage) with the proposed dwelling to be sited within the side yard / garden area of same. The configuration of the site is such that a considerable proportion of its area extends forward of the front building line and around the perimeter of the adjacent turning bay with the result that the front garden area of the existing house is noticeably larger than the remainder of the housing within the cul-de-sac.
- 1.2. To the immediate east the site is bounded by the amenity parkland of Rockfield Park whilst the Carysfort – Maretimo Stream, which passes alongside the eastern site boundary, serves to separate the site from the main park area. The northern site boundary adjoins a pedestrian / cyclist access point which provides for a connection onwards to Temple Road / Frascati Road (the N31 National Route) as well as a bridge crossing of the stream leading into Rockfield Park and beyond. On-street parking in the site surrounds, including within the cul-de-sac wherein the application site is located, is regulated by way of 'Pay & Display' parking controls.

2.0 Proposed Development

- 2.1. The proposed development consists of the subdivision of an existing housing plot followed by the construction of a three-storey, 3-bedroom dwelling house within the side garden area of No. 60 Barclay Court.
- 2.2. Associated site development works include the blocking up of a series of windows within the eastern gable elevation of the existing dwelling, the demolition of a double garage and a single-storey extension to the rear of the property, the installation of new windows & rooflights within the existing house, and the provision of 4 No. car

parking spaces with access from the adjacent turning bay. Water and sewerage services are available via connection to the public mains.

- 2.2.1. On 12th June, 2020, the Planning Authority issued a Certificate of Exemption (PA Ref. No. V/040/20) pursuant to the provisions of Section 97 of the Planning and Development Act, 2000, as amended, with regard to the proposed development.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On 6th August, 2020 the Planning Authority issued a notification of a decision to refuse permission for the proposed development for the following 3 No. reasons:
- The proposed dwelling, by reason of its design, scale, height and massing would be visually incongruous within this setting and would have the potential to set an undesirable precedent for similar development within the immediate surrounds. The design of the proposed dwelling is not in keeping with the character of the surrounds and is considered to be contrary to Section 8.3.2.4(v) (Corner/Side Garden Sites) of the Dún Laoghaire-Rathdown County Development Plan, 2016-2022. The proposed development would, therefore, seriously injure the amenities or depreciate the value of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.
 - It is considered that the proposed dwelling by reason of its overall scale, height and the extent by which it projects beyond the rear building line of the existing dwelling, would have a serious negative impact on the residential amenity of the adjoining dwelling and dwellings further to the west. The proposal is likely to result in overshadowing impacts and would appear visually overbearing when viewed from the rear gardens of the properties to the west. The proposed development would, therefore, be seriously injurious to the residential amenities of the area and would depreciate the value of the adjoining properties in the area and, if permitted, would set an undesirable precedent for similar development in the vicinity. The proposed development

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

- The proposal provides a sub-optimal private amenity space which negatively impacts upon the residential amenity of the adjoining properties through a reliance on extensive screening for the first and second floor level terrace. The proposal would set a poor precedent for similar development in the area and would therefore be contrary to Section 8.2.8.4 (Private Open Space – Quantity) of the Dún Laoghaire-Rathdown County Development Plan, 2016-2022. The proposed development would, therefore, seriously injure the amenities or depreciate the value of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

States that the proposed development is generally acceptable in principle, although significant concerns arise with respect to the overall design, scale, form & massing of the proposal to the effect that it would be visually incongruous and out of character with the surrounding area. It is also considered that the proposal will have a negative impact on the residential amenity of neighbouring properties by reason of overshadowing and an overbearing appearance. Further concerns arise as regards the quantity and quality of the private open space provision for the proposed dwelling (which takes the form of a rear garden area combined with first & second floor terraces / balconies), however, whilst the open space serving the existing dwelling falls significantly short of the necessary standard, it is accepted that this will remain largely unchanged as a result of the proposed development.

In terms of screening the proposal for the purposes of appropriate assessment, given the proximity of the site to a stream which provides for a direct pathway to the South Dublin Bay Special Area of Conservation and the South Dublin Bay and River Tolka Estuary Special Protection Area, and the lack of mitigation measures, it is considered that any future application should be supported by a Natura Impact Statement. The report thus concludes by recommending a refusal of permission for the reasons stated.

3.2.2. *Other Technical Reports*

Drainage Planning, Municipal Services Dept.: Refers to the site location in or close to a flood zone and notes the accompanying Site Specific Flood Risk Assessment before stating that a number of issues require clarification. In this regard, it is noted that the flood depth maps suggest significant flooding of up to 1m through the site. Reference is also made to the assertion by the applicant that while overland flow could impact the site, the significantly lower level of the banks of the stream adjacent to the site would render any such flooding unlikely. The report proceeds to recommend that the applicant be required to provide further details of the potential flood impact on site should floodwaters overtop the low level walls of the flood defences (to include sections through the stream and into the site). These details should show the impact of flooding on site for a 0.1% AEP event and also clarify the position of the development relative to flood zones. It is further recommended that the applicant engage with the Drainage Planning Section of the Local Authority to discuss its requirements prior to the commencement of works with a subsequent note advising that failure to comply with the requirements of the Strategic Flood Risk Assessment of the Development Plan may result in a recommendation to refuse permission. Additional details are also sought with respect to the surface water drainage arrangements whilst runoff from the existing and proposed houses should be disposed of within the curtilage of each property (as opposed to the communal parking area).

Transportation Planning: Recommends that the applicant submit revised / additional details showing the northern site boundary treatment between the proposed off-street car parking spaces and the adjacent pathway from Rockfield Park. It is further stated that this boundary treatment should optimise the visibility between vehicles exiting the parking spaces and members of the public leaving Rockfield Park via the adjacent pathway (this is considered particularly relevant in the case of cyclists or runners / joggers who may be traveling at speed when exiting the park).

3.3. **Prescribed Bodies**

Irish Water: No objection, subject to conditions.

3.4. **Third Party Observations**

None.

4.0 Planning History

4.1. On Site:

None.

4.2. On Adjacent Sites:

None.

5.0 Policy and Context

5.1. National and Regional Policy

- 5.1.1. The ‘*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009*’ note that in general, increased densities should be encouraged on residentially zoned lands and that the provision of additional dwellings within inner suburban areas of towns or cities, proximate to existing or due to be improved public transport corridors, has the potential to revitalise areas by utilising the capacity of existing social and physical infrastructure. Such developments can be provided either by infill or by sub-division. In respect of infill residential development potential sites may range from small gap infill, unused or derelict land and backland areas, up to larger residual sites or sites assembled from a multiplicity of ownerships. In residential areas whose character is established by their density or architectural form, a balance has to be struck between the reasonable protection of the amenities and the privacy of adjoining dwellings, the protection of established character, and the need to provide residential infill.

5.2. Development Plan

5.2.1. ***Dún Laoghaire Rathdown County Development Plan, 2016-2022:***

Land Use Zoning:

The proposed development site is located in an area zoned as ‘A’ with the stated land use zoning objective ‘*To protect and-or improve residential amenity*’.

Other Relevant Sections / Policies:

Chapter 2: Sustainable Communities Strategy:

Section 2.1: Residential Development:

Policy RES3: Residential Density:

It is Council policy to promote higher residential densities provided that proposals ensure a balance between the reasonable protection of existing residential amenities and the established character of areas, with the need to provide for sustainable residential development. In promoting more compact, good quality, higher density forms of residential development it is Council policy to have regard to the policies and objectives contained in the following Guidelines:

- ‘Sustainable Residential Development in Urban Areas’ (DoEHLG 2009)
- ‘Urban Design Manual - A Best Practice Guide’ (DoEHLG 2009)
- ‘Quality Housing for Sustainable Communities’ (DoEHLG 2007)
- ‘Irish Design Manual for Urban Roads and Streets’ (DTTaS and DoECLG, 2013)
- ‘National Climate Change Adaptation Framework
- Building Resilience to Climate Change’ (DoECLG, 2013)

Policy RES4: Existing Housing Stock and Densification:

It is Council policy to improve and conserve housing stock of the County, to densify existing built-up areas, having due regard to the amenities of existing established residential communities and to retain and improve residential amenities in established residential communities.

Chapter 8: Principles of Development:

Section 8.2.3: Residential Development:

Section 8.2.3.1: Quality Residential Design

Section 8.2.3.2: Quantitative Standards

Section 8.2.3.4: *Additional Accommodation in Existing Built-up Areas:*

(v) Corner/Side Garden Sites:

Corner site development refers to sub-division of an existing house curtilage and/or an appropriately zoned brownfield site to provide an additional dwelling in existing built up areas. In these cases the Planning Authority will have regard to the following parameters (Refer also to Section 8.2.3.4(vii)):

- Size, design, layout, relationship with existing dwelling and immediately adjacent properties.
- Impact on the amenities of neighbouring residents.
- Accommodation standards for occupiers.
- Development Plan standards for existing and proposed dwellings.
- Building lines followed where appropriate.
- Car parking for existing and proposed dwellings.
- Side/gable and rear access/maintenance space.
- Private open space for existing and proposed dwellings.
- Level of visual harmony, including external finishes and colours.
- Larger corner sites may allow more variation in design, but more compact detached proposals should more closely relate to adjacent dwellings. A modern design response may, however, be deemed more appropriate in certain areas in order to avoid a pastiche development.
- Side gable walls as side boundaries facing corners in estate roads are not considered acceptable. Appropriate boundary treatments should be provided both around the site and between the existing and proposed dwellings. Existing boundary treatments should be retained where possible.
- Use of first floor/apex windows on gables close to boundaries overlooking roads and open spaces for visual amenity and passive surveillance.

It is also recognised that these sites may offer the potential for the development of elderly persons accommodation of more than one unit. This would allow the elderly to remain in their community in secure and safe accommodation. At the discretion of

the Planning Authority there may be some relaxation in private open space and car parking standards for this type of proposal.

Section 8.2.3.5: *Residential Development – General Requirements*

Section 8.2.4.9: *Vehicular Entrances and Hardstanding Areas*

Section 8.2.8.4: *Private Open Space – Quantity*

5.2.2. **Blackrock Local Area Plan, 2015-2021:**

Chapter 3: Urban Structure & Character

Chapter 5: Population, Housing & Social Infrastructure:

Section 5.2.2: *Future Housing Mix: Infill Development:*

In response to strategic policy objectives aimed at densifying and intensifying land use within the Greater Dublin Metropolitan Area, infill development, including houses within side/rear gardens, should be facilitated and encouraged - but only where such development positively contributes to and integrates with the built environment, respects the residential amenity of neighbouring properties, provides for a high standard of residential amenity for future occupants and does not conflict with other County Development Plan policies.

Objectives: Housing:

H1 - It is an objective of the Council that new residential development shall comply with the Guidelines for Sustainable Residential Development in Urban Areas and the accompanying Urban Design Manual (May 2009) and Chapter 3 of the LAP.

H2 - It is an objective of the Council that all new residential development within the Plan area shall be designed having regard to the minimum quantitative and qualitative standards as set out in Section 16.3 of the County Development Plan 2010-2016.

Chapter 9: Open Space, Recreation & Green Infrastructure:

Section 9.3: *Rockfield Park:*

Objectives: Rockfield Park:

RP1 - It is an objective of the Council to retain and enhance existing pedestrian / cycle access to the Park.

RP4 - It is an objective of the Council to improve access to Rockfield Park from Barclay Court and the site of the former Rosemont School. Any redevelopment of the former Rosemont school site shall ensure that the existing trees on site are retained and incorporated into Rockfield Park as part of the open space provision.

Section 9.5: *Green Routes*:

GR1 - It is an objective of the Council to provide and enhance where appropriate the provision of Green Routes including Urban Greenways and Cycle Network routes to both connect open spaces in Blackrock to cater for pedestrians and cyclists and provide recreational opportunities, in accordance with Map 16 'Open Space Strategy'.

(The Deerpark Greenway from Deerpark to Blackrock passes through Rockfield Park proximate to the proposed development).

5.3. **Natural Heritage Designations**

5.3.1. The following natural heritage designations are in the general vicinity of the proposed development site:

- The South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), approximately 500m north-northeast of the site.
- The South Dublin Bay Special Area of Conservation (Site Code: 000210), approximately 500m north-northeast of the site.
- The South Dublin Bay Proposed Natural Heritage Area (Site Code: 000210), approximately 500m north-northeast of the site.

5.4. **EIA Screening**

5.4.1. Having regard to the minor nature and scale of the development proposed, the site location outside of any protected site, the nature of the receiving environment in an existing built-up area, the intervening pattern of development, the limited ecological value of the lands in question, the availability of public services, and the separation

distance from the nearest 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

- Design is subjective, however, a well-established and experienced architect was appointed for the purpose of preparing a carefully composed and considered response to the development brief. A clear rationale for the composition of the design was provided with the application.
- Having regard to the surrounding pattern of development and the site location in an urban setting, the development of a three-storey, 3-bedroom dwelling house is by no means an exceptional proposal out of scale with the context.
- The proposed variation in design by 'book-ending' a row of conventional semi-detached houses will improve the wider streetscape.
- The generous expanse and setting of Rockfield Park to the east serves to diminish the proportional relationship between it and the gable end of the existing / proposed dwelling house.
- Views of the gable end of No. 60 Barclay Court from within Rockfield Park are generally obscured by existing trees and it is considered that any visitor to the park would be completely unaware of the presence of the proposed dwelling regardless of its composition.
- A 'sheer' gable three storeys high is not an alien or unusual element to be inserted into an urban landscape.
- The flat roof of the proposed dwelling will be 200mm higher than the ridge of adjacent housing, however, it is suggested that this is a deliberate attempt by which to 'close off' a pitched roof aligned west to east. If necessary, the Planning Authority could have granted permission, subject to a requirement that the ceiling height of the middle (first) floor be reduced from 2.7m to 2.5m

thereby adjusting the overall building height, although it is submitted that any such adjustment would seem niggardly given the greater consideration of the general architectural principle that bigger rooms require proportionately greater ceiling heights.

- By way of precedent, the Board is referred to the pair of three-storey structures which serve to 'bookend' Brookfield Court to the rear of the application site with no ill effects on the enjoyment of Rockfield Park. It should also be noted for comparison purposes that these buildings rise to a height of 10m with no dedicated off-street car parking and little or no private open space.
- The comparative height of the proposed dwelling would be greatly mitigated its set-back of 1.2m which would have the effect of:
 - making it almost invisible on the approach along the street thereby denying any direct, immediate comparison;
 - 'reducing the height' by dint of the perspective effect; and
 - setting it apart from the pre-existing line of houses.
- The vertical massing proposed is a reasonable proposition in any urban or suburban setting. Given the limitations of the site, there is no scope for off-setting of the accommodation east or west, nor for shunting a floor level to form a cantilever thereby articulating the three-dimensional model.

The submitted design is in keeping with the character of the site surrounds, insofar as suburban estates from the latter half of the 20th Century are little more than a collection of boxes scattered randomly in a field.

Given the increased emphasis on environmental awareness, climate change, and energy saving, a vertical arrangement is more energy efficient due to the 'stack effect' of heat rising whilst a rational floor plan minimises external surface area / heat loss. This is recognised as best practice in the drive towards NZEB standards.

- The proposed development will set a desirable precedent. If all of the two-storey, semi-detached houses in South Dublin were replaced with three-storey terraces, they would use 33% less real estate and 42% less energy,

with the effect that the public transport system may become economically viable and sufficiently frequent as to be a practical alternative.

- The proposal is an innovative design solution that provides a compact infill dwelling.
- No observations were received from local residents and none are concerned about the presence or appearance of the proposed house.
- The extent to which the proposed house will project beyond the rear building line would seem to be academic given that it is possible to build a two-storey extension of 40m² onto the rear of a house by way of exempted development.
- The orientation of the row of houses within which the application site is located, with south-facing back gardens, ensures that all of the properties enjoy uncompromised sunlight from dawn to dusk.
- The accompanying shadow impact analysis demonstrates that the proposed development will have a minimal effect on the amenity of the rear gardens of neighbouring housing at any time of the day or year.
- Should the Board deem a 'zero impact' necessary, permission could be granted subject to a condition requiring the proposed dwelling to be moved forward by 1.2m (thereby closing the set-back) with amended drawings detailing same submitted for the agreement of the Planning Authority in advance of any development (an alternative shadow impact analysis showing the impact of such a revision is included in Appendix 3 of the grounds of appeal).

Equally, it would be open to the Board to grant permission with a condition requiring the front of the proposed house to be moved forward 1.2m such that the rear wall of the first and second floors will align with the rear wall of the first floor of Nos. 59 & 60 Barclay Court whilst the rear wall of the ground floor will align with the rear of the ground floor of No. 60 Barclay Court (with revised drawings to be agreed with the Planning Authority prior to the commencement of development). Such an arrangement would have the added advantage of removing the need for the anti-overlooking screen. An alternative shadow

impact analysis has been submitted with the grounds of appeal in support of such a revised proposal.

- It is the applicant's understanding that there is no national or local planning policy guidance which requires a side gable access.
- There is adequate space available to the front of the property to construct a concealed waste-sorting & bin storage area. This issue could be resolved by way of condition in the event of a grant of permission.
- The private open space provision satisfies the quantitative requirements of the Development Plan and provides for an innovative design solution given the constraints of the site. In referencing the fact that some of the private open spaces will cantilever over one another, it is unclear if the Planning Authority is implicitly criticising such a design, however, the partial covering of private open space serves a useful purpose in allowing the area in question to be available 24 hours a day and for use during inclement weather.
- The Planning Authority has failed to take into consideration the 70m² of private open space within the front garden area or the communal open space available to residents within Rockfield Park.
- Notwithstanding that the applicant stands over the submitted proposal, the grounds of appeal have been accompanied by two alternative house designs with associated changes to the open space provision (Appendices 3 & 4), either of which would enable a grant of permission, subject to conditions.
- With respect to the concerns raised by the Transportation Planning Division, the provision of maximum visibility between cars exiting the site and walkers / cyclists etc. emerging from Rockfield Park will be a welcome safety improvement and the installation of a frameless glass screen would serve to optimise this visual interaction.

Given that the Planning Authority is satisfied as regards the principle of the proposed development, there is no reason why permission could not be granted, subject to a condition requiring the boundary treatment between the off-street car parking and the pathway from Rockfield Park being agreed prior to the commencement of development.

- In response to the report of the Drainage Planning Section, the applicant has retained the services of consulting engineers with specialist expertise in flood risk assessment.

Accordingly, as the Planning Authority is satisfied that the principle of the development is acceptable, there is no reason why permission could not be granted, subject to conditions stipulating that the requirements of the Drainage Planning Section be clarified and agreed prior to the commencement of development.

- An interim Natura Impact Statement and a Construction & Environmental Management Plan are included in Appendices 5 & 6 of the grounds of appeal. There is no reason why permission could not be granted subject to an ecologist attending on site as an environmental clerk of works and reporting to the Local Authority during construction. Such a process was adopted in the matter of the Loughlinstown Stream and the Cherrywood Strategic Development Zone.
- The proposed development site is not constrained in terms of its overall size given that the area to be allocated to the proposed dwelling house is comparable to that of existing housing plots in Barclay Court.
- It is best planning practice to densify existing towns and suburbs, particularly in locations close to public transport. In this regard, support is lent to the subject proposal as the site is well served by shopping precincts, schools, and public transport.

6.2. Planning Authority Response

- The Board is referred to the report of the Drainage Planning Section dated 22nd July, 2020. It is considered that, notwithstanding the contents of the first party appeal, as the applicant has failed to submit the necessary additional information to address the concerns raised as regards flood risk, some uncertainty remains as to whether the requirements of Appendix 13 (Strategic Flood Risk Assessment) of the County Development Plan (no highly vulnerable development within Flood Zones 'A' & 'B') and Box 5.1 of the

'Planning System and Flood Risk Management Guidelines' can be fully satisfied.

6.3. Observations

None.

6.4. Further Responses

- 6.4.1. *Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media*: The proposed development site is separated from the immediately adjacent Maretimo / Brewery Stream by a 2m – 3m wide strip of scrub. The Natura Impact Statement submitted in support of the appeal identifies a hydrological pathway from the site to the South Dublin Bay Special Area of Conservation and the South Dublin Bay and River Tolka Estuary Special Protection Area via this stream which enters the European Sites c. 600m downstream. The NIS sets out that there is a potential risk during the construction phase for materials such as silt, oils and cement to be transported off site by surface water flow resulting in detrimental changes in water quality and potentially impacting the qualifying and special conservation interests for which the Natura 2000 sites have been designated. Therefore, the NIS has proposed a suite of measures to prevent pollution of the Maretimo Stream and the downstream European Sites which are to be incorporated into a Construction and Environmental Management Plan (CEMP); these measures include the storage of chemicals in sealed containers, the implementation of suitable procedures for the refuelling, oiling and greasing of machinery and the laying of cement, and the installation of a silt fence immediately outside of the site boundary and set back from the stream.
- 6.4.2. The NPWS accepts that if the mitigation measures set out in the NIS are successfully implemented in full during construction then no significant negative impact on Natura 2000 sites should result from the proposed development. Accordingly, any grant of permission should be subject to a condition that the measures intended to avoid pollution of the Maretimo Stream and downstream European Sites (as set out in the NIS provided with the appeal) be included in a CEMP to be agreed with the Planning Authority prior to the commencement of development and implemented in full.

7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues relevant to the appeal are:

- The principle of the proposed development
- Overall design and layout
- Impact on residential amenity
- Traffic considerations
- Flooding implications
- Appropriate assessment

These are assessed as follows:

7.2. The Principle of the Proposed Development:

7.2.1. With regard to the overall principle of the proposed development, it is of relevance in the first instance to note that the subject site is zoned as 'A' with the stated land use zoning objective '*To protect and-or improve residential amenity*'. In addition, the surrounding area is residential in character while the prevailing pattern of development is dominated by conventional housing construction. In this respect, I would suggest that the proposed development site comprises a potential infill site / plot subdivision situated within an established residential area where public services are available and that the development of appropriately designed infill housing would typically be encouraged in such areas provided it integrates successfully with the existing pattern of development and adequate consideration is given to the need to protect the amenities of existing properties. Such an approach would correlate with the wider strategic outcomes set out in the National Planning Framework 'Project Ireland: 2040', including the securing of more compact and sustainable urban growth such as is expressed in National Policy Objective 35 which aims to '*increase residential density in settlements, through a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights*'.

7.2.2. Further support is lent to the proposal by reference to Policy RES4: '*Existing Housing Stock and Densification*' of the Development Plan, which aims to increase

housing densities within existing built-up areas having due regard to the amenities of established residential communities, wherein it is stated that the Planning Authority will encourage the densification of existing suburbs in order to help retain population levels by way of 'infill' housing that respects or complements the established dwelling types. These policy provisions are further supplemented by the guidance set out in Section 8.2.3.4: '*Additional Accommodation in Existing Built-up Areas*' of the Plan which details the criteria to be used in the assessment of proposals that involve the subdivision of an existing house curtilage and / or an appropriately zoned brownfield site to provide an additional dwelling.

- 7.2.3. The '*Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009*' similarly acknowledge the potential for infill development within established residential areas provided that a balance is struck between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character, and the need to provide residential infill.
- 7.2.4. The site is also located within walking distance of significant public transport infrastructure, such as DART and Dublin Bus services (with the Blackrock and Seapoint train stations located within c. 850m and 1,100m walking distance respectively), and is a comparatively short distance from Blackrock village centre as well as local schools, places of worship, employment opportunities, and other amenities such as Rockfield Park.
- 7.2.5. Therefore, having considered the available information, including the site context and land use zoning, and noting the infill nature of the site itself, I am satisfied that the overall principle of the proposed development is acceptable, subject to the consideration of all other relevant planning issues, including the impact, if any, of the proposal on the amenities of neighbouring properties and the overall character of the wider area.

7.3. Overall Design and Layout:

- 7.3.1. The proposed development involves the subdivision of the existing housing plot occupied by No. 60 Barclay Court and the construction of a three-storey, 3-bedroom dwelling house (floor area: 155m²) within the side yard / garden area of that property.
- 7.3.2. In support of the proposal, it has been suggested that the new dwelling house will form a vertical 'book-end' to the resulting terrace similar to that within Brookfield

Place to the south, while the contemporary design will provide for a greater variation in the streetscape and an improved sense of place given the rather formulaic composition of the wider housing estate. The grounds of appeal have sought to expand on the design rationale and have emphasised the site location at the end of the cul-de-sac adjoining Rockfield Park where the resulting context / setting, level of screening, and proportional relationship, allows for the assimilation of the proposal without detriment to the amenity of the surrounding area. It has also been asserted that the overall design methodology, including the three-storey height and the recessed positioning behind the established building line, serves to set the proposal apart from the pre-existing row of housing and represents an innovative solution to the provision of a compact infill dwelling on a restricted site.

7.3.3. While the Planning Authority has acknowledged the potential for the subject site to accommodate additional accommodation, it is not satisfied that the overall design, scale, height and massing of the proposal as submitted is appropriate. In this regard, the report of the case planner has raised particular concerns with respect to the projection of the second floor level above and beyond the roof of the existing house to the effect that the relationship between the two roof types will appear visually jarring within the established streetscape. It further notes that the construction will extend across the full width of the site and states that the overall massing / expanse of the three-storey gable elevation (combined with a lack of articulation and visual interest) will detract from the character of the surrounding area, particularly when viewed from within Rockfield Park. Although the Planning Authority has indicated that a contemporary design may be acceptable on site, it is considered that the submitted proposal fails to have sufficient regard to either the character of the site or its immediate surrounds and thus would be inconsistent with the established pattern of development.

7.3.4. Clearly, the contemporary design is at variance with the prevailing pattern of development, however, given the site context, including its location at the end of a small cul-de-sac bounded by an expanse of public parkland, I would have no overt objection to the aesthetics proposed provided the construction can be satisfactorily accommodated on site and takes due cognisance of its relationship with neighbouring properties, including the reasonable protection of the amenities and privacy of adjoining dwellings. In this regard, I would accept that the general height

and scale of the proposal will 'book-end' the existing row of housing and is of limited visibility from within the wider estate, however, I would have some reservations as regards the massing and expanse of the gable elevation facing onto Rockfield Park.

- 7.3.5. The difficulties with respect to developing an additional dwelling on this site derive from the narrow dimension of that area between the gable end of No. 60 Barclay Court and the eastern site boundary. In response to the constraints, the building footprint extends across the full width of the available space in order to maximise the internal room sizes / dimensions, however, this also serves to prohibit any side access to the gable elevation (including the first and second floor windows therein) from within the confines of the property (the provision of which is a factor in the assessment of proposals under Section 8.2.3.4: '*Additional Accommodation in Existing Built-up Areas: (v) Corner/Side Garden Sites*' of the Development Plan). Consequently, access for construction and routine maintenance purposes etc. will be required over lands outside of the applicant's control (the gable elevation of the proposed dwelling will also adjoin the riverbank of the Carysfort - Maretimo Stream which gives rise to additional complications). It is of further note that any construction along the site boundary will likely result in the considerable loss of existing screen planting thereby further heightening the visual impact of the proposed dwelling when viewed from within Rockfield Park.
- 7.3.6. In assessing proposals for infill development on corner / side garden sites, Section 8.2.3.4(v) of the Development Plan also references the need to consider private open space provision for the existing and proposed dwellings. Accordingly, I would refer the Board to Section 8.2.8.4: '*Private Open Space – Quantity*' of the Plan which states that all three-bedroom dwelling houses should be provided with a minimum of 60m² of private open space behind the front building line (with any open space to the side of dwellings only considered as part of the overall private open space calculation where it comprises useable, good quality space), although in instances where an innovative design response is proposed, a relaxation in the quantum of private open space may be considered on a case-by-case basis.
- 7.3.7. Given the restricted size and configuration of the application site, it is not possible to satisfy the minimum open space requirement for a three-bedroom dwelling house solely through the provision of a rear garden and, therefore, the subject proposal has sought to utilise a more innovative approach with the proposed dwelling to be

provided with a small enclosed garden area (25m²) in addition to first (20m²) and second (15m²) floor rear balconies, the combination of which will achieve the minimum quantitative standard of 60m² of private open space. However, the Planning Authority has raised concerns that this arrangement is deficient in both quantitative and qualitative terms with the report of the case planner referencing the dimensions (depth) of the individual spaces (with respect to separation distances) and the fact that the cantilevered nature of the two balconies will extend over the lower level spaces. It has been further stated that the proposed balconies and the associated screening measures will have a detrimental impact on the residential amenity of the adjacent dwelling house due to the extent to which they will project beyond the rear building line.

7.3.8. Although the proposed open space provision is somewhat unusual in the context of a dwelling house, it nevertheless satisfies the minimum quantitative requirements of the Development Plan. While I would acknowledge that the individual spaces are limited in size with only the ground & first floor areas accessible from communal living spaces (the second-floor balcony can only be accessed through a bedroom), I am satisfied that they can support a reasonable variety of uses. Furthermore, from a qualitative perspective I am cognisant that each of the spaces benefits from a south-facing orientation and will not directly overlook surrounding housing. Accordingly, I am amenable to the principle of the open space arrangement for the new dwelling house, although its impact, if any, on the residential amenity of neighbouring properties is assessed elsewhere in this report.

7.3.9. With respect to the existing dwelling house, this will retain a south-facing rear garden of c. 38m² (a minor increase over the existing arrangement arising from the demolition of a rear annex) which is considerably below the minimum standard for a three-bedroom house as set out in the Development Plan, however, the Planning Authority has sought to stress that the overall quantum of open space serving the property will remain largely unchanged and thus the site has the potential to accommodate a suitably scaled infill development. The applicant has also suggested that in assessing the open space provision for both the existing and proposed dwellings that consideration should be given to the 'private open space' within the front garden area and the communal open space available to residents within Rockfield Park.

- 7.3.10. I would not agree with the analysis of the Planning Authority as regards the existing and proposed open space provision serving No. 60 Barclay Court. In my opinion, that area to the side of the existing dwelling house behind the front building line would qualify as private open space as it is already screened in large part (or is capable of being screened further without detriment to the area) from public view as a result of the existing site boundaries and its recessed positioning at the end of the cul-de-sac. Indeed, I would suggest that the area to the side of the property was originally intended to function as private open space for No. 60 Barclay Court given the limited rear garden depth when compared to neighbouring properties. This side yard extends to approximately 40m² and when taken in combination with the rear garden area, it provides for c. 78m² of private open space to serve the existing dwelling house which would compare favourably with other housing in Barclay Court (further space would be available if the existing garage were not in place).
- 7.3.11. While I would acknowledge that the applicant is resident in the existing dwelling and that it is her choice to reduce / limit the amount of open space serving her property, and although cognisance should be taken of an individual's preferences as regards the particular use towards which the private open space associated with their home may be put (or whether they place a greater emphasis on the redevelopment of any such space as additional accommodation or for the provision of structures ancillary to the enjoyment of the dwelling house), in my opinion, there remains a need to ensure that the existing house continues to benefit from an adequate level of private open space. In this regard, the proposed development will result in a significant reduction in the open space for the existing dwelling and thus would have a significant adverse impact on the amenity of No. 60 Barclay Court.
- 7.3.12. In reference to the suggestion that the front garden area should be included in the calculation of private open space, I am not satisfied that this would accord with the definition of 'private' given its location to the front of the property. Similarly, it would not be appropriate to rely on the availability of communal amenity lands within Rockfield Park as a measure by which to compensate for private open space deficiencies in the proposed development.
- 7.3.13. Having considered the available information, including the amended design proposals provided in Appendices 3 & 4 of the grounds of appeal, in my opinion, an objective analysis of the subject proposal is that it amounts to an overdevelopment of

the site. Notwithstanding the actual size of the application site, its developable area is generally limited to that space between the existing dwelling and the eastern site boundary. Accordingly, in order to provide for a reasonable level of accommodation, it has been necessary for the new construction to span the full width of the available space thereby preventing any access to the side gable. In addition, the narrow dimension of the developable area, when taken in combination with the limited depth of the rear garden space, necessitates the tiered open space arrangement whilst the proposal as a whole compromises the private open space provision for the existing residence. On balance, I am inclined to conclude that the construction has been somewhat forced into the available space and amounts to an overdevelopment of a restricted site that would detract from the residential and visual amenity of property in the vicinity.

7.4. Impact on Residential Amenity:

- 7.4.1. In its decision to refuse permission the Planning Authority has concluded that the proposed development, owing to its overall scale, height and the extent to which it will project beyond the rear building line of the existing dwelling house, will be seriously injurious to the residential amenities of that property and those dwellings further west by reason of the likely overshadowing impacts and as the construction will appear visually overbearing when viewed from within the rear gardens of those properties.
- 7.4.2. In response, the grounds of appeal have sought to draw a comparison between the likely overshadowing and visual impacts of the proposed dwelling and those attributable to the construction of a two-storey extension to the rear of a dwelling house by way of exempted development. Reference has also been made to the orientation of the row of houses within which the application site is located, with their south-facing back gardens, to the effect that all of the properties concerned will continue to enjoy uncompromised sunlight from dawn to dusk. It has been further submitted that the accompanying shadow impact analysis demonstrates that the proposed development will have a minimal effect on the amenity of the rear gardens of neighbouring housing at any time of the day or year (amended design proposals reducing the rear projection of the new construction have also been included in Appendices 3 & 4 of the grounds of appeal in an effort to alleviate any concerns

arising, however, a complete set of plans & particulars for these revisions is not provided).

- 7.4.3. Having reviewed the available information, I am inclined to agree with the assessment of the Planning Authority as regards the potential impact of the proposed development on the residential amenity of the existing dwelling house on site. The full height of three-storey construction will extend to some extent beyond the rear building line of the original two-storey dwelling along the shared boundary with the flat-roofed design also contributing to the overall massing of the structure, however, it is the combined depth and height of the screening measures to the first and second floor balconies which adds considerably to the impact and uninterrupted elevational expanse of the proposal when viewed from neighbouring properties (as shown on Drg. No. 56 Rev. A). In addition, unlike an above ground floor extension developed by way of exempted development which is required to be set back at least 2 metres from the party boundary, the western elevation of the proposed dwelling will be set flush with the boundary shared with No. 60 Barclay Court thereby heightening its visually overbearing appearance and domineering impact. It is of further relevance to note the configuration of first floor balcony and its positioning whereby it will extend forward of Bedroom No. 1 (and the new window proposed to serve same) of the existing dwelling.
- 7.4.4. In my opinion, the visual impact arising from the overall height, expanse, and siting of the western elevation of the proposed construction will be unacceptably overbearing with viewed from neighbouring dwellings to the west of the application site and particularly so from within the adjacent property of No. 60 Barclay Court.
- 7.4.5. With respect to the issue of overshadowing, I would refer the Board to the 'Overshadowing Study' included in Appendix 2 of the grounds of appeal which provides a three-dimensional model of the shadow cast projections arising from the proposed development as lodged (referred to as 'Option 2' as distinct from the amended design proposals and shadow impact analyses contained in Appendices 3 & 4 of the appeal) for the hours of 10:00, 12:00 & 14:00 on 21st March, 21st June, 21st September & 21st December. While I would acknowledge the benefits of this exercise, it is regrettable that the report does not offer a more in-depth analysis of the predicted daylight, sunlight and overshadowing impacts with reference to accepted guidance i.e. BRE '*Site Layout Planning for Daylight and Sunlight - A guide*

to good practice' (2nd edition, 2011) and BS EN 17037: 2018: '*Daylight in Buildings*'. Furthermore, I would have reservations as regards the omission of the new dividing wall between the rear gardens of the existing and proposed dwellings given that it does not allow for a fair comparison between the pre- and post- development scenarios. It is also noted that although the modelling has accounted for the construction of the proposed dwelling house, it would not appear to have considered the new first floor bedroom window to be installed in the rear elevation of the existing house (as a replacement for the gable end window serving Bedroom No. 1) which is of relevance given that the window in question would appear to be within the shadow cast by the proposed dwelling up until 12:00 hours on all of the modelled days with the exception of 21st June. While it is possible that the levels of sunlight / daylight received by the replacement bedroom window will compare favourably with those of the existing gable end window, in the absence of further details I am not in a position to comment further on this issue.

- 7.4.6. From a review of the shadow projection modelling, the proposed development will result in increased overshadowing of the rear elevation of the existing dwelling house for much of the year during the early morning hours and up until approximately midday (at which point the southerly aspect ensures that the rear of the properties receive direct sunlight). In this respect, the principal impact will relate to the existing & proposed first floor windows serving the 'Store' and 'Bedroom 1' to the rear of the property, with particular reference to the new bedroom window given its proximity to the three-storey construction and the first floor balcony area. The extent of the projected overshadowing will also partially extend over the rear facade and garden area of No. 59 Barclay Court further west, although this impact is likely to be minor consequence given its limited scope and short duration.
- 7.4.7. On balance, I am generally satisfied that the impact of the proposed development in terms of overshadowing will not give rise to any significant concerns beyond the confines of the application site, however, I would suggest that further clarity is required as regards the potential impact on the amenity of No. 60 Barclay Court. While the southern aspect to the rear of that property will ensure that both the accommodation and garden area will benefit from direct sunlight after midday, it would be preferable for comparative purposes if the pre- and post- development scenarios were represented in full and analysed further in the overshadowing study

with reference to the need to consider the rear garden wall and the new first floor bedroom window (although the replacement bedroom window may benefit from comparable or improved levels of sunlight / daylight, this is not established in the study provided). Furthermore, given the quantitative deficiencies in the private open space to be retained by the existing dwelling house consequent on the proposed development, there is a greater onus on the need to consider the qualitative standards achieved within that space given the potential loss of amenity attributable to overshadowing.

- 7.4.8. Therefore, on the basis of the foregoing, I am not satisfied that it has been adequately demonstrated that the proposed development will not unduly impact on the residential amenity of No. 60 Barclay Court by reason of a loss of light / overshadowing.

7.5. Traffic Considerations:

- 7.5.1. The proposed development includes for the provision 4 No. car parking spaces in a grouped arrangement to the front of the application site (with access from the adjacent turning bay) which would satisfy the 'standard' parking requirement for both the existing and proposed dwellings in accordance with Table 8.2.3: '*Residential Land Use – Car Parking Standards*' of the Development Plan i.e. 2 No. spaces per 3-bed unit+.
- 7.5.2. Although the widened entrance arrangement to the communal parking will exceed the maximum generally permissible under Section 8.2.4.9: '*Vehicular Entrances and Hardstanding Areas (i) General Specifications*' of the Plan with respect to shared entrances serving 2 No. dwellings, it is notable that no objections have been raised to this aspect of the proposal by the Roads Authority. Furthermore, the report of the Transportation Planning Division has sought to ensure that the boundary treatment between the off-street parking and the adjacent pathway leading to / from Rockfield Park will optimise the visibility between vehicles exiting the parking and members of the public leaving Rockfield Park.
- 7.5.3. In my opinion, the proposed parking arrangement at the end of a small-cul-de-sac is acceptable in principle and the outstanding concerns of the Transportation Planning Division can be satisfactorily addressed by way of condition in the event of a grant of permission.

7.6. Flooding Implications:

- 7.6.1. From a review of the available information, it is apparent that consideration needs to be given to the potential flooding implications of the proposed development in light of its proximity to the Carysfort – Maretimo Stream which passes by the eastern site boundary. In this respect, I would advise the Board at the outset that whilst the National Flood Hazard Mapping available from the Office of Public Works does not record any flood events within or bounding the site itself, flooding has previously been recorded a short distance away (c. 250m downstream to the northeast and 280m upstream to the south) as a result of overtopping of the Carysfort – Maretimo Stream (with 2 No. residential properties & the basements of 3 No. offices at Barclay Road / Temple Road and 27 No. residential units & the Avondale Business Park having been impacted by flooding on 24th October, 2011). However, it should be noted that this mapping is not definitive and serves only as a useful tool in highlighting the potential for flood events in a particular area.
- 7.6.2. On examination of the most up-to-date flood mapping for the area prepared by the Office of Public Works as part of its CFRAM programme, it would appear that the application site (which includes the entirety of the housing plot occupied by No. 60 Barclay Court) is partially located within Flood Zone ‘B’ (where the probability of flooding is moderate) and is immediately proximate to Flood Zone ‘A’ (where the probability of flooding is highest) as defined by the *‘Planning System and Flood Risk Management, Guidelines for Planning Authorities’*. While this mapping also has limitations in terms of identifying flood risk in any given area, it broadly corresponds with the flood zones detailed in the Strategic Flood Risk Assessment included at Appendix 13 of the Dún Laoghaire Rathdown County Development Plan, 2016-2022.
- 7.6.3. At this point, I would draw the Board’s attention to the Site-Specific Flood Risk Assessment that has accompanied the planning application with a view to identifying and quantifying the risk of flooding associated with the proposed development. Within this report the consulting engineers have determined that the site of the proposed development is within Flood Zone ‘C’ and is subject to a ‘low probability’ of flooding i.e. where the probability is less than 0.1% or 1 in 1,000 for river flooding.
- 7.6.4. Although this conclusion is at variance with the flood zone identification shown in the previously referenced mapping, it derives from the estimated fluvial flood levels

contained in the Eastern CFRAMS with the node closest to the application site (Node Level Ref. No. 10610M00061) detailing fluvial flood levels of 1% AEP: 14.49mAOD and 0.1% AEP: 14.68mAOD immediately alongside the site. Accordingly, on the basis that existing ground levels on site are approximately c. 15.49mAOD, the case has been put forward that the proposed development site is outside the extent of the 0.1% AEP flood level and thus is within Flood Zone 'C' where the probability of flooding is low. It has also been submitted that as the proposed development will have a finished floor level of 15.48mAOD it will achieve a freeboard of 800mm over the estimated 1 in 1,000 year flood level. It has been further asserted that although a dwelling house is a 'highly vulnerable' class of development, it is appropriate within Flood Zone 'C' by reference to Table 3.2 of the *'Planning System and Flood Risk Management, Guidelines for Planning Authorities'* with no need to satisfy the 'Justification Test'. The FRA proceeds to confirm that the proposed development will be sited over the 1% AEP estimated flood level plus an allowance of 30% for climate change and that the estimated depth of flood levels along the service road to the site will not be sufficient to impede access by emergency vehicles.

7.6.5. In its assessment of the proposed development, the Drainage Planning, Municipal Services Dept. of the Planning Authority has raised concerns as regards the site location within or close to a flood zone and suggests that a number of issues require clarification with a view to establishing the impact of flooding on site for a 0.1% AEP event and the location of the development relative to flood zones. It proceeds to state that the available flood depth maps would suggest significant flooding of up to 1m through the site and that further details are required of the potential flood impact on site should floodwaters overtop the low level walls of the flood defences.

7.6.6. While I would acknowledge the contents of the Site-Specific Flood Risk Assessment undertaken on behalf of the applicant, I am inclined to agree with the Planning Authority that clarification is required as to the determination of the applicable flood zones in this instance. In particular, it would be necessary to provide a reasoned explanation as to why those more elevated lands further west within Barclay Court are shown to be within Flood Zone B (as identified in the CFRAM flood zone mapping and the Strategic Flood Risk Assessment appended to the County Development Plan) whereas the lower-lying development site proximate to the Carysfort - Maretimo Stream seemingly lies outside this designation.

7.7. Appropriate Assessment:

7.7.1. From a review of the available mapping, including the data maps from the website of the National Parks and Wildlife Service, it is apparent that while the proposed development site is not located within any Natura 2000 designation, there are a number of such sites within the wider area with the most proximate being the South Dublin Bay Special Area of Conservation (Site Code: 000210) and the South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024) approximately 500m to the north-northeast. In this respect it is of relevance to note that it is the policy of the Planning Authority, as set out in Chapter 4: '*Green County Strategy*' of the Dún Laoghaire Rathdown County Development Plan, 2016-2022, to ensure the protection of natural heritage and biodiversity, including European Sites that form part of the Natura 2000 network, in accordance with relevant EU Environmental Directives and applicable national legislation, policies, plans and guidelines.

7.7.2. In effect, it is apparent from the foregoing provisions that any development likely to have a serious adverse effect on a Natura 2000 site will not normally be permitted and that any development proposal in the vicinity of, or affecting in any way, the designated site should be accompanied by such sufficient information as to show how the proposal will impact on the designated site. Therefore, a proposed development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive. Accordingly, it is necessary to screen the subject proposal for the purposes of 'appropriate assessment'.

7.7.3. *Stage 1 Appropriate Assessment: Screening:*

In screening the subject proposal for the purposes of appropriate assessment, I would refer the Board at the outset to the '*Report for the Purposes of Appropriate Assessment Screening*' provided with the planning application. By way of summation, this states that the only Natura 2000 sites within the zone of influence of the proposed development are the South Dublin Bay Special Area of Conservation and the South Dublin Bay and River Tolka Estuary Special Protection Area, both approximately 500m north-northeast of the site. More specifically, following

consideration of the 'source-pathway-receptor' model, it acknowledges that there is a potential hydrological connection between the project site and those protected sites by way of surface water flow via the Carysfort – Maretimo Stream. The report proceeds to state that a 'worst-case scenario' could involve the proposed development giving rise to a significant pollution event in Dublin Bay (with an associated deterioration in water quality etc.) as a result of (1) the demolition of the existing shed on site and (2) the pouring of concrete for foundations. The former is considered unlikely to have any impact on the stream while the latter is to be contained within the confines of the site through best practice in order to avoid impacting on the adjacent watercourse. This screening thus concludes by stating that the proposed development, individually or in combination with other plans and projects, is not likely to have a significant effect on any European Sites and that a Stage 2 appropriate assessment (and the submission of a NIS) is not required.

7.7.4. However, within its screening of the proposed development for the purposes of appropriate assessment, the Planning Authority has determined that in light of the hydrological pathway between the works and the Natura 2000 sites (i.e. the South Dublin Bay SAC & the South Dublin Bay and River Tolka Estuary SPA) via the Carysfort – Maretimo Stream, the potential arises for contaminated site runoff generated during the construction and operational stages of the development to indirectly impact on the European Sites in the absence of suitable mitigation. Accordingly, it was recommended that any future planning application should be supported by a Natura Impact Statement.

7.7.5. Having considered the screening exercises undertaken by both the applicant and the Planning Authority, in accordance with the advice contained in the *'Appropriate Assessment of Plans and Projects in Ireland, Guidance for Planning Authorities'* published by the Department of Environment, Heritage and Local Government, I am satisfied that in the absence of any potential pathways for significant impacts between the proposed development and other Natura 2000 sites, only the following two such sites are within the zone of influence of the proposed development:

- The South Dublin Bay Special Area of Conservation (Site Code: 000210); and
- The South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024)

7.7.6. In terms of assessing the potential direct, indirect or secondary impacts of the proposed development on the conservation objectives of the aforementioned Natura 2000 sites, it should be noted that due to the location of the proposed works outside of any Natura 2000 designation, and the separation distances involved, it is clear that the subject proposal will not directly impact on the integrity of any European Site (such as by way of habitat loss or reduction). However, having reviewed the available information, in light of the nature and scale of the proposed development, the specifics of the site location relative to certain Natura 2000 sites, and having regard to the prevailing site topography, in my opinion, by employing the source / pathway / receptor model of risk assessment, it can be determined that specific consideration needs to be given to the likelihood for the proposed development to have an adverse effect on the conservation objectives of the South Dublin Bay SAC & the South Dublin Bay and River Tolka Estuary SPA on the basis that the proposed development site is situated upstream of those sites and immediately alongside the Carysfort – Maretimo Stream which flows towards same i.e. it will be necessary to consider the potential implications for downstream protected habitats & species within the aforementioned sites arising from any potential deterioration in water quality attributable to the proposed works given the hydrological connectivity between the project site and the European site.

7.7.7. Accordingly, the screening exercise for the purposes of appropriate assessment should be focused on the following:

European Site: The South Dublin Bay Special Area of Conservation (Site Code: 000210)

Distance & Direction: c. 500m north-northeast

Qualifying Interests: Mudflats and sandflats not covered by seawater at low tide [1140]

Annual vegetation of drift lines [1210]

Salicornia and other annuals colonising mud and sand [1310]

Embryonic shifting dunes [2110]

Conservation Objectives: To maintain the favourable conservation condition of Mudflats and sandflats not covered by seawater at low tide in South Dublin Bay SAC (as defined by a list of specified attributes and targets).

European Site: - The South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024)

Distance & Direction: c. 500m north-northeast

Qualifying Interests: Light-bellied Brent Goose (*Branta bernicla hrota*) [A046]
Oystercatcher (*Haematopus ostralegus*) [A130]
Ringed Plover (*Charadrius hiaticula*) [A137]
Grey Plover (*Pluvialis squatarola*) [A141]
Knot (*Calidris canutus*) [A143]
Sanderling (*Calidris alba*) [A144]
Dunlin (*Calidris alpina*) [A149]
Bar-tailed Godwit (*Limosa lapponica*) [A157]
Redshank (*Tringa totanus*) [A162]
Black-headed Gull (*Chroicocephalus ridibundus*) [A179]
Roseate Tern (*Sterna dougallii*) [A192]
Common Tern (*Sterna hirundo*) [A193]
Arctic Tern (*Sterna paradisaea*) [A194]
Wetland and Waterbirds [A999]

Conservation Objectives: To maintain the favourable conservation condition (as defined by a list of specified attributes and targets) of the species and habitats for which the SPA has been selected.

(Grey Plover is proposed for removal from the list of Special Conservation Interests and, therefore, a site-

specific conservation objective has not been set for this species).

7.7.8. Following consideration of the ‘source-pathway-receptor’ model, with particular reference to the potential for negative impacts on downstream water quality as a result of the release of cementitious materials, sediment / silt, or other contaminants to the Carysfort – Maretimo Stream during construction of the proposed development, it is my opinion that, in accordance with the precautionary principle, it is not possible to rule out the likelihood of the proposed development adversely impacting on a Natura 2000 site and that consideration needs to be given to the likelihood of the proposal to have an adverse effect on the conservation objectives of the South Dublin Bay SAC & the South Dublin Bay and River Tolka Estuary SPA.

7.7.9. At this point, and by way of clarity, I would advise the Board that within Sections 5 & 6 of the ‘*Report for the Purposes of Appropriate Assessment Screening*’ submitted with the planning application, the applicant has sought to rely on standard best practice construction to ensure that any pouring of concrete undertaken as part of the development will be contained within the site to avoid impacting on the adjacent stream. In my opinion, any such measure would seem to be purposively intended to mitigate against indirect impacts on water-dependent habitats & species within downstream Natura 2000 Sites caused by a deterioration in water quality attributable to the construction of the proposed development (such as by way of sedimentation, the accidental spillage of fuels / oils from equipment / machinery, or the release of other contaminants into the Carysfort – Maretimo Stream). In this regard, I would submit that to take account of the ‘best practice’ mitigation contained in the applicant’s screening would be contrary to the judgement of the European Court of Justice in the case of “*People over Wind*” (C-323/17- CJEU) wherein it was determined that it was not appropriate, in screening for Appropriate Assessment, to take account of mitigation measures or “*measures intended to avoid or reduce the harmful effects of a plan or project on a European site*” as to do so would be liable to undermine the protection afforded by the Habitats Directive and would run the risk of circumventing the requirements for Stage 2 Appropriate Assessment when a comprehensive analysis of such measures would be carried out and a determination reached as to their effectiveness (this legal position has been reiterated in more recent case law e.g. *Sweetman (IGP) -v- An Bord Pleanala & Ors [2020] IEHC 39*).

7.7.10. It is reasonable to conclude that the ‘best practice’ measures referenced in the applicant’s screening report are intended to avoid, or mitigate, likely adverse effects on the South Dublin Bay SAC & the South Dublin Bay and River Tolka Estuary SPA, attributable to a deterioration in water quality consequent on the proposed development. Therefore, on the basis that no account can be taken of any such mitigation measures, and by applying the ‘precautionary principle’, I would submit that the Board cannot be satisfied 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 Nos. 000210 & 004024, in view of the sites’ Conservation Objectives. Accordingly, it is reasonable to conclude on the basis of the information available, which I consider adequate in order to issue a screening determination, that the likelihood of the proposed development adversely affecting the aforementioned Natura 2000 sites cannot be objectively ruled out and therefore the subject works constitute development which necessitates Stage 2 Appropriate Assessment.

7.7.11. Stage 2: Appropriate Assessment:

In response to the screening undertaken by the Planning Authority, the grounds of appeal have been accompanied by a Natura Impact Statement which, in my opinion, adequately identifies the key characteristics of the potential impacts arising as a result of the proposed development that would be likely to undermine the stated conservation objectives of the designated sites i.e. the indirect impact on downstream water quality and certain protected species & habitats arising from the potential release of pollutants / contaminants to the Carysfort – Maretimo Stream during construction of the development.

(Revised public notices in respect of the Natura Impact Statement were received by the Board on 4th May, 2021 in response to a Section 132 Notice issued on 27th April, 2021).

7.7.12. The submitted NIS proceeds to state that the likelihood of impacts on hydrologically connected sites is extremely low with accidental spillages and the release of contaminated runoff to be avoided by adherence to a variety of best practice and site-specific construction management measures (incl. CIRIA Report C532: ‘Control of Water Pollution from Construction Sites’) that are to be incorporated into a Construction and Environmental Management Plan (CEMP). Section 3.6 of the NIS

proceeds to details those mitigation measures which will be incorporated into the CEMP as a minimum, including:

- All personnel to receive on-site induction relating to operations adjacent to the Carysfort – Maretimo Stream and the environmentally sensitive nature of the receiving downstream marine environment.
- The erection of a temporary silt fence along the upper exposed bank of the Carysfort – Maretimo Stream which will comprise a silt curtain to prevent surface water runoff to the watercourse. This will be retained in place for the duration of the construction works until soft landscaping of the buffer zone is implemented.
- The reporting of any incident / observation that may be considered as causing or likely to cause disturbance to be reported to the Local Authority which shall take immediate action to prevent or limit the impact.
- Assorted measures to prevent pollution of watercourses, including the appropriate storage & application of chemicals and a prohibition on the temporary storage of any excavated material adjacent to the stream.
- All refuelling, oiling and greasing to occur above drip trays or on an impermeable surface which provides protection to underground strata and watercourses and away from drains and adjacent watercourses as far as reasonably practicable.
- The siting of storage areas, machinery depots and site offices at least 10m from any watercourse.
- The disposal of raw / uncured waste concrete to be controlled to avoid impacting on the stream.
- Best practice in bulk-liquid concrete management addressing pouring and handling, secure shuttering / formwork, adequate curing times.
- The washing of lorries and mixers off-site.
- The appointment of an Ecological Clerk of Works to be present on site at the setting out stage of the silt fence construction (and to supervise the implementation of the required measures).

(The grounds of appeal have also been accompanied by a CEMP which references the minimum mitigation measures set out in the NIS)

- 7.7.13. The NIS has thus concluded that, subject to adherence to the mitigation measures specified, the possibility of any adverse effects on the integrity of the South Dublin Bay SAC & the South Dublin Bay and River Tolka Estuary SPA, or on any other European Site, having regard to their conservation objectives, arising from the proposed development, either on its own or in combination with other projects and plans, can be excluded beyond a reasonable doubt.
- 7.7.14. On balance, I would concur with the findings of the NIS and would accept that the implementation of best practice and adherence to the mitigation measures set out in the NIS will serve to avoid any impacts on ground and surface water quality thereby ensuring no significant adverse effects on the conservation objectives of the South Dublin Bay SAC & the South Dublin Bay and River Tolka Estuary SPA as a result of the proposed development. I am also satisfied that the proposed development, subject to suitable mitigation, would not be likely to give rise to any in-combination / cumulative impacts with other plans or projects which would adversely affect the integrity of any Natura 2000 site and would not undermine or conflict with the Conservation Objectives applicable to same.
- 7.7.15. Therefore, I consider it reasonable to conclude, on the basis of the information available, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, when taken individually and in combination with other plans or projects, will not adversely affect the integrity of the South Dublin Bay SAC & the South Dublin Bay and River Tolka Estuary SPA, or any other European site, in view of the sites' conservation objectives.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be refused for the proposed development for the reasons and considerations set out below:

9.0 Reasons and Considerations

1. The proposed development, by reason of its overall scale, height, massing and siting, would represent overdevelopment of a restricted site; would be contrary to the guidance set out in the Dún Laoghaire Rathdown County Development Plan, 2016-2022 under section 8.2.3.4(v) in relation to the development of corner / side garden sites with regard to its relationship with the existing dwelling, the absence of side gable access / maintenance space and deficiencies in the private open space provisions for the existing dwelling; would be visually obtrusive and overbearing when viewed from the rear garden of the existing house and adjoining property of No. 60 Barclay Court; and would result in a significant reduction in the private open space serving No. 60 Barclay Court. The Board is also not satisfied that the proposed development would not result in excessive overshadowing of the adjacent dwelling house and its rear garden area. The proposed development would, therefore, seriously injure the amenities of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.

Robert Speer
Planning Inspector

1st July, 2021