



An
Bord
Pleanála

Inspector's Report ABP-308308-20

Development

Demolition of two houses and construct 31 apartments in a three to four-storey building, two houses and a new vehicular access

Location

353 & 363 Blackhorse Avenue, Dublin 7

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

4237/19

Applicant(s)

Lark Finance Limited & SM
Blackhorse Limited

Type of Application

Permission

Planning Authority Decision

Grant

Type of Appeal

Third-Party

Appellant(s)

1. John Reilly; 2. Kevin Fitzsimons

Observer(s)

Navan Road Community Council

Date of Site Inspection

2nd February 2021

Inspector

Colm McLoughlin

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1.0 Site Location and Description

- 1.1. The appeal site is stated to measure 0.35ha and is located at the junction of Blackhorse Avenue (R806 regional road) and Villa Park Road opposite the Cabra Gate and Lodge entrance to Phoenix Park, on the north side of Dublin city. It currently accommodates two vacant detached houses and their associated outbuildings, situated amongst overgrown vegetation and mature trees. The boundaries of the site comprise walls of varying heights supplemented by railings and mature hedgerows along Blackhorse Avenue. It is served by a pedestrian gate onto Blackhorse Avenue, as well as gated-vehicular entrances onto the junction of Blackhorse Avenue and Villa Park Road and also onto the laneway along the northern boundary.
- 1.2. The surrounding area is primarily characterised by housing on the northeast side of Blackhorse Avenue and the expansive Phoenix Park on the southwest side of Blackhorse Avenue. Bounding the site to the north is no.2 Villa Park Road and a single-lane access road to a builder's yard, including various single-storey structures adjoining the northeast corner of the site. Housing in the area is primarily dominated by semi-detached and terraced two-storey houses of varying eras with front gardens opening onto the road network. Surveyed ground levels on site indicate approximately a 2m drop in levels from the northwest corner to the southeast corner.

2.0 Proposed Development

- 2.1. The proposed development would primarily comprise the following:
- demolition and removal of two detached houses and associated outbuildings, as well as site clearance works, including the removal of vegetation and all trees;
 - construction of a three to four-storey apartment block fronting onto Blackhorse Avenue, containing a total of 31 apartments, each served by balconies or terraces, with ground-floor cycle parking facilities, plant, waste management and circulation spaces, two communal gardens at third-floor level and photovoltaic panels at roof level;

- construction of two three-storey semi-detached houses to the rear (north) of the site with private rear gardens;
- provision of a vehicular entrance off Villa Park Road to a surface-level car park and pedestrian entrances off the junction of Blackhorse Avenue and Villa Park Road and off Blackhorse Avenue at the eastern site boundary;
- public lighting and landscaping works throughout, with communal open space comprising a seating areas and children's play area. Revised boundary treatments along the public road frontage, including open boundary to Villa Park Road and a low wall supplemented by a railing and hedgerow along Blackhorse Avenue;
- attenuation tank, green roofs and connections to all local services;
- 'Part V' social housing units (details of the specific units to be provided not submitted).

2.2. The following tables set out the key elements of the proposed development, as initially submitted to the planning authority:

Table 1. Stated Development Standards

Site Area	0.35ha
No. of apartments and houses	33
Total Gross Floor Area (GFA)	3,158sq.m
Gross Residential Density	94 units per ha.
Plot Ratio	0.9
Site Coverage	33%
Communal Open Space	370sq.m

Table 2. Unit Mix

	One-bedroom	Two-bedroom	Three-bedroom	Four-bedroom	Total
Apartment	11	20	-	-	31
Houses	-	-	-	2	2
Total	11	20	-	2	33

Table 3. Stated Building Heights

	Storeys	Height (OD)
Apartment	4	13.2
Houses	3	9.6

Table 4. Parking

Total car parking (including accessible spaces)	27 (3)
Cycle parking	68

2.3. In addition to the standard documentation and drawings, the planning application was accompanied by various technical reports and drawings, including the following:

- Planning Statement;
- Copy of Part V Validation Letter from Dublin City Council (DCC);
- Architectural Heritage Impact Assessment Report;
- Daylight, Sunlight, Overshadowing and Average Daylight Fraction Study;
- Arboricultural Tree Survey Report;
- Arboricultural Impact Assessment and Tree Root Protection Plan;
- Bat Assessment;
- Screening Report for Appropriate Assessment (AA);
- Design Rationale – Landscape Architecture;
- Photomontage booklet;
- Building Lifecycle Report;
- Housing Quality Assessment;
- Architect's Design Statement;
- Drainage Works Report;
- Flood Risk Assessment;
- Preliminary Construction Waste Management Plan;
- Residential Travel Plan;

- Traffic Statement;
- Archaeological Assessment;
- Landscape & Visual Impact Assessment;
- Public Lighting Design Report.

2.4. Following a request for further information, the pair of semi-detached houses were omitted from the proposed development, the building was setback further along Blackhorse Avenue and the proposed children's play area was repositioned to the rear of the site. A Traffic and Transport Assessment was submitted in response to a request to clarify the further information submitted.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The planning authority decided to grant permission for the proposed development, subject to 22 conditions, which are generally of a standard nature, while also including the following:

Condition 3(a) – a 2m footpath shall be provided along the roadside frontage;

Condition 3(b) – provision of a railing along the pedestrian route bordering car parking spaces 13 to 16;

Condition 4 – £4,000 contribution per unit in respect of the shortfall in the provision of public open space on site;

Condition 5(h) – retention of an historic lodge and associated boundaries;

Condition 16 – details of areas to be taken in charge.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Prior to recommending the submission of further information with respect to the proposed development (December 2019), the Planning Officer initially noted the following:

- the request of the Conservation section of the planning authority to maintain the lodge building on site are noted, however, the demolition of all buildings on site is considered acceptable with none of these identified as protected structures;
- setting the front building line back further along Blackhorse Avenue would be necessary particularly given the low-rise character of the area and the historical architectural features and structures to the southwest;
- consideration should be given to the revised positioning of the private amenity areas serving the proposed apartments;
- the north-facing aspect onto external deck access walkways would undermine the quality and use of 13 of the apartments;
- the omission of the roof-level communal space and additional screening along the northern boundary would further address the potential for overlooking of neighbouring properties;
- given the site context adjacent to Phoenix Park, the absence of public open space on site would be acceptable, while the attractiveness of the surface-level communal open space fronting Blackhorse Avenue would be undermined by traffic noise impacts;
- details of the proposed play area for children, any existing public surface water sewers on the site and the revised parking and access arrangements should be provided.

Following advertisement of significant further information with respect to the planning application, the Planning Officer's second report (June 2020) noted the following:

- the two houses to the rear are omitted from the revised proposals;
- the additional observations, including those of the Office of Public Works (OPW) that are stated to refer to comments from An Garda Síochána regarding Áras an Uachtaráin, are noted;
- the repositioning of the building further from the primary roadside is supported, but this has led to difficulties regarding the adequacy of space to provide suitable access to the rear;

- revised boundary treatments and planting proposals are required;
- additional screening and planting to the communal terraces has been proposed and the extent of lighting available to the open spaces would be acceptable;
- there may be scope for trees to the north of the site to be maintained as part of the revised proposals;
- minor deviation from the recommended internal lighting standards for the apartments, based on BRE guidance, would be acceptable given the sensitivity of the site context and the use of the mesh screen sections to the external walkways;
- proposals need to address the potential for conflict between vehicular movement and the use of the children's play area;
- diversion of piped infrastructure on site would not be necessary according to the submission from Irish Water;
- clarification of the further information submitted should be sought, as well as an opportunity to respond to the OPW submission regarding potential impacts on Phoenix Park, including Áras an Uachtaráin.

The Planning Officer's final report (September 2020) recommended a grant of planning permission and noted the following:

- the revisions to the layout, providing for the removal of conflict between vehicles and pedestrians accessing the play area, would reduce the number of on-site car parking spaces to 25;
- pits would be provided for the trees along the northern boundary;
- the revised boundary treatment, the planting of larger canopy trees along Blackhorse Avenue and the provision of over 100 new trees replacing the trees to be removed would be acceptable;
- the proposed development would not interfere with the structural stability of the boundary wall or the usability, security and safety of Phoenix Park.

3.2.2. Other Technical Reports

- Roads & Traffic Planning Division – initially requested further information and subsequently stated that conditions should be attached;
- Engineering Department (Drainage Division) – no objections raised, subject to conditions;
- City Archaeologist – attach a condition to include assessment and monitoring, as well as retention of the historic lodge and associated boundaries;
- Architectural Conservation Officer – requested further information;
- Parks & Landscape Services Division – recommend refusal of permission;
- Waste Management Division – conditions recommended.

3.3. Prescribed Bodies

- Department of Culture, Heritage and the Gaeltacht – no response;
- Irish Water – further information initially requested and subsequently a grant of permission was requested, subject to conditions.

3.4. Third-Party Observations

- 3.4.1. Numerous third-party observations were received during the consultation periods for the planning application, the majority of which were from local residents, while also including submissions from local representative groups, elected representatives and the OPW. The issues raised are similar to those raised in the grounds of appeal and they are collectively summarised in conjunction with the grounds of appeal below.

4.0 Planning History

4.1. Appeal Site

- 4.1.1. I am not aware of any other recent planning applications relating to the appeal site. It is stated that pre-planning discussions took place between representatives of the planning authority and the applicant in July 2019 under DCC reference PAC0309/19 regarding proposals for 34 apartments and two houses on the appeal site.

4.2. Surrounding Area

- 4.2.1. Recent planning applications in the immediate area are generally reflective of the residential urban character of this area, including those referenced by the planning authority. Recent applications for infill residential developments in the surrounding area, include the following:

'The Pallet Site', Blackhorse Avenue (located 270m to the southeast of the appeal site adjacent to Park Crescent House apartments)

- ABP-300456-18 (DCC ref. 2925/17) – permission was granted by An Bord Pleanála in July 2018 for the demolition of an outbuilding and the construction of a three-storey building containing eight apartments on this triangular plot. Condition 2 of the Board's decision required the omission of an intermediary floor, comprising three apartments, thereby only permitting a three-storey building, as opposed to the four-storey building that had been applied for;
- DCC ref. 2901/20 – permission was refused by the planning authority in August 2020 for the construction of a four-storey building containing 20 apartments due to the poor provision of communal open space, the substandard use of access space, poor internal space and the resultant traffic hazard due to the lack of on-site parking.

375 Blackhorse Avenue (located 40m to the northwest of the appeal site)

- ABP ref. PL29N.236504 (DCC ref. 3435/09) permission was refused by An Bord Pleanála in October 2010 for a three-storey building containing 15 apartments, due to the scale and layout of the building significantly forward of the building line with inadequate separation from the public road, which would constitute overdevelopment of the site and would be incongruous in the streetscape;
- DCC ref. 3603/14 – permission was granted by the planning authority in January 2015 for the construction of seven two-storey semi-detached and terraced houses (Nos.1-7 Martin Close), each with individual rear gardens and vehicular access off Blackhorse Avenue.

5.0 Policy & Context

5.1. Development Plan

- 5.1.1. The appeal site has a zoning objective 'Z1 - Sustainable Residential Neighbourhoods' within the Dublin City Development Plan 2016-2022, with a stated objective 'to protect, provide and improve residential amenities'. Cabra Gate Lodge and Cabra Gate directly opposite the site to the southwest are included within the record of protected structures attached to the Development Plan under the grouped reference 6772 and Phoenix Park is identified as a Conservation Area. The south eastern half of the site is within a zone of archaeological constraints for the recorded monument ref. DU018-021, which is identified as a former well site, while the zone of archaeological constraints for Phoenix Park (ref. DU018-007) follows the park boundary wall to the southwest of the site. A 'road scheme' is identified for the stretch of Blackhorse Avenue fronting the site.
- 5.1.2. Under Policy QH1 of the Development Plan, the planning authority will have regard to various Ministerial Guidelines, a number of which are listed in Section 5.2 below. Policy SC13 promotes sustainable densities with due consideration for surrounding residential amenities. The Plan includes a host of policies addressing and promoting apartment developments. The Building Research Establishment (BRE) document 'Site Layout Planning for Daylight and Sunlight - A Guide to Good Practice' (2011) is referenced in the Plan with respect to the consideration of aspect, natural lighting, ventilation and sunlight penetration for new apartments.
- 5.1.3. Section 16.7.2 of the Development Plan sets out building height limits, including a 16m restriction in the subject outer city area. Other relevant sections and policies of the Development Plan include the following:
- Section 4.5.3 - Making a More Compact Sustainable City;
 - Section 4.5.9 – Urban Form & Architecture;
 - Section 9.5.4 - Sustainable Urban Drainage Systems (SUDS);
 - Section 11.1.5.13 - Preservation of Zones of Archaeological Interest and Industrial Heritage;
 - Section 16.2 – Design, Principles & Standards;

- Section 16.10 - Standards for Residential Accommodation;
- Section 16.38 – Car Parking Standards (Zone 3 – maximum of 1.5 spaces per residential unit) & Cycle Parking Standards (minimum of one space per unit).
- Policy GIO14: (i) to seek the designation of Phoenix Park as Special Amenity Areas and to prepare Special Amenity Area Orders (SAAOs) for same.
(ii) To protect and conserve the historic landscape of the Phoenix Park and its archaeological, architectural and natural heritage whilst facilitating visitor access, education and interpretation, facilitating the sustainable use of the park's resources for recreation and other appropriate activities, encouraging research and maintaining its sense of peace and tranquillity.

5.2. Planning Guidelines

5.2.1. The following planning guidance and strategy documents are relevant:

- National Planning Framework (NPF) – the Government's high-level strategic plan for shaping the future growth and development of Ireland to the year 2040;
- Eastern and Midland Region Spatial and Economic Strategy (June 2019);
- Urban Development and Building Heights Guidelines for Planning Authorities (2018);
- Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (2018);
- Design Manual for Urban Roads and Streets (DTTaS and DoECLG, 2013);
- Architectural Heritage Protection Guidelines for Planning Authorities (2011);
- Phoenix Park Conservation Management Plan (OPW, 2011);
- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (including the associated Urban Design Manual) (2009);
- The Planning System and Flood Risk Management – Guidelines for Planning Authorities (OPW, 2009);
- Greater Dublin Regional Code of Practice for Drainage Works (Version 6.0).

5.3. Natural Heritage Designations

- 5.3.1. The nearest European sites, including Special Areas of Conservation (SAC) and Special Protection Areas (SPA), which could potentially be affected by the proposed development, comprise the following:

Table 5. Natural Heritage Designations

Site Code	Site Name	Distance	Direction
004024	South Dublin Bay and River Tolka Estuary SPA	5.7km	east
000210	South Dublin Bay SAC	7.4km	east
004006	North Bull Island SPA	8.8km	east
000206	North Dublin Bay SAC	8.8km	east

5.4. Environmental Impact Assessment - Preliminary Examination

- 5.4.1. Environmental Impact Assessment (EIA) is not mandatory for the proposed project having regard to the thresholds set within Schedule 5 of the Planning and Development Regulations 2001-2020. Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. Two third-party appeals opposing the decision of the planning authority were submitted, one of which was submitted on behalf of a group of local residents and the other was submitted by the residents of no.1 Villa Park Road, which is located on the opposite side of Villa Park Road to the appeal site. An oral hearing was requested, however, the Board considered the appeal could be adequately dealt with

through written procedures. In conjunction with the third-party observations, the issues raised in the grounds of appeal can be collectively summarised as follows:

Principles & Design

- proposals are contrary to zoning objectives and would have an unacceptable impact for the local community;
- proposals represent overdevelopment of the site with an excessive residential density;
- low-rise housing would be more suitable for the site following the development constructed at the neighbouring site of nos.1 to 7 Martin Close;
- while the revised proposals submitted during consideration of the application offered minimal improvements to the scheme, not all issues raised were adequately resolved, as highlighted by internal reports from sections of the planning authority and the observation from the OPW;
- the building would have an incongruous appearance and inappropriate form, materials, height and scale relative to the streetscape and the predominant two-storey housing of the area;
- proposals fail to follow the setbacks of the existing building lines;

Residential Amenities

- proposals would result in a loss of privacy, with potential for overlooking from the roof-level communal areas, from the rear deck access walkways and from the upper levels of the building, which would not be resolved by the proposed mitigation measures, including mesh screens and boundary planting;
- proposals would result in overshadowing and loss of sunlight for properties;
- the development would have an overbearing impact from neighbouring properties and the public realm;
- noise pollution would arise, particularly from the associated servicing equipment, as well as the use of external areas, including the roof-level communal areas;
- light pollution would overspill into the surrounding areas;

Residential Development Standards:

- an inappropriate unit mix has been proposed with an excess of one-bedroom apartments;
- proposals are non-compliant with the minimum standards for dual aspect apartments, as well as the levels of natural lighting required for internal areas;
- there would be an absence of public open space, as well as poor provision of private space, communal space and children's play areas;
- proposals are lacking in communal waste facility details and accessibility for persons with mobility needs;

Traffic, Access & Parking

- the proposed vehicular entrance would be onto a road network with restricted capacity and speed limits, as well as excessive traffic volumes and poor visibility, which would exacerbate traffic and road safety problems, including the safety of school children, pedestrians, cyclists and motorists;
- additional more realistic traffic and parking assessments are required, as well as safety audits, including the implications for increased traffic on Blackhorse Avenue arising from rerouting of BusConnects along Navan Road;
- a shortfall in resident, visitor and accessible car parking relative to standards would arise, within an area with no availability to accommodate any additional on-street parking and a significant walking distance from Luas services and various other public transport options;
- proposals are also lacking in details regarding construction phase traffic management and emergency vehicle access;
- a pedestrian crossing to Blackhorse Avenue is required and this has been requested by local residents to be installed at the Phoenix Park Cabra gate junction;

Local Planning Precedent

- under ABP ref. PL29N.236504 An Bord Pleanála refused planning permission in 2010 for a three to four-storey building at the neighbouring site located at 375 Blackhorse Avenue;

- under the permission granted in 2018 (ABP ref. 300456/17) An Bord Pleanála required the omission of a floor to only allow for a three-storey apartment building to the southeast of the appeal site along Blackhorse Avenue (the Pallet site). The planning authority recently refused permission for a revised apartment development scheme on this neighbouring site (DCC ref. 2901/20);

Phoenix Park

- Phoenix Park is included in the record of monuments and places (RMP) and is protected under the National Monuments Act;
- proposals present implications and risks for the security, privacy and safety of Áras an Uachtaráin, with concerns raised regarding the adequacy of relying on the applicant's submitted imagery from a drone survey;
- impact on the architectural heritage, character, landscape and setting of Phoenix Park, including walls, internal space, gates and trees, as well as features such as the zoo and 'Poor Man's Well';
- would result in visual blight on the historical integrity of the park due to limited and seasonal tree cover in the immediate park area, as well as the proximity, scale and lighting of the proposed development;
- potential impacts on the structural stability of protected boundary walls;

Environment

- unacceptable loss of trees to the environment, which would not be addressed via replanting and any replacement trees should be carefully selected, including the use of semi-mature trees;
- proposals would result in a loss of biodiversity and habitat, including space used by badgers and a feeding area for three identified bat species, while additional bat surveys are required;
- the appeal site is at risk of flooding and the proposed development could also lead to an increased risk of flooding elsewhere, including via stormwater surge;
- potential for vermin infestation arising from site clearance works;
- additional measures to facilitate increased landscaping are required;

- an EIA would be necessary for the project;
- failure to refer to underground watercourses on site and adjacent to the site, including within the Screening Report for AA;

Other Matters

- fire water storage details are required and the proposals do not comply with Building Regulations by failing to provide Part M compliant lifts to serve all floors;
- there has been a lack of consultation with neighbouring residents;
- insufficient, misleading and inaccurate information has been provided with the planning application;
- proposals would result in the loss of a building of significant architectural heritage via demolition of the 19th-century lodge house (363 Blackhorse Avenue) and this building should be maintained as part of the redevelopment;
- proposals would impact on environmental services, including water mains pressure, wastewater capacity and SUDS;
- there is a need for cabling infrastructure details to be provided and permission for blepper bikes, go cars and a crèche have not been addressed;
- the impact on rights to light and the structural integrity of neighbouring structures needs to be considered;
- the health and safety risks need to be considered, as do the implications of the Covid-19 restrictions on such developments.

6.2. Applicant's Response

The applicant's response to the grounds of appeal can be summarised as follows:

Principles & Design

- the omission of the pair of semi-detached houses allowed for the apartment building to be setback further on site, in order to increase separation from Phoenix Park and create a strong urban edge and improved setting for the development along Blackhorse Avenue and Villa Park Road;

- a high-quality scheme is proposed with quality and robust materials and southerly aspect for apartments towards Phoenix Park;
- densification of the site is in line with various local planning provisions and national guidelines, and reference to previous refusals of planning permission dating from 2007 and 2010 are irrelevant based on the current planning provisions and the pent-up demand for housing;
- the height of the development is justified, as it would facilitate more compact urban growth and is in line with the Urban Development and Building Heights Guidelines for Planning Authorities, while avoiding undue overlooking of neighbouring properties;
- the visual impact assessment of the development when viewed alongside the Cabra Gate and Lodge concludes that the development would not be uncharacteristic for a suburban landscape such as this, while being respectful of its surroundings, including Phoenix Park and its associated features;
- the demolition of the buildings on site would have no impact on the architectural heritage of the area and the proposed development would have no physical impact on local architectural heritage features;
- the planning authority's recent reasons for refusal of permission under DCC ref. 2901/20 for a four-storey apartment building on the 'Pallet site' to the southeast did not refer to building heights;

Residential Amenities

- a stepped building height arrangement has been proposed to address neighbouring amenities;
- additional site boundary screening and screened setbacks for the communal roof terraces have been proposed to address neighbouring residential amenities. The roof-level communal terraces can be omitted, if necessary, given that there would be ample ground-level communal space;
- the proposed public lighting would not result in adverse impacts on neighbouring residents via overspill or light pollution;

- Villa Park Road housing would benefit from additional natural lighting consequent to the proposed removal of trees from the site and the proposed development would not impact on the extended property at no.2 Villa Park Road;
- the building primarily looks towards Phoenix Park and Blackhorse Avenue and avoids direct overlooking or excessive overshadowing of neighbouring residential properties;
- this modest scale residential development, including associated play area for children would not generate excessive noise, particularly when compared with the surrounding established residential context;
- the proposed boundary treatments and passive surveillance of external areas from the apartments would help to maintain the security of neighbouring properties;
- precedent for use of deck access walkways is provided for via Board decisions for Monkstown Grove (ABP ref. 307439-20) and Verville, Clontarf (ABP ref. 302344-18);
- given the discretion provided for in the New Apartment Guidelines with regard to small-scale infill developments and the difficulties in strictly meeting all quantitative development standards, the shortfall of average daylight factor to some internal areas of the proposed apartments would be admissible;

Access, Traffic & Parking

- detailed analysis and audits accounting for the condition and capacity of the immediate road network, as well as the DMURS have informed the project design;
- the traffic assessments are based on surveys at an optimum time of the year, which concluded that the proposed access arrangements would adequately accommodate the anticipated levels of traffic, while avoiding adverse impacts on the junctions modelled;
- the Roads and Transport Planning Division of the planning authority was satisfied with the assessments and audits undertaken and ultimately the proposed approach in providing access and parking for the development;

- proposals encourage a modal shift, given the context relative to public transport options and the city centre, the surplus provision of cycle parking spaces, the introduction of a car club facility, the submission of a car parking management plan and as the parking would be within the maximum parking standards of the Development Plan;

Other Matters

- no evidence of an underground stream on site has been presented to substantiate these claims;
- sufficient evidence to support the necessity or otherwise to maintain the existing buildings on site has not been provided;
- condition 5(h) requiring the retention of an historic lodge and associated boundaries should be omitted, as it appears to have been attached erroneously;
- the appellants have not brought any new evidence forward regarding the security and safety of Áras an Uachtaráin and any potential risks to the Áras have been previously addressed within the response to the further information request.

6.3. Observations

- 6.3.1. An observation from a local residents' representative group was submitted in response to the grounds of appeal. The observations largely reaffirm and expand on issues raised within the third-party observations to the planning authority and also within the grounds of appeal, as collectively summarised above.

6.4. Planning Authority Response

- 6.4.1. The planning authority did not respond to the grounds of appeal.

6.5. Further Submissions

- 6.5.1. Following consultation by An Bord Pleanála with An Taisce, the Department of Culture, Heritage and the Gaeltacht and The Heritage Council, no submissions were received from these bodies.

7.0 Assessment

7.1. Introduction

7.1.1. The subject proposed development initially comprised a total of 31 apartments and two semi-detached houses to the rear of the site. In response to a request for further information from the planning authority, the applicant clarified certain matters relating to the development, while amending the proposed development. These amendments resulted in the omission of the two houses, as well as a revised positioning for the apartment block, on average approximately 3m further back from Blackhorse Avenue. The decision to grant planning permission issued by the Planning Authority included a condition (3) requiring minor alterations primarily addressing pedestrian movement. The applicant has not contested the amendments to the scheme and I am satisfied that there is merit in the amendments, particularly with regard to urban design matters. Accordingly, it is the revised proposals submitted in response to the clarification of further information that I consider as part of my assessments below. Notwithstanding the alterations and the conditions of the planning authority decision, the grounds of appeal assert that the proposed development would be inappropriate for the site and numerous observations assert that a lower density and scale of housing akin to that constructed at nos.1 to 7 Martin Close would be more suitable in redeveloping the site.

7.1.2. I consider the substantive issues arising from the grounds of appeal and in the assessment of the appeal, relate to the following:

- Site Clearance;
- Zoning & Density;
- Layout, Height, Scale, Design & Amenities;
- Apartment Standards;
- Impact on Residential Amenities;
- Access, Parking & Traffic;
- Drainage;
- Other Matters.

7.2. Site Clearance

7.2.1. Condition 5(h) of the planning authority decision requires the retention of an historic lodge and associated boundaries on site, which appears to have been attached based on the commentary from the city archaeologist's report. The maintaining of this lodge is also supported within the grounds of appeal and in response the applicant has contested this condition, which would require a complete redesign of the entire development and would effectively nullify the permission. A preliminary construction waste management plan has been submitted addressing the means of removing these buildings. The city archaeologist's commentary states that within the applicant's archaeological assessment, the importance of the lodge on the southern boundary has not been discussed and that this building was depicted on the first edition Ordnance Survey (OS) maps dating from 1843 and is likely to have been associated with the neighbouring Cabra Gate and Lodge complex. As part of the planning application, the applicant submitted an Architectural Heritage Impact Assessment, which does refer to the structures on site, including the subject lodge (no.363 Blackhorse Avenue) situated on the southwest corner of the site. This assessment asserts that the 'lodge' dates from the 1910 to 1930 period based on its features and available mapping. The conservation section of the planning authority clarified that this lodge structure and other structures on site are not protected structures, while also stating that the lodge should not be demolished given its positive contribution to the surrounding historic context. This lodge is now falling into disrepair and given the lack of conservation status associated with it, I am satisfied that the principle of demolishing the lodge and other structures on site would be acceptable based on the information provided, the assessments undertaken and the general appearance of the structure within the urban setting. Furthermore, a condition to maintain buildings on site would be unreasonable and would not be warranted in this case.

7.2.2. The southeastern section of the site is within a 'Zone of Archaeological Interest', as identified in the Development Plan, and a zone of notification for the recorded monument and place (RMP) ref. DU018-021, which is a former well site. The Department of Culture, Heritage and the Gaeltacht did not respond during consultation and the City Archaeologist recommends that an archaeological condition be attached, including monitoring and recording of any archaeological

material identified in the course of the development and I am satisfied that a condition to require same would be warranted. The proposed development would be a sufficient distance across a roadway from the boundary walls to Phoenix Park conservation area, not to directly interfere with the structural stability of the park walls.

- 7.2.3. Residents have highlighted concerns regarding the loss of mature trees and vegetation within the site. Following a tree survey, all 49 trees on site were identified for removal, including five grade B trees of moderate quality with an estimated remaining life expectancy of at least 20 years and various other mature trees of lesser quality. The arboricultural impact assessment submitted by the applicant asserts that the removal of 41 trees is required to facilitate the development and that eight trees would be removed for sound arboricultural management given their likely short lifespan. The assessment states that the trees mainly consist of naturalised scrub trees that are in poor condition. Revised proposals with respect to tree protection were not submitted during revisions to the scheme, however, the revised proposals would be unlikely to sufficiently improve scope for the trees most worthy of protecting (Grade B) to remain on site as part of the development. According to the revised design rationale for landscape architecture submitted by the applicant, over 100 trees are proposed to be planted throughout the site as part of the proposed development, including semi-mature species with associated pits. I am not aware of any tree preservation orders with respect to the subject trees and I am satisfied that given the stated condition of the trees on site and subject to the stated proposed provision of replacement tree planting, a sustainable approach to redeveloping the site has been set out in this regard.

7.3. Zoning & Density

- 7.3.1. The entire site has a zoning objective 'Z1 – Sustainable Residential Neighbourhoods' within the Dublin City Development Plan 2016-2022, with a stated objective 'to protect, provide and improve residential amenities', where residential use is a permissible use. Accordingly, the provision of 31 apartments replacing two vacant houses accords with the land-use zoning objectives pertaining to the site and policy QH23 of the Development Plan, which discourages demolition of houses unless providing for increased units on site, as well as other improvements.

7.3.2. Given the existing pattern of development in the immediate vicinity and the existence of two former houses on the site, the appeal site is considered to constitute an infill brownfield site. The proposal providing for 31 apartments on a site with a stated area of 0.35ha would equate to a residential density of 88 units per hectare. The immediate area is dominated by low-rise housing on the northeast side of Blackhorse Avenue, with the nearest apartment development of similar densities to that proposed situated approximately 120m to the southeast at Park Crescent House. There is no upper limit for residential densities set within the Development Plan and I consider that the proposed density would be reasonable having regard to the site's location 500m walk from Navan Road, which is a route frequently served by public buses, including those connecting with the city centre. Furthermore, the National Planning Framework for Ireland has as one of its central tenets a requirement to build at more sustainable densities particularly on sites such as this within existing urban areas, where services and facilities already exist.

7.3.3. Notwithstanding this, and as per the relevant Guidelines for Sustainable Residential Development and Policies QH7, QH8 and SC13 of the Development Plan, the acceptability or otherwise of the proposed development requires the proposals to respect and integrate with the surrounding character and to have due consideration for the protection of surrounding residents, households and communities in providing for replacement and increased residential development, which I will address in Section 7.6 below. Proposals also need to provide an appropriate level of amenity for future occupants, and I propose to address such matters in Section 7.5 below.

7.4. Layout, Height, Scale, Design & Amenities

7.4.1. The layout for the proposed apartment development would appear to be largely dictated by the desire to harness south-facing views towards Phoenix Park, the need to avoid excessive overlooking of residential properties to the rear, the provision of a vehicular access off Villa Park Road and the need to suitably address the building line and features of architectural heritage along Blackhorse Avenue. While a gated pedestrian entrance is proposed along Blackhorse Avenue, the development would feature an open boundary along Villa Park Road.

7.4.2. Section 16.2.1 of the Development Plan addressing 'Design Principles', seeks to ensure that development responds to the established character of an area, including

building lines and the public realm. The building line along the immediate stretch of Blackhorse Avenue to the southeast is relatively well defined, and the proposed building footprint would be stepped forward from a position initially setback behind the established building line to the southeast. The proposed building footprint would be marginally forward (c.1.6m) of the building line along the east side of Villa Park Road to the north. The building would also be setback 3m to 4m from the eastern boundary with no.351 Blackhorse Avenue to allow for a pedestrian route around the building. The revisions to the layout for the proposed development, including the increased setbacks for the apartment building along Blackhorse Avenue of between 8m and 16m, would provide a more appropriate response relative to the building line along Blackhorse Avenue. I am satisfied that the proposed layout has successfully responded to the site context and represents a sufficiently high standard of urban design, in accordance with the principles set out in the Development Plan, the Urban Design Manual and the National Planning Framework.

- 7.4.3. The grounds of appeal assert that the height of the proposed buildings would be contrary to planning policy and would be out of character with the surrounding low-rise setting, as well as permitted developments within the area. The Development Plan sets out that the maximum building height allowable would be 16m in this area, excluding plant, flues and lift overruns. The Urban Development and Building Heights Guidelines for Planning Authorities (2018) provide guidance relating to building heights for apartment buildings. According to these Guidelines, building-up urban infill sites is required to meet the needs of a growing population and 'increased building height is a significant component in making optimal use of the capacity of sites in urban areas'. Section 3.1 of these Guidelines outlines that it is Government policy that building heights must be generally increased in appropriate urban locations.
- 7.4.4. The proposed building would feature three to four-storey elements with a stated maximum height of 13.2m and with the lower three-storey elements closest to the eastern and western side boundaries. Site section 2-2 on drawing no.XX300 Revision 01 illustrates a slightly taller building of 13.75m when measured from the immediate ground level and with a lift overrun (0.47m) extending the height to 14.22m. The surrounding area is dominated by buildings of two-storeys or lower, including the Cabra Gate Lodge, which, alongside the Cabra Gate to Phoenix Park,

is included in the record of protected structures (RPS ref. 6772). Contiguous elevation drawings submitted with the application illustrate the existing and proposed variations in building height along Blackhorse Avenue and Villa Park Road, as well as North Road within Phoenix Park (see drawing no.XX400 Revision 02). I am satisfied that the stepped building arrangement, the separation distances between the proposed building and existing housing and other neighbouring structures, including protected structures and other architectural features of the Phoenix Park conservation area, would be sufficient to ensure that there would not be an abrupt transition in building heights. Furthermore, given the minimum 18m setback and separation from the Phoenix Park across a roadway, the height, scale and layout of the proposed development would not detrimentally impact on the setting or character of this conservation area or its associated features of architectural or historical merit. I recognise that following an appeal in 2018 under ABP-300456-18 (DCC ref. 2925/17) a four-storey building containing 11 apartments, on a site located 270m to the southeast of the appeal site adjacent to the walls of Phoenix Park, was conditioned by the Board to be reduced in height to three storeys in the interests of the visual and residential amenities of neighbouring properties, which appears to have been in direct response to the three-storey complex of adjacent apartment buildings at Park Crescent House.

- 7.4.5. As part of the application a design statement and computer-generated images (CGIs) of the proposed development have been submitted by the applicant and I am satisfied that the images provide a reasonably accurate portrayal of the development, as initially proposed. External finishes to the elevations of the proposed buildings would be dominated by a light-toned brickwork, while comprising metal-framed windows and doors. Substantial use of bronze-colour metal is proposed throughout, including within the sections of mesh screen along the rear elevation to the external access corridors, the building entrance canopies and the fin railing features enclosing the balconies and providing screening to the upper-level roof terraces. Render finish is proposed for the inset rear walls to the external access corridors and for sections of the rear ground-floor elevation. The proposed scheme is of contemporary design with quality, durable and low maintenance materials and finishes. The building exhibits a consistency in design and external finish, with the most expansive elevation onto Blackhorse Avenue primarily broken

up by stepping and angling the building line and incorporating vertical differentiation in building heights. The roofs to the building would accommodate green roofs and photovoltaic panels, which would not be visible from street level. I am satisfied that with the attachment of conditions, sufficient care has been undertaken in the design and external appearance of the proposed apartment building. I am also satisfied that the apartment building avoids undue monotony and is acceptable in terms of design.

7.4.6. The appearance of the proposed development, as illustrated in the CGIs submitted, and the views of the proposed development would be very much limited to the immediate area, and would be set amongst the adjacent residential buildings. Policy GIO14 of the Development Plan seeks to protect and conserve the historic landscape of Phoenix Park. The OPW Phoenix Park Conservation Management Plan identifies the primary risks to the park, including the erosion of its unique value as a historic designed landscape. I recognise the comments received from the Parks & Landscape Services Division and the OPW requesting refusal of permission due to the asserted adverse impact of the development on Phoenix Park, as well as the grounds of appeal supporting such assertion. The planning authority did not consider that the proposals would be detrimental with the setting or character of Phoenix Park. Having reviewed the aforementioned management plan the appeal site would not appear to be situated at an identified significant view into or out of the park. Furthermore, while the trees proximate and along the park boundary are largely of the deciduous variety featuring seasonal cover, the depth of tree cover is nevertheless reasonably extensive and would provide for some screening of the proposed development. I also recognise the existence of a variety of other neighbouring buildings external to the park and of lower height to the proposed development, yet partially visible from within the park. Consequently, I am satisfied that the visual impact of the proposed development, would not substantially interfere with the historic landscape and the enjoyment of the special amenity of Phoenix Park. Furthermore, the proposed development would not interfere with the character and setting of neighbouring protected structures, including Cabra Lodge and Cabra Gate.

7.4.7. Consequent to the site constraints and the scale of the development, scope for providing extensive communal and public open space on site would be limited. With regard to the absence of public open space in the proposed development, the

planning authority and the applicant accept that payment of a contribution in lieu of the shortfall would be necessary and I am satisfied that this would be a reasonable solution given the site constraints and the immediate site context opposite Phoenix Park. The applicant states that a range of spaces would be allocated for communal open space, including a children's play area, a linear buffer along Blackhorse Avenue and two communal roof terraces. These spaces would be well in excess of the minimum space required to serve the development based on Development Plan standards (195sq.m), as well as the space required by the New Apartment Guidelines for a children's play area (85-100sq.m). A lighting assessment submitted with the application also confirmed that each of the communal spaces would receive sufficient natural lighting relative to the desired standards and a noise assessment was submitted to identify noise impacts on the open space provision, primarily to address noise from passing traffic along the Blackhorse Avenue frontage. During revisions of the proposed development, the communal open space provision was increased and various amendments undertaken to improve the privacy, noise levels and access to these spaces, including hedge planting to supplement the boundary along Blackhorse Avenue. With the amendments proposed each of the communal areas would provide a reasonable level of amenity for residents of the apartments. Communal facilities for future residents, comprising a waste collection area and two cycle stores, are also proposed at ground-floor level.

- 7.4.8. Considering the quality of architectural finishes and overall design, and notwithstanding limited views of the building from within Phoenix Park, I am satisfied that there is sufficient rationale to allow the proposed development based on the immediate urban context, as well as the principles set out in the aforementioned Ministerial Guidelines. In conclusion, the scale, height, appearance, design and layout of the proposed development would be appropriate for the area and the appearance of the site.

7.5. Apartment Standards

- 7.5.1. An unusual feature of the proposed development is the provision of an external decked walkways, featuring sections of a mesh screen along the rear elevation, providing access to the apartments at the upper floors of the apartment building. While this layout would to a degree directly inhibit the privacy and amenity of four

first and second-floor apartments consequent to persons passing the bedroom windows when accessing other apartments, I am satisfied that the arrangement would be acceptable given the positioning of all apartment main living areas generally facing south and the limited number of apartments that would be directly impacted. The New Apartment Guidelines require at least 33% of the units to be dual aspect. Six (19%) of the proposed apartments would feature uninhibited dual aspect, while 11 (35%) would feature secondary aspect onto the external decked walkways. An assessment of the levels of sunlight and skylight amenity predicted to be achievable for the proposed apartments was provided with the planning application and this concluded that using the worst-case scenario, 93% of the rooms tested would achieve average daylight factors above the BRE Guidelines. The assessment also considers the impact of the mesh screens on living areas, noting that the screens would be likely to restrict lighting to several of the rear bedrooms below the BRE Guidelines. In discussing aspect to apartments, the New Apartment Guidelines highlight that it is daylighting and orientation of living spaces that is the most important objective to achieve. Given the separation distances to neighbouring buildings and the orientation of the building, including the extensive provision of south aspect for the main living spaces and private amenity areas, I am satisfied that the proposed apartments would be provided by an appropriate and reasonable level of natural lighting relative to the applicable standards.

- 7.5.2. Proposals would provide for 11 one-bedroom apartments (35%), one two-bedroom three-person apartment (4%) and 19 two-bedroom four-person apartments (61%). I am satisfied that this mix would contribute to the overall residential mix of housing in the locality, which is dominated by larger forms of housing, and accords with the apartment mix provisions set out in the New Apartment Guidelines. Within the applicant's Housing Quality Assessment, a quantitative assessment against the relevant design standards has been provided for each of the proposed apartments. The minimum size of the apartments proposed at 47sq.m for a one-bedroom unit (45sq.m), 65sq.m for a two-bedroom three-person unit (63sq.m) and 74sq.m for a two-bedroom four-person unit, exceeds the respective guideline standards for these units (45sq.m, 63sq.m and 73sq.m). The internal design, layout, configuration and room sizes, including storage areas, for each of the apartments would accord with or

exceed the relevant standards. In addition, the 10% additional floor space required for residential schemes of between ten and 99 units would also be achieved.

- 7.5.3. Private amenity space, including balcony sizes, for each of the apartments would meet or exceed the minimum requirements. Floor to ceiling heights of 2.85m to 3.3m would be provided in the ground-floor apartments, in excess of the 2.7m minimum height requirement. The number of apartments per core would be well within the minimum requirements. In conclusion, I am satisfied that the proposed development would provide an attractive mix of apartments, meeting the relevant design standards and providing a suitable level of amenity for future residents.

7.6. Impact on Residential Amenities

- 7.6.1. Policy SC13 of the Development Plan promotes sustainable densities within developments with due consideration for surrounding residential amenities. The grounds of appeal raise concerns with respect to the potential impact of the development on the residential amenity of neighbouring properties, generally arising from the loss of privacy and excessive overshadowing. In response the applicant asserts that the proposed building primarily overlooks non-residential areas and excessive overshadowing of neighbouring residential properties would not arise.
- 7.6.2. No windows are proposed on the eastern end elevation of the apartment building facing the house and rear garden at no.351 Blackhorse Avenue. Windows are proposed along the western end elevation of the building, facing towards housing on the opposite side of Villa Park Road to the northwest. The potential for the proposed development to lead to excessive overlooking of these houses to the northwest would be limited by virtue of the separation distance from the proposed building to the front elevations of these houses (30m) and also given the existence of a roadway situated between the proposed development and these buildings. A similar situation would arise with regards to the potential for the development to lead to excessive overlooking of Cabra Gate Lodge to the south, which is understood to be in use as a residence. This neighbouring property would be separated from the proposed development by over 20m across Blackhorse Avenue and the boundary wall to Phoenix Park. I am satisfied that the proposed development would not lead to excessive overlooking of the neighbouring residential properties to the east, west and south. Residential properties closest to the appeal site and with the greatest

potential to be impacted by the proposed development are those at nos.2 and 4 Villa Park Road, directly to the north of the site. Given the orientation of nos.2 and 4 with rear elevations facing southeast, as well as the extension to the rear of no.2, the potential for excessive direct overlooking of internal areas to these houses from the proposed building would not arise. The rear garden to no.2 would be approximately 10m to 16m from the closest section of the proposed building, including the external rear walkways. The two communal roof terraces would be a minimum of 17m and 25m from the rear garden to no.2. To address the proximity of neighbouring properties to the north, including the potential for excessive overlooking of rear gardens, the applicant has proposed various measures to alleviate any potential impacts, including the use of a metal fin railing backed with a solid privacy screen to the communal roof terraces. Other measures include the use of tree pits, in order to provide an opportunity for semi-mature trees to form additional screening along the northern boundary with no.2, and sections of mesh screening to the external walkways. These walkways are not designed as areas where residents would congregate within the complex, and I am satisfied that based on the design of the building, the proposals would not result in excessive direct overlooking of properties to the rear of the site.

7.6.3. A shadow study was submitted with the application (appended to the Housing Quality Assessment) and this identified the extent of lighting to neighbouring properties. The applicant states that the proposed development would not result in additional shading of properties along Blackhorse Avenue. It is further highlighted that the gardens to houses would continue to receive sunlight greater than that required under BRE recommendations. The vertical sky component (VSC) arising from the proposals for neighbouring properties would also be within the BRE recommendations. Based on the information provided following detailed modelling, I am satisfied that the proposed development would not result in excessive overshadowing or loss of natural light to neighbouring residences, including those to the north of the apartment building.

7.6.4. Similar to the situation with regard to overlooking and overshadowing, residential properties with the greatest potential to be effected as a result of overbearing impacts, would be nos.2 and 4 Villa Park Road. I am satisfied that the orientation of these properties and the minimum separation distances from the proposed building

to these properties, as outlined above, would be sufficient to ensure that the proposed three to four-storey building would not be excessively overbearing where visible from these properties.

- 7.6.5. Objections to the proposed development have also been submitted with respect to the potential impacts arising from lighting and the additional noise emanating from the communal areas and service equipment. Baseline noise levels in the area are dominated by traffic noise according to the surveys undertaken and this would be likely to continue with or without the proposed development. While the existing houses on site are not in use, the proposed redevelopment of the site for increased residential use would not be likely to result in a substantive increase in noise levels in the neighbouring area. A public lighting plan showing the positioning of lighting columns was initially submitted with the planning application and condition 19 of the planning authority decision sought final lighting details to be provided in line with standard development requirements. The requirement for public lighting would not be extensive and the overall level of lighting would be typical for a residential development in an urban setting such as this, and would not lead to undue impacts on neighbouring amenities.
- 7.6.6. In conclusion, the proposed development would not result in excessive overshadowing or overlooking of neighbouring properties and would not have an excessively overbearing impact when viewed from neighbouring residential properties. Proposals would not reasonably lead to excessive levels of noise or light pollution for neighbouring properties. Accordingly, the proposed development would comply with Policy SC13 of the Development Plan and the proposed development should not be refused for reasons relating to impacts on neighbouring residential amenities.

7.7. Access, Parking & Traffic

- 7.7.1. The grounds of appeal assert that capacity to accommodate the additional traffic associated with the proposed development would not be available on the local roads network and that permission for the development would be to the detriment of the safety of pedestrians and other road users. Sufficient provision for car parking would not be provided with the development, which would result in excessive overspill parking in the surrounding area according to local residents. It is also asserted that

the development would not be readily accessible to public transport and other road upgrades are required to facilitate the development. The existing site can be accessed by vehicles from gate entrances onto the rear access lane and the junction of Blackhorse Avenue and Villa Park Road. These accesses would be omitted from the proposed development and a new vehicular access off Villa Park Road to surface level parking and service areas would be provided.

7.7.2. Following a request for further information, a Stage 1 Road Safety Audit accompanied the response and this highlighted a total of six minor items that are required to be addressed as part of the scheme, including the need for unobstructed visibility splays onto Villa Park Road. With the omission of a mature tree at the boundary, it is clear that unobstructed visibility would be achievable in line with DMURS at the proposed entrance based on drawing no.P131-S0 Revision P05. Following the submission of junction analysis for the Blackhorse Avenue and Villa Park Road intersection, as well as details of fire tender, refuse vehicle and access sightlines onto Villa Park Road, the Roads & Traffic Planning Division of the planning authority did not object to the proposed access arrangements for the development and I am satisfied that the proposed arrangements would not detrimentally impact on traffic safety or convenience. Minor and reasonable revisions, including the installation of a protective railing to several parking spaces and a slightly wider (2m) pedestrian path along Blackhorse Avenue have been requested via conditions attached to the planning authority decision.

7.7.3. Following revisions to the proposed development, the applicant states that a total of 25 car parking spaces are proposed to serve the apartments, including two accessible spaces, visitor parking spaces and a car club dedicated space. A car parking management plan accompanied the application as part of the Traffic and Transport Assessment, and this specified how the on-site spaces would be allocated, while also stating that 10% of spaces would feature electronic vehicle charging points and ducting would be provided for the remainder to accommodate future upgrades and demand. The planning authority requested that car parking spaces are leased to units rather than being allocated and the car parking management plan confirmed this approach would be followed. A total of 66 bicycle spaces are proposed at ground level, comprising 56 internal spaces and ten external visitor spaces. Following a request from the Roads & Traffic Planning Division of the

planning authority, the applicant submitted a revised Residential Travel Plan for the development as part of the Traffic and Transport Assessment. This Plan contained various objectives to encourage a modal shift, primarily including increased cycling, the use of public transport and the use of a car club space on site, which would be overseen by an assigned Travel Plan Coordinator.

7.7.4. I am satisfied that subject to a condition addressing parking management, similar to that requested by the Roads & Traffic Planning Division of the planning authority, the quantum of parking proposed would be appropriate relative to the accessible urban location of the site, with access to high frequency and numerous public bus routes along Navan Road, the proposals contained within the Residential Travel Plan and the applicable standards in the Development Plan, as referenced in Section 5.1.3 above. The Traffic and Transportation Assessment addressed the impact of the development on local traffic, based on traffic counts, existing public transport services in the area and the estimated vehicular trips arising from the development in project design years. While the proposed development would result in some additional trips along the surrounding road network and forecasts of a future development scenario and traffic patterns have been presented, having regard to the context, parking provision, development proposals and the information provided, including analysis of the existing and future performance of the Blackhorse Avenue and Villa Park Road junction, I am satisfied that the proposed development would not lead to any significant additional traffic congestion in the area. Inconvenience to road users during the construction phase of the project would only be for a temporary period and a construction management plan to include traffic management measures should be submitted in the event of a grant of planning permission to mitigate the traffic impacts during the construction phase of the project.

7.7.5. The appellants refer to the necessity for a pedestrian crossing to Blackhorse Avenue at the Phoenix Park Cabra gate junction. Based on the information provided, it would not appear necessary or reasonable for the proposed development to incorporate such a pedestrian crossing. I note that policy MTO43 of the Development aims to address safety issues at another neighbouring gate to the park (Ashtown) and a similar policy does not exist with regards to the Cabra gate.

- 7.7.6. In conclusion, subject to conditions, the proposed development would not result in traffic hazard or significant additional traffic or parking congestion in the area, and it would feature an appropriate provision of car and cycle parking.

7.8. Drainage

- 7.8.1. The grounds of appeal raise concerns regarding the capacity of local engineering services. The application was accompanied by a Proposed Drainage Works Report addressing site services, including foul sewers, surface water drainage, foul drainage and water supply. The applicant forwarded correspondence from Irish Water with respect to a pre-connection enquiry and this outlined that there is capacity to serve a similar size development to that proposed, subject to parameters, including the need to provide adequate fire storage capacity as part of the development, the determination of any existing service infrastructures on site and any subsequent diversions of same. Piped gravity surface and foul networks are proposed with connections to services running along Blackhorse Avenue. The site would feature an attenuation tank, lined pervious pavements and green roofs, and it is stated that outflow from the site would be restricted to 2.2 l/s, in line with the requirements of the Engineering Department of the planning authority. The Engineering Department also state that SUDS measures outlined in the applicant's Proposed Drainage Works Report should be implemented in full as part of the proposed development. Consultation with Irish Water following the submission of further information by the applicant, confirmed that diversion of a combined foul sewer on site would not be necessary and conditions were recommended in the event of a grant of planning permission. Objections to drainage and water supply proposals have not been raised by the planning authority or Irish Water. The planning authority's Engineering Department consider the applicant's proposals to be generally acceptable, subject to certain conditions regarding clarifications and agreements on matters of surface water management. In conclusion, I consider the proposed site services to be satisfactory, subject to appropriate conditions.
- 7.8.2. Reference to increased risk of flooding on site and within the surrounding area as a result of the proposed development have been raised in objections to the development. The applicant submitted a flood risk assessment report as part of the planning application and this identified that the site was at low risk of fluvial or pluvial

flooding and at no risk of coastal or ground water flooding based on the information available, including mapping and the results of infiltration studies provided with the applicant's Proposed Drainage Works Report. Following the approach set out within 'The Planning System and Flood Risk Management – Guidelines for Planning Authorities' the site is within an area of low probability for flooding and the proposed development is 'less vulnerable' and therefore appropriate for the site. I am satisfied that the development would be at low risk of flooding and that with the intended implementation of the stormwater run-off to approved run-off rates, it would not increase the risk of flooding to other lands.

7.9. Other Matters

Áras an Uachtaráin

- 7.9.1. The proposed apartment building would be approximately 420m northeast of Áras an Uachtaráin and the upper-level apartments and communal roof terraces would potentially have views in the direction of this official residence of the President of Ireland. The grounds of appeal assert that this would present risks for the security, privacy and safety of the President and those visiting Áras an Uachtaráin, while the OPW assert that their submission includes the observations of An Garda Síochána confirming this. To indicate the views that would potentially be available from the apartments, a drone survey with imagery was submitted as part of applicant's response to a clarification for further information request. While the imagery only shows the views available during a period of extensive tree foliage, it is clear that views towards the Áras would be restricted by an intervening 50m-deep belt of tree cover within Phoenix Park. Based on the information provided, it would appear that the proposed development would not lead to endangerment of the health or safety of persons occupying, attending or employed in Áras an Uachtaráin.

Bats

- 7.9.2. All Irish bats are protected under national (Wildlife Acts, 1976-2012) and EU legislation (under Annex IV of Habitats Directive, with Lesser Horseshoe Bat included under Annex II also). As part of the application documentation, a bat assessment was submitted identifying bat activity of very low levels on site, with no bats entering or exiting the buildings on site and three species of bats commuting

through the gardens. Concerns have been raised by parties regarding the extent of surveying undertaken in guiding this assessment. I also note that the assessment dating from 2019 advises additional surveys if the buildings on site are not demolished within a year. Notwithstanding this, should permission be granted for the proposed development, including the demolition of buildings and in the event that bat roosting is identified, an application must be made to the National Parks and Wildlife Service (NPWS) for a derogation licence.

Building Lifecycle and Management

- 7.9.3. As required within the New Apartment Guidelines, a building lifecycle report assessing the long-term running and maintenance costs and demonstrating the measures that have been considered by the applicant to manage and reduce costs for the benefit of residents, has been included with the planning application. While the measures and sinking fund details are lacking in specification for this development, prior to the sale or lease of individual units the developer would have to achieve compliance with the terms of the Multi-Unit Development Act 2011, inclusive of the establishment of a development specific Owners Management Company and a development specific sinking fund.

8.0 Appropriate Assessment

8.1 Stage 1 – Screening

- 8.1.1. A report screening for Appropriate Assessment (AA) was submitted with the planning application.

8.2 Relevant European Sites

- 8.2.1. The nearest European sites are listed in section 5.3 of this report and identified in the applicant's report screening for AA. Details of qualifying interests and special conservation interests for neighbouring European Sites are presented in table 6 below.

Table 6. Interest Features of Neighbouring European Sites

Site Name & Code	Qualifying Interest / Special Conservation Interest	Distance
South Dublin Bay and River Tolka Estuary SPA [004024]	Light-bellied Brent goose <i>Branta bernicla hrota</i> [A046] Oystercatcher <i>Haematopus ostralegus</i> [A130] Ringed plover <i>Charadrius hiaticula</i> [A137] Grey plover <i>Pluvialis squatarola</i> [A141] Knot <i>Calidris canutus</i> [A143] Sanderling <i>Calidris alba</i> [A149] Dunlin <i>Calidris alpina</i> [A149] Bar-tailed godwit <i>Limosa lapponica</i> [A157] Redshank <i>Tringa totanus</i> [A162] Black-headed gull <i>Chroicocephalus ridibundus</i> [A179] Roseate tern [A193] Arctic tern [A194] Wetland and waterbirds [A999]	5.7km
South Dublin Bay SAC [000210]	Mudflats and sandflats not covered by seawater at low tide [1140] Annual vegetation on driftlines [1210] Salicornia and other annuals colonising mud and sand [1310] Embryonic shifting dunes [2110]	7.4km
North Bull Island SPA [004006]	Light-bellied brent goose [A046] Shelduck <i>Tadorna</i> [A048] Teal <i>Anas crecca</i> [A054] Pintail <i>Anas acuta</i> [A054] Shoveler <i>Anas clypeata</i> [A056] Oystercatcher [A130] Golden plover <i>Pluvialis apricaria</i> [A140] Grey plover [A141] Knot [A143] Sanderling [A144] Dunlin [A149]	8.8km

	Black-tailed godwit <i>Limosa</i> [A156] Bar-tailed godwit [A157] Curlew <i>Numenius arquata</i> [A160] Redshank [A162] Turnstone <i>Arenaria totanus</i> [A169] Black-headed gull [A179] Wetland and waterbirds [A999]	
North Dublin Bay SAC [000206]	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] Atlantic salt meadows [1330] Mediterranean salt meadows [1410] Embryonic shifting dunes [2110] Shifting dunes along the shoreline with marram grass <i>Ammophila arenaria</i> (white dunes) [2120] Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130] Humid dune slacks [2190] Petalwort <i>Petalophragmium ralfsii</i> [1395]	8.8km

8.3. Receiving Environment

- 8.3.1. The subject urban site, as described in section 1 above, contains two former houses, associated outbuildings and hard-surfaced areas, as well as overgrown vegetation and a variety of trees and shrubs. Habitats identified on site as part of the applicant's AA Screening Report include buildings and artificial surfaces, amenity grassland and ornamental/non-native shrubs. The appeal site is within the catchment of the River Liffey, which is located approximately 2km to the south of the site. Surface water bodies have not been identified on the site. Within third-party submissions to the application, reference was made to underground water features possibly running through the site, but no substantive evidence of same was provided or was available, nor were such features noted as part of the application, including the trial holes for infiltration tests.

8.4. Test of Likely Significant Effects

- 8.4.1. The project is not directly connected to or necessary to the management of any European site. The proposed development is examined in relation to any possible interaction with European sites to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites.
- 8.4.2. Taking account of the characteristics of the proposed development in terms of its location and the scale of works both during construction and operational phases, the following issues are considered for examination in terms of implications for likely significant effects on European sites:
- impacts on water quality, for example via release of suspended solids, accidental spills or the release of contaminants from made ground during construction;
 - loss or disturbance of habitat/species, for example, use of the appeal site by qualifying species.

8.5. Potential Effects

- 8.5.1. The site is currently occupied by two vacant houses and outbuildings and contains no substantive features of ecological significance. Based on the source-pathway-receptor model, the nearest downstream pathway to designated sites from the appeal site is the River Liffey, flowing in an easterly direction into Dublin Bay.
- 8.5.2. Surface water from the site would be discharged at rates compliant with the Greater Dublin Regional Code of Practice for Drainage Works to the public surface water drainage system after passing through an attenuation tank and a flow-control hydrobrake. All foul water from the proposed development would be discharged via the public system to the Ringsend Waste Water Treatment Plant (WWTP). Permission has been granted (ABP-301798-18) for works that would increase the capacity of the plant from a population equivalent of 1.9 million to 2.4 million.
- 8.5.3. Having regard to the above, the urban context and the residential nature of the proposed development, I consider that the only potential pathways between the appeal site (source) and the European sites (receptors) would relate to drainage during construction and operation. Due to the nature of the application site and the

proposed development, there is no direct pathway to a European site, however there is a potential indirect pathway to coastal SACs and SPAs via surface and foul drainage networks and Ringsend WWTP.

8.5.4. With the exception of the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024), the South Dublin Bay SAC (Site Code: 000210), the North Bull Island SPA (Site Code: 004006) and the North Dublin Bay SAC (Site Code: 000206), I am satisfied that other European sites proximate to the appeal site can be 'screened out' on the basis that significant impacts on these European sites could be ruled out, either as a result of the separation distance from the appeal site, the extent of marine waters or given the absence of any direct hydrological or other pathway to the appeal site. The conservation objectives for the four above named coastal sites are appended to this report. The conservation objectives largely relate to water-dependent habitats and species, as listed in table 6 above, including coastal and inter-tidal habitats and migratory wintering birds.

8.5.5. There is theoretically an indirect hydrological pathway between the application site and the four named coastal sites via the public drainage system and the Ringsend WWTP, where wastewater from the proposed development would be treated. I am satisfied that the distances are such that any pollutants post treatment from the Ringsend WWTP would be minimal and would be diluted and dispersed and, therefore, there is no likelihood that pollutants arising from the proposed development, either during construction or operation, could reach the designated sites in sufficient concentrations to have any likely significant effects on the designated sites in view of their qualifying interests and conservation objectives.

8.6. In-combination impacts

8.6.1. Given my assessment above and findings of no significant effects from the proposed development, I am satisfied that likely significant in-combination impacts would not arise.

8.7. Stage 1 – Screening Conclusion

8.7.1. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed

development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024), South Dublin Bay SAC (Site Code: 000210), North Bull Island SPA (Site Code: 004006) and North Dublin Bay SAC (Site Code: 000206), or any other European sites, in light of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment and the submission of a Natura Impact Statement is not therefore required.

- 8.7.2. In reaching this conclusion, I took no account of mitigation measures intended to avoid or reduce the potentially harmful effects of the project on any European Sites.

9.0 Recommendation

- 9.1. I recommend that planning permission for the proposed development should be granted, subject to conditions, for the reasons and considerations set out below.

10.0 Reasons and Considerations

1. Having regard to the land-use zoning objectives for the site, as set out in the Dublin City Development Plan 2016-2022, to the nature, scale and design of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density in this urban location, would be acceptable in terms of layout, height, scale and design of the development, would provide a suitable level of amenity for future residents, would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and convenience, would be served by adequate parking and environmental services, would not endanger the health and safety of persons using neighbouring buildings and would comply with the provisions of the Dublin City Development Plan 2016-2022, the Urban Development and Building Heights Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in December 2018 and the Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in March 2018. The proposed development

would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 22nd day of April, 2020, and the 10th day of August, 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.

Reason: In the interest of clarity.

2. Details of the materials, colours and textures of all the external finishes to the proposed building shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. A panel of the proposed finishes shall be placed on site to enable the planning authority to adjudicate on the proposals.

Reason: In the interest of visual amenity.

3. Each apartment shall be used as a single dwelling unit only and shall not be sub-divided in any manner or used as two or more separate habitable units.

Reason: In the interests of sustainable development and proper planning.

4. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally-constituted management company. A management scheme providing adequate measures for the future maintenance of roads and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

5. The developer shall comply with all requirements of the planning authority in relation to roads, access, lighting and parking arrangements, including facilities for the recharging of electric vehicles. In particular:

- (a) the footpath along the site boundaries with Blackhorse Avenue and Villa Park Road shall be a minimum of 2m in width;**
- (b) a separation rail or similar shall be provided from the access to the children's play area along the pedestrian route bordering parking bays nos.13, 14, 15 and 16;**
- (c) all car parking spaces shall not be sold separately or let independently of the proposed development;**
- (d) prior to the occupation of the proposed development, a Mobility Management Strategy shall be submitted to the planning authority for written agreement. The strategy shall address the mobility requirements of future residents and shall promote the use of public transport, cycling and walking and the use of the car club space. A mobility manager shall be appointed to oversee and co-ordinate the roll out of the strategy;**
- (e) the Mobility Management Strategy shall incorporate a Car Parking Management Strategy for the overall development which shall address the management and assignment of car spaces to residents over time;**
- (f) the roads and traffic arrangements serving the site, including footpath connections and signage, shall be in accordance with the detailed requirements of the planning authority for such works and shall be carried out at the developer's expense;**
- (g) the roads layout at the vehicular entrance, parking areas, footpaths, kerbs, car parking bay sizes and road access to the development shall comply with the requirements of the Design Manual for Urban Roads and Streets and with any requirements of the planning authority for such road works;**
- (h) the materials used in any roads / footpaths provided by the developer shall comply with the detailed standards of the planning authority for such road works;**

- (i) each of the proposed parking spaces shall be provided with electric vehicle charging points. Details of how it is proposed to comply with these requirements, including details of design of, and signage for, the electrical charging points shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of traffic safety and in the interest of sustainable transportation.

6. The landscaping scheme shown on drawing no. Co.15-DR-201 Revision C, as submitted to the planning authority on the 22nd day of April, 2020, shall be carried out within the first planting season following substantial completion of the external construction works.

All planting shall be adequately protected from damage until established. Any plants that die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

7. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any apartment.

Reason: In the interest of public health and to ensure a satisfactory standard of development.

8. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

9. Prior to the commencement of the development, the developer shall enter into water and waste water connection agreements with Irish Water.

Reason: In the interest of public health.

10. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a satisfactory standard of development.

11. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall –

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
- (b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and
- (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

12. Proposals for a naming and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of the development. Thereafter, all signs, and apartment

numbers, shall be provided in 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.

Reason: In the interest of urban legibility and to ensure the use of locally appropriate place names for new residential areas.

13. 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.

Reason: To protect the residential amenity of property in the vicinity and the visual amenity of the area.

14. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of the development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, which shall be carried out in full, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of the environment and sustainable waste management.

15. The construction of the development shall be managed in accordance with a Construction & Environmental Management Plan, which shall be submitted to, and agreed in writing with the planning authority prior to commencement of

development. This plan shall provide, inter alia, details and location of the proposed construction compound(s), details of intended construction practice for the development, including hours of working, noise and dust management measures, measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network, details of arrangements for routes for construction traffic, parking during the construction phase and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

- 16.** Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

- 17.** Prior to commencement of the 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.

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.

- 18.** 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 of roads,

footpaths, watermains, drains, 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 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.

Reason: To ensure the satisfactory completion of the development.

19. 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.

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.

20. The developer shall pay to the planning authority a financial contribution in lieu of public open space 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.

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.



Colm McLoughlin
Planning Inspector

2nd February 2021

DECISION QUASHED