



An  
Bord  
Pleanála

## Inspector's Report

### ABP-308361-20

---

<b>Development</b>	Demolition of existing public house and construction of 3 no. commercial units and 40 no. apartments
<b>Location</b>	Former Páidí Ógs Public House, Junction of Church Road & Old Navan Road
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	FW19A/0189
<b>Applicant(s)</b>	Frank Gleeson
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Frank Gleeson
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	8 <sup>th</sup> of January 2021
<b>Inspector</b>	Angela Brereton

## Contents

1.0 Site Location and Description .....	4
2.0 Proposed Development .....	4
3.0 Planning Authority Decision .....	5
3.1. Decision .....	5
3.2. Planning Authority Reports .....	6
3.3. Other Technical Reports .....	12
3.4. Prescribed Bodies .....	13
3.5. Third Party Observations .....	14
4.0 Planning History.....	14
5.0 Policy Context.....	16
5.1. Fingal Development Plan 2017-2023 .....	16
5.2. Natural Heritage Designations .....	19
5.3. EIA Screening .....	19
6.0 The Appeal .....	20
6.1. Grounds of Appeal .....	20
6.2. Planning Authority Response .....	22
7.0 Assessment.....	22
7.1. Principle of Development and Planning Policy .....	22
7.2. Background.....	24
7.3. Density and Height.....	24
7.4. Design and Layout .....	26
7.5. Landscaping and Open Space .....	27
7.6. Impact on the Character and Amenities of the Area.....	29

7.7. Access and Parking ..... 30

7.8. Land Ownership ..... 32

7.9. Drainage ..... 33

7.10. Flood Risk..... 35

7.11. Screening - Stage 1 Appropriate Assessment ..... 43

8.0 Recommendation..... 49

9.0 Reasons and Considerations..... 49

## 1.0 Site Location and Description

- 1.1. The subject site which has a stated area of 0.496 hectares, comprises a derelict public house and car park and is centrally located within Mulhuddart, Dublin 15. The site is bounded by the river Tolka to the north, by the Old Navan Road to the south, to the east by Church Road. The former public house faces directly onto the public footpath along the Old Navan Road and is attached to a two storey building which includes a takeaway on ground floor to the west, beside the entrance to the carpark. The site comprises of both the former public house and a large car park accessed from the Old Navan Road, which extends to the rear of the neighbourhood at the northwest. There are a number of mature trees on either side of this access.
- 1.2. Mulhuddart centre includes a range and mix of uses ranging from retail to restaurant with buildings facing directly onto the public footpath/ Old Navan Road with heights between 3 and 4 storeys. River Medical is a 3/4 storey building to the west on the opposite side of the entrance to the carpark.
- 1.3. The Tolka River, along the northern boundary, forms part of the Tolka Valley, which provides amenity areas in the form of passive recreation. There is a flood defence wall along this boundary. On the opposite side of the river, some distance to the north, on a higher level, is a large residential area comprising of a range of house types with a four storey apartment building orientated along the Tolka River.
- 1.4. There are traffic lights to the east at the junction of Church Road and the Old Navan Road and further to the west on the Old Navan Road. On the day of the site visit the surface car park at the rear was not heavily parked, with the majority of the parking being close to the entrance and River Medical. It is noted that there is one centrally located access/egress to the car park area from the Old Navan Road. There is a set down parking area along the Old Navan Road in front of the site.

## 2.0 Proposed Development

- 2.1. This is to comprise the following, all on a site of 0.486sq.m at the former Paidi Óg Public House, Junction of Church Road and Old Navan Road, Mulhuddart, Dublin 15:
  - The demolition of the existing two storey public house premises;

- The construction of a new building consisting of 3 no. Commercial Units (2no. Retail Units, 1 no. Licenced Public House) and; –
- 40 no. Apartments, (4no studios, 14 no. 1 beds, 17 no. 2 beds and 5 no. 3 beds) all across lower ground to fourth floor, with associated 84no. surface car parking spaces, utilising the existing vehicular and pedestrian site access;
- All with associated landscaping, public open space at roof level, bin storage, bike storage signage and site works.

2.2. Documentation submitted with the application includes the following:

- Architects Design Statement and associated documents/drawings as prepared by CDP Architecture;
- 3D Visualisations as prepared by CDP Architecture;
- Engineering Report and associated documents/drawings as prepared by Molony Millar Consulting Engineers;
- G. Sexton & Partners Fire Consultants Report;
- R.M Breen Consulting Mechanical + Electrical Engineers Report;
- Legal Documentation as prepared by Clerkin Lynch Solicitors.

2.3. Existing and Proposed Plans have been submitted. These include a Site Layout Plan and drawings including floor plans, sections and elevations including contextual elevations. Infrastructural drawings have also been submitted.

### 3.0 **Planning Authority Decision**

#### 3.1. **Decision**

On the 10<sup>th</sup> of September 2020, Fingal County Council, refused permission for the proposed development for the following reason:

*The proposed development is in an area which is identified to be at risk of flooding, by reference to the Fingal County Development Plan 2017-2023 and the documentation submitted with the planning application. Based on the information submitted with the application, it is considered that there is an*

*unacceptable risk of flooding associated with the proposed development including concerns regarding the 100 year flood level, finished floor levels of the proposed development and flood event management. Taking account of the absence of adequate information relating to the risk of flooding associated with the proposed development, analysis of such risk, and appropriate mitigation measures to address any risk, the proposed development if permitted would be contrary to the Fingal County Development Plan 2017-2023 and the provisions of the Planning System and Flood Risk Management Guidelines issued to planning authorities under section 28 of the Planning and Development Act 2000, as amended, and would therefore be contrary to the proper planning and sustainable development of the area.*

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

#### **3.2.1. Planning Reports**

The Planner's Report had regard to the locational context of the site, planning history and policy and the inter-departmental reports. They noted that no submissions were made. Their Assessment included regard to the following:

- They have regard to the current proposal and the previous Board refusal on this site – Ref. ABP-303919 relates. They consider that a number of issues remain outstanding and request that additional information be submitted.

#### *Additional Information request*

This includes the following in summary:

#### *Flood Risk*

- They refer to the Tolka Flood Study (2003) and request that a full hydrology assessment on this section of the Tolka River be carried out to address concerns raised.
- Revisions to indicate the FFL's on revised floor plans and sections and to provide consistency.
- To submit a Flood Risk Management Plan with the updated hydrology assessment.

- They note that the response should comply with the requirements of the Planning System and Flood Risk Management Guidelines for Planning Authorities.

#### *Drainage*

- They note the concerns raised by Irish Water that a pumping station may be required to be installed on the application site to facilitate a gravity connection.
- They note that the positioning of such infrastructure must have regard to future access and maintenance, setbacks etc. Also, that implications for design and layout and any legal issues need to be addressed.
- Issues relative to Flood Risk and AA Screening need to be addressed.
- They advise that survey work is required, having regard to the location of sewers on the site. Also, that the location of structures or carrying out of works/diversion of existing infrastructure be to the requirements of Irish Water.
- A way leave in favour of Irish Water will be required over the infrastructure which is not located within a public area.

#### *Appropriate Assessment*

- They request that screening for AA be carried out by a suitably qualified person. This to have regard to the impact on Natura 2000 sites and to the location of the site in an area at risk of flooding and to the requirements of Irish Water with regard to connection to waste water infrastructure.

#### *Legal Issues*

- The Applicant is required to submit proposals and particulars demonstrating how the proposed scheme will comply with the legal agreement in place.

#### *Landscaping and Open Space*

- A comprehensive landscaping plan and a Tree Survey including an Arboricultural Method Statement in accordance with current standards to be submitted.

#### *Access and Parking*

They request revisions to the layout to include the following:

- A revised entrance layout to reduce the risk of pedestrian and vehicular conflict and provide pedestrian priority at the entrance.
- Revisions to the layout to provide for greater segregation of HGV manoeuvres within the carparking area.
- Revisions to the parking layout providing secure residential parking separate from the commercial parking and segregation from public parking is required.
- Regard to the access at the north western site boundary and to indicate if there are wayleaves over the site for this access.
- The quantum of cycle parking to be addressed in an integrated and innovated design solution.
- Adequacy of fire tender in terms of accessing the car parking area and the proposed building height.

#### *Residential Amenity*

- To address the PA's concerns regarding residential amenity, daylight/sunlight issues and balconies relative to some of the apartments, in particular unit nos. 2,3,4 and 5.
- Revised fenestration detailing ensuring floor to ceiling glazing and increasing window ope size to the eastern elevation, lower ground floor levels.
- Ground floor apartments should have a floor to ceiling height of 2.7m.
- The development would appear to contravene Objective DMS 32 (gated community) of the Fingal DP and it is requested this be addressed.

#### *Applicant's response*

CDP Architecture's response on behalf of the Applicants has regard to the A.I requested and includes the following:

#### *Flood Risk*

- A response regarding Flood Risk issues as prepared by JBA Consulting.
- Revised drawings and finished floor levels as indicated on the revised drawings as prepared by CDP Architecture.



### *Drainage*

- They refer to the response to drainage issues raised including by Irish Water as prepared by Molony Millar Consulting Engineers.

### *Appropriate Assessment*

- They refer to the AA Screening as prepared by Enviroguide Consulting.

### *Legal Issues*

- They refer to the response and legal documentation as prepared by Clerkin Lynch Solicitors.

### *Landscaping and Open Space*

- They refer to the landscaping proposal as prepared by Landmark Designs Ltd.
- They note the drawings and Report as prepared by The Tree File Limited. Regard is also had to the CDP Architecture drawings which show the removal of 3no. trees as indicated on the revised Existing Site Plan/Block Plan and the revised Proposed Site Plan.

### *Access and Parking*

- They refer to the response as prepared by Moloney Millar Consulting, together with the revised drawings as prepared by CDP Architecture indicating the revised entrance layout to be more pedestrian friendly.
- These also indicate the revised car parking and delivery layout and the designated car parking layout.
- They note that the quantum of cycle parking available on site exceeds that within the Fingal CDP.
- Having regard to the fire tender issue they refer to the letter as prepared by G.Sexton + Partners, Fire/DAC Consultants together with the response as prepared by Moloney Millar Consulting Engineers.

### *Residential Amenity*

- They refer to a Contextual Section EE as prepared by CDP Architecture which illustrates a section through apartments no. 3, 4 and 5 together with the public house.

- Also, to Contextual Section DD relative to apartment units nos. 5 & 6 and public realm in an east westerly direction through the site.
- They note that a Sunlight and Daylight Assessment Report as prepared by Digital Dimensions together with revised drawings by CDP Architecture have been submitted. This includes revisions of floor to ceiling height of 2.7m.
- Revised drawings have also been submitted, having regard to Objective DMS 32 to illustrate the removal of the gate, any proposed or existing gate has been removed from the proposed site plan, thus mitigating this as a concern.

#### *Planner's response*

The Planner had regard to the A.I submitted and to the revised documentation and drawings and their response included the following:

#### *Flooding*

- The applicant has not carried out a full hydrology assessment on this section of the Tolka River, the studies referred to in the letter from JBA Consulting have not been submitted. It remains the case that a full flood risk assessment, associated hydraulic model and a Flood Event Management Plan is required in order to address the issues raised in the request for A.I. There remains an identified flood risk on the subject site which has not been resolved.

#### *Drainage*

- They note that Irish Water have submitted a response to the A.I submission which states that they have no objections subject to the inclusion of standard conditions in respect of connection agreements. They have regard to the Molony Millar response regarding details of the manhole survey of the site. They consider that the A.I request relative to drainage issues has been satisfactorily addressed.
- They note that a way leave in favour of Irish Water will be required over the infrastructure which is not located within a public area.

#### *Appropriate Assessment*

- They consider that the AA Screening Report submitted addresses the concerns set out in the A.I and provide a full consideration of this issue.

### *Legal Issues*

- They note that the details submitted (including correspondence and various Folios) by the applicant's Solicitors appear in support of the legal opinion. However, they have some concerns about clarity relative to the issues raised.

### *Landscaping and Open Space*

- They note that deficiencies in the landscaping plan have been identified by Parks and Green Infrastructure section with particular reference to the children's play area. Conditions are recommended in the event of permission.

### *Access and Parking*

- They refer to the report by Molony Millar Consulting engineers along with the revised drawings. Also, the comments of the Transportation Planning Section in particular relevant to A.I request no.7. They seek Clarification of A.I relative to the parking layout, inter-visibility and to the parking and loading area and provide that a swept path analysis is needed relative to the delivery area.

### *Residential Amenity*

- They have regard to the revised drawings and Sunlight and Daylight Analysis submitted. They provide that amendments made to the design and layout in response to the A.I request generally address the issues raised.
- They note that as shown on the revised drawings, the gate has been removed to address Objective DMS 32 of the Fingal DP.
- They consider that the concerns arise with regard to safety of the basement level as an indefensible space.

### *Conclusion*

- They consider the proposal to be of merit and would if permitted contribute to the achievement of a broad range of policy and objectives of the Fingal DP. They note that the proposal has been amended to address many of the concerns of the Planning Authority as set out in the request for Additional Information. However, notwithstanding general satisfaction with the proposal, the conflict of the proposed development with the identified flood risk on the

site remains unresolved. They recommend refusal relative to the flood risk issue.

### 3.3. Other Technical Reports

#### Water Services Department

They have no objection subject to conditions relative to surface water drainage. They request additional information relative to Flood Risk.

They note the applicant's response to the A.I request and provide that clarification of A.I should be sought relative to flood risk issues raised including the need for a full hydrological assessment and Flood Event Management Plan.

#### Environmental Health Section

They recommend conditions relative to the proposed mixed use development.

#### Parks Division

They request that a detailed Landscaping Plan be submitted. Also, that account be taken of the interface with the Tolka River and the High Amenity Area. Objectives DMS03 and NH52 are referred to.

They provide that public open space provision on the roof is not acceptable as public open space but is considered as communal open space for the residents.

They submit that the proposed the location and design and layout of the playground is not acceptable and this should be addressed in the landscape plan.

They request that a complete tree survey including an Arboricultural Impact Assessment be submitted. The site contains 6no. large mature trees at the entrance of the site within the carpark.

Their response to the A.I submitted provides that the landscaping layout is not acceptable and does not meet current standards. In the event that, permission is granted they recommend conditions including: a revised landscape plan prepared by a suitably qualified person, details regarding the play facilities, a financial contribution in lieu of the provision of public open space. The latter to be used towards upgrading of recreational facilities in Tolka Valley Park. All measures in the

Arboricultural Report to be adhered to. A post construction report on the condition of trees and a tree bond of €80,000.

#### Transportation Planning Section

They have regard to access and parking issues. They note the parking requirement relative to the proposed mixed use development. They request that a revised parking layout providing secure residential parking separate from the commercial parking be submitted and agreed.

They request segregation of HGV manoeuvres and parking areas be addressed and note that this will result in some alterations to the parking layout.

Also, that details on the use of the access at the north western boundary of the site, and of wayleaves over the site for access.

They consider the deficiency in cycle parking quantum and note the need for an integrated and innovative design solution.

Clarification that the proposed access for the fire tender is adequate in terms of accessing the car parking area and the proposed building height.

Their response to the A.I submitted provides that they seek clarification in summary relative to secure residential parking separate from commercial parking; a revised layout providing inter-visibility at the entrance to the under-croft parking area; a revised layout for the parking and loading area on the public road to include swept path analysis for the delivery area.

### **3.4. Prescribed Bodies**

#### Irish Water

They note that in the case of wastewater connections this assessment did not confirm that a gravity connection was achievable. Therefore, a suitably sized pumping station may be required to be installed on the subject site. All infrastructure should be designed and installed in accordance with the Irish Water Code of Practice.

They note the presence of sewers on the site and request a survey to determine the exact location of this infrastructure.

They advise that structures or works over or in close proximity to IW infrastructure that will inhibit access for maintenance or endanger structural or functional integrity of the infrastructure are not allowed.

Diversion of the infrastructure that maybe required subject to layout proposal of the development and separation distances and subject to agreement with IW.

A wayleave in favour of IW will be required over the infrastructure that is not located with public space. They refer to the requirement for connection agreements with IW.

In response to the A.I, they consider the proposal acceptable and recommend conditions.

### 3.5. **Third Party Observations**

None noted on file.

## 4.0 **Planning History**

The Planner's Report and the Design Statement submitted provide an extensive Planning History relative to the subject site and to the surrounding area. This includes the following:

*Subject Site:*

**FW18A/01189** - Permission refused by the Council and subsequently by the Board on the subject site for the: Demolition of the existing two-storey public house premises, and the construction of a new building consisting of three number commercial units (two number retail units, one number licenced public house) and 46 number apartments, (four number studios, 14 number one bedroom, 23 number two bedroom and five number three bedroom) all across lower ground to fourth floor, with associated 88 number surface car parking spaces, utilising the existing vehicular and pedestrian site access. All with associated landscaping, public open space at roof level, bin storage, bike storage, signage and site works.

A copy of the Board's Decision (Ref.ABP-303919-19) to refuse permission for this proposal for reasons relative to drainage and flood risk is included in the History Appendix to this Report.

**FW13A/0127**- Permission granted for change of use of a single retail unit to 2 restaurants with sit in and takeaway service.

**FW10A/0040** - Permission granted for a change of use to a rear portion of Paidi Og's public house from nightclub to retail unit, external ATM and other associated works.

**FW08A/0612**- Permission refused for the demolition of public house and the construction of a mixed use development (4,297m<sup>2</sup> residential, and 596m<sup>2</sup> commercial) due to:

- the excessive provision of residential development in a neighbourhood centre,
- the design of the development in the vicinity of the Tolka Valley High Amenity Area,
- overshadowing of the courtyard would diminish the function use of the amenity area,
- insufficient provision of car parking,
- premature development pending the Mulhuddart Bridge Replacement Scheme which would lead to serious traffic congestion,
- insufficient legal interest by the applicant to carry out the proposed development.

*Planning history in the vicinity*

Regard is had in the Planner's Report and documentation submitted to several sites in the vicinity where permission was granted for residential and mixed-use development. Other development includes:

**FW17A/0083** - Permission was granted by the Council for development in the Tolka River Valley Park in the townlands of Parslickstown, Buzzardstown, Coolmine, Corduff and Deanstown in Mulhuddart and Blanchardstown, Dublin 15. This development consists of a new sewer duplication of the existing 9C sewer for a distance of 3.2km, underground storage tanks, control building, underground wastewater pumping station and all associated works.

## 5.0 Policy Context

It is submitted that the key policy and guidance documents of relevance to the proposed development are as follows:

- Project Ireland 2040 National Planning Framework (2018)
- Regional and Economic Spatial Strategy for the Eastern Region (2019)
- Regional Planning Guidelines for the Greater Dublin Area 2010-2022
- Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (DECLG, 2018) and as updated by the subsequent Apartment Guidelines (DHLGH, 2020).
- Urban Development and Building Heights, Guidelines for Planning Authorities (2018)
- Design Manual for Urban Roads and Streets 2019
- 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 2009 (including the associated Technical Appendices)
- Guidelines for Planning Authorities, Retail Planning (2012)

### 5.1. Fingal Development Plan 2017-2023

Policies from the development plan, most relevant to the assessment of the proposed development are summarised below.

#### *Zoning*

Part of the site is located on lands which are designated as a Local Centre where it is an objective to “*protect, provide for and/or improve local centre facilities*” and a section along the north, adjacent to the Tolka River designated as High Amenity, where it is an objective to “*Protect and enhance high amenity areas*”.



### *Settlement*

The lands are within Mulhuddart Village which is one of 11 settlements in the second tier of Table 2.9 Consolidation Areas within the Gateway located within the Metropolitan Area.

### *Mulhuddart*

**Objective 1-** Provide for appropriate mixed use village-scale development which enhances local services and community facilities, and has a residential content.

**Objective 3-** Improve and promote links between the Tolka Valley Park, Blanchardstown Centre and Mulhuddart Village.

### *Urban Consolidation and Design*

**Objective PM03** - Identify obsolete and potential renewal areas within the County and encourage and facilitate the re-use and regeneration of derelict land and buildings in the County's urban centres.

**Objective PM31-** Promote excellent urban design in accordance with the 12 urban design principles set out in the *Urban Design Manual – A Best Practice Guide* (2009).

**Objective PM33-** Enhance and develop the fabric of existing urban centres in accordance with the principles of good urban design, including the promotion of high quality well-designed visually attractive areas.

### *Tolka Valley Park and Amenity*

**Objectives NH51-** Protect High Amenity areas from inappropriate development and reinforce their character, distinctiveness and sense of place.

**Objective NH52-** Ensure that development reflects and reinforces the distinctiveness and sense of place of High Amenity areas.

### *Flood Risk*

**Objective SW02-** Allow no new development within floodplains other than development which satisfies the justification test, as outlined in the national guidelines.

**Objective SW04-** Require the use of Sustainable Urban Drainage Systems (SuDS) to reduce the potential impact of existing and predicted flooding risks.

**Objective SW07-** Implement the national guidelines and a site-specific Flood Risk Assessment to an appropriate level of detail, addressing all potential sources of flood risk, is required for lands identified in the SFRA, located in area including Mulhuddart, demonstrating compliance with the guidelines, paying particular attention to residual flood risks and any proposed site specific flood management measures.

Strategic Flood Risk Assessment for the Fingal Development Plan 2017-2023.

This notes that the urban area of Mulhuddart is located on one of the principal rivers i.e the Tolka and that there are three catchment areas identified for further assessment (AFAs) as shown on Table 5.1, which includes Mulhuddart. Section 5.4 refers to Flood Defence Schemes and includes regard to the Tolka River Flooding Study which recommended replacement and upgrade of Mulhuddart Bridge.

Section 5.4.1 notes: The Flood Zones along the Tolka ignore the effect of the defences and defended areas have been delineated. Any planning applications within these areas have a residual risk associated with them and an appropriately detailed FRA should be included with any applications to define mitigation measures and finished floor levels. As noted in section 5.3.1 the OPW are undertaking a review of the flood zone mapping along the Tolka to account for the defences.

Section 6.1.18 refers to Blanchardstown North – Mulhuddart. Figure 6.18 notes that lands in Mulhuddart are at risk from significant flooding identified by Flood Zones A and B. The flood relief works recommended in the Tolka Flooding Study have all been completed in this area but there is still a residual risk associated with failure of these defences. The defended areas are shown in the flood zone mapping in Appendix A and any planning applications within these areas must be accompanied by an FRA addressing this residual risk.

Appendix B – Development Plan Justification Tests. This provides mapping and lists a number of Criteria relative to flood risk at Mulhuddart. This includes regard to the application of the sequential approach: Highly Vulnerable Development should not be permitted in undefended Flood Zone A or B.

## Variation No. 2

The Fingal Development Plan 2017-2023 was varied in June 2020 to align with the National Planning Framework (NPF) and the Regional Spatial and Economic Strategy (RSES).

Section 2.8 refers to Settlement Strategy for Consolidation Areas within the Dublin Metropolitan Area, which includes Mulhuddart Village (Table 2.5 refers), and notes its proximity to Blanchardstown.

Objective SS15: Strengthen and consolidate existing urban areas adjoining Dublin City through infill and appropriate brownfield redevelopment in order to maximise the efficient use of existing infrastructure and services.

Objective SS16: Examine the possibility of achieving higher densities in urban areas adjoining Dublin City where an approach would be in keeping with the character and form of existing residential communities, or would otherwise be appropriate in the context of the site.

Variations to Chapter 3 – Placemaking include the deletion and insertion in Section 3.4 of Objective PM42: Implement the policies and objectives of the Minister in respect of ‘Urban Development and Building Heights Guidelines’ (December, 2018) and Sustainable Urban Housing: Design Standards for New Apartments (March, 2018) issued under section 28 of the Planning and Development Act, as amended.

### **5.2. Natural Heritage Designations**

The site is located c. 13km North West from the edge of South Dublin Bay and River Tolka Estuary SPA.

### **5.3. EIA Screening**

Having regard to the nature and scale of the proposed development 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

CDP Architecture have submitted a First Party Appeal on behalf of the Applicant Frank Gleeson. This includes that the appeal should be read in conjunction with the original planning submission, and additional information submission lodged with the Council and the accompanying appendices to this appeal. The Grounds of Appeal are summarised under the following headings below:

#### *Background and Regard to Previous Reasons for Refusal*

- They refer to previous planning applications made on this site. The most recent application being ABP-303919-19 which was subsequently refused by the Board on the basis of flooding risk and the requirement for diverting the existing foul sewer on site.
- They provide that the Board's reasons for refusal have been addressed in the current application including in the additional information submitted.
- The additional information demonstrated that the existing foul sewer pipe would not be practical to divert, due to the proliferation of existing services on site and they provide that this was agreed by representatives of the Council drainage and water departments.
- They provide details and note that the concern over flood risk to the site and development has now been mitigated against by way of the increase in FFL's and as shown on the drawings in Appendix D and accompanying flood reports carried out by JBA Consulting under Appendix E.

#### *Summary Points*

The First Party include a number of *Summary Points to Overturn Decision and Grant Permission*. These include the following:

- The Council are in support of the development of the site and welcome mixed use development within the current zoning of local centre.
- The Parks Department have issued a set of conditions to be attached to grant of planning to deal with their items which can be addressed in compliance.

- The Transportation Planning Division recommended Clarification of A.I which has been addressed under the subject appeal response – they refer to revised drawings and information as prepared by Molony Millar Consulting Engineers under Appendix C.
- They note that the Council's Water Department has no objection subject to conditions to surface water and that they requested clarification of A.I in relation to flooding. This item has been dealt with by way of the accompanying reports prepared by JBA Consulting in Appendix C.
- Irish Water had no objection and stated that the A.I was acceptable to them, and provide standard conditions to be attached to the grant of planning – they refer to the report in Appendix C.
- The proposed development will generate positive activity for the area and will be compatible and strengthen existing neighbouring uses and activities. A development of this nature will encourage further development in the vicinity.
- The conclusion of the AA Screening Report issued at A.I stage, stated that the development would not significantly affect the conservation objectives of any European site. The Council also concluded that an EIA would not be required.
- Any concerns over legal issues have already been dealt with by the response and legal documentation as prepared by Clerkin Lynch Solicitors, under Appendix G.
- The concerns of the Council's Transport Department in relation to parking segregation between commercial and residential spaces can be dealt with by way of a barrier system keeping both separated.
- Concerns in relation to deliveries, parking areas and loadings areas to the public road have been mitigated against, by way of an autotrack carried out by Moloney Millar Consulting Engineers as prepared under Appendix F.
- They note that the Council deemed the proposed development to be of merit and to contribute to objectives in the Fingal DP. They submit that as the only reason for refusal and concern that the Council had, has now been mitigated, the development should be granted.

- They include Appendices A – G as accompanying documentation in support of their appeal. Appendix D includes revised drawings by CDP Architecture. Appendix E includes: Flood Risk Assessment as prepared by JBA Consulting.

## 6.2. Planning Authority Response

This has regard to the First Party Grounds of Appeal and their response includes the following:

- No new information has been provided as part of the appeal which has not been considered in the application, which is on appeal or the previous application ref. FW19A/0189 and its subsequent appeal under ref. ABP-308361-19.
- The case that policies and objectives seeking regeneration in areas in need of renewal are applicable to the subject case is considered an inappropriate application of this policy.
- The Council requests the Board to uphold the decision by FCC and ABP to refuse permission.
- In the event, that the appeal is successful, provision should be made in the determination for apply a development contribution in accordance with the Council's S. 48 Development Scheme.

## 7.0 Assessment

### 7.1. Principle of Development and Planning Policy

- 7.1.1. Mulhuddart is described as a Village proximate to Blanchardstown and a Level 4 Local Centre in the Fingal Development Plan 2017-2023. This includes specific Policies and Objectives to encourage consolidation of development in the Mulhuddart area, as well as more general Objectives to support sustainable redevelopment of brownfield sites and the provision of increased residential densities where appropriate. The appeal site and surrounding area is located within two separate land use zonings. The frontage area including the former public house is within 'LC', Local Centre. This zoning objective seeks to *protect, provide for and/or*

*improve local centre facilities*. The vision for the zoning objective seeks to provide a mix of local community and commercial facilities for the existing and developing communities. Uses such as retail, commercial and residential are permitted in principle within this zoning. The redevelopment of the site for a mixed use development in principle complies with this local centre zoning.

- 7.1.2. The northern part of the site which as shown on the Site Layout Plan contains the existing and proposed surface carparking area. It is adjacent to the Tolka River and the Tolka Valley Park and is designated as 'HA' High Amenity, where it is an objective to *Protect and enhance high amenity areas*. The vision includes that these areas be protected from *inappropriate development and reinforce their character, distinctiveness and sense of place*. Therefore, it is important that any future development enhance and not detract from the high amenity area of the environs of the Tolka River.
- 7.1.3. Variation 2 of the Fingal DP 2017-2023 which was adopted in June 2020 seeks alignment with the National Planning Framework Plan and the Regional Spatial and Economic Strategy. This refers to the Fingal Settlement Hierarchy and notes that Mulhuddart Village is a settlement within the Dublin City and Suburbs Consolidation Area. The NPF requires that land use plans target 50% of all new homes within or contiguous to the built area of Dublin City and Suburbs and at least 30% in other settlements. It supports increased heights and densities in appropriate locations.
- 7.1.4. Objective PM31 of the development plan promotes excellent urban design in accordance with the 12 urban design principles set out in the *Urban Design Manual – A Best Practice Guide* (2009) which in combination with the national guidelines advocate high quality sustainable development that are well designed and built to integrate with the existing or new communities and the design manual provides best practice design criteria such as context, connections, inclusivity, variety, efficiency, layout etc. The proposed development is assessed against these criteria in greater detail below for both the commercial and residential.
- 7.1.5. It is important that if this brownfield site is to be redeveloped that a sustainable integrated development can be achieved, including having regard to amenities of existing and future residents and businesses, issues of access, parking, impact on the area of high amenity adjacent to the Tolka to the north of the site,

demolition/construction etc. Regard is also had to the background to this proposal, and to issues concerning drainage, screening for appropriate assessment and in particular the previous Board reasons for refusal and the Council's reason for refusal relative to concerns regarding flood risk in this Assessment below.

## 7.2. Background

- 7.2.1. Note is had of the previous Board refusal on this site Ref: ABP-303919-19 relates. In that case the application was for in summary (full description is noted in the Planning History Section above) for the Demolition of the existing two storey public house and the construction of 3no. Commercial Units and 46no. apartments and all associated site works. This was refused for in summary reasons of flood risk (similar reason to that given by the Council in the current application) and relative to concerns about the foul sewer traversing the site and the absence of any proposal and/or agreement to divert this sewer. It is also of note that the Board was not satisfied that sufficient information had been submitted to show that the proposed development either individually or in combination with other plans and projects would not be likely to have a significant impact on European sites.
- 7.2.2. No objection was previously raised to the proposed demolition of the derelict public house (Paidi Ógs). While the design and layout currently proposed is relatively similar to that previously proposed the no. of apartments proposed has been reduced to 40 no. in the current scheme and the set back from the Tolka River at the rear has been increased. It is noted that the proposed commercial floor space at ground floor level remains similar.
- 7.2.3. While this proposal is being assessed *de novo*, it is however, noted that the Board's previous reasons for refusal were not specifically related to issues of design and layout, rather relative to concerns/issues regarding drainage and flood risk.

## 7.3. Density and Height

- 7.3.1. National Policy Objective 35 of the National Planning Framework 2040 seeks to increase densities through a range of measures including '*increased building heights*'. Note is also had to Section 28 - *The Urban Development and Building Heights Guidelines 2018* relative to the provision of increased heights and densities



in urban areas. Regard is had to site suitability issues and to current national and local policies and objectives which generally support the promotion of high densities in a qualitative design and layout that integrates with the proper planning and sustainable development of the area. Also, to the Section 28 - *Sustainable Urban Housing Design Standards for New Apartments Guidelines 2018* and to updates provided in the 2020 Guidelines.

- 7.3.2. The site area is stated to be 0.496 Ha, the current proposal provides for site coverage of 18.3%, the plot ratio of 0.8 and the proposed density (40 units) of 80/Ha. However, it is noted that this is lower than that previously submitted (46units - 91/Ha) in the previous application – Ref. ABP- 303919-19 refers. It is considered that as this brownfield site is in an accessible urban location in Mulhuddart Village, close to public transport links and to the Blanchardstown area that the high density proposed in the current application (80 units per Ha) is not out of context and can be supported.
- 7.3.3. Note is had to the Section 28 - *Urban Development and Building Heights Guidelines 2018*. This includes that the proposed development be at a scale appropriate to the district/neighbourhood/street and enhance the urban design concept. It refers to the need for a landscape and visual assessment. Section 3.6 refers to development which integrates well into existing neighbourhoods and provides that 4 storeys or more can be accommodated alongside existing larger buildings, trees and parkland, river/sea frontage or along wider streets. Regard is also had to linkages and to compliance with DMURS.
- 7.3.4. The surrounding context consists of buildings up to 3 and 4 storeys, many with pitched roofs. The current proposal is for a building of varying heights of 2 to 4 stories over ground floor level (appears 3/5 stories from ground level). The section adjoining the existing 2 storey building to the west is shown 3 storey with commercial on ground floor level. It is to incorporate a green roof area. The adjoining front elevation is shown 4 storeys in height with a green roof at fourth floor level. The remainder of the building which is to the rear of the southern elevation is shown 5 stories in height (i.e. from ground level). It is proposed to provide the main area of green roof/open space above.

## 7.4. Design and Layout

- 7.4.1. The proposed building on the site includes 3 no. commercial units ( 2 no. retail, 1 no. licenced public house), accessed directly onto the public footpath along the Old Navan Road, and 40 no. apartments ( 4 no. studio, 14 no. one bed, 17 no. 2 beds and 5 no. 3 beds) all across lower ground to fourth floor, with associated 84no. surface car parking spaces, utilising the existing vehicular and pedestrian site access. It also includes all associated landscaping, open space at roof level, bin storage, signage and site works.
- 7.4.2. The Design Statement submitted with the application provides details of the accommodation to be provided. The Lower Ground Floor area provides access to the under- croft parking area and includes bin and bicycle storage areas, common storage areas, parking area and 2no. stair/lift cores to serve the residential units above. The Ground Floor level is occupied by the 3no. commercial units (2no. retail units and 1no. bar) which are to be accessed via the public path along the Old Navan Road and via the rear entrance at Lower Ground Floor area. This level is also to be occupied by 5no. apartments (2no. 1 bed, 2no. 2 bed and 1no. 3 bed) together with the stair/lift cores and circulation areas. The First and Second Floor Levels are occupied by 10 no. apartments on each floor (1 no. studio, 3no. 1 bed, 5 no. 2 bed and 1no. 3 bed apt). The Third Floor is occupied by 9no. apartments (1no. studio, 3no. 1 bed, 4no. 2 bed and 1 no. 3 bed). The Fourth Floor Level is occupied by 6no. apartments (1no. Studio, 3no. 1 bed, 1no. 2 bed and 1no. 3 bed). All floors are to be served by Stair/Lift Cores and Circulation Areas. A landscaped roof terrace is proposed at the higher level to serve as part of the communal open space for the proposed development. Landscaping plans have been submitted.
- 7.4.3. Apartment Developments should be of high-quality design and layout having due regard to the character and amenities of the area. Accordance should be had to the relevant Guidelines. In terms of quantitative standards, I consider that the proposed development, as amended in the F.I submitted, generally complies with all relevant requirements for unit size, room size, storage provision, unit mix, dual-aspect, private amenity space, floor-to-ceiling heights, and core arrangement as set out in the *Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities*, 2018 and as updated in subsequent Guidelines 2020.

- 7.4.4. Regard is had to the applicant's response to the Additional Information relative to design issues raised and to the revised plans including Contextual Elevations submitted. It is noted that as requested a Daylight & Sunlight Assessment has been submitted. It is concluded that in view of the location and set back of the proposed building, some distance from adjacent residential properties that the proposed development would not cause overshadowing or loss of light or overlooking for adjoining residential properties. It also provided that the design of the proposal has taken into account recommendations of the BRE guidelines to mitigate for the balconies by increasing the window sizes to a maximum and positioning. The main living space is to receive maximum daylight within the apartment units.
- 7.4.5. External finishes are to be made up of a mixture of materials including brick, stone, render, steel railings and glazed curtain wall. It is noted that the proposal seeks to incorporate contemporary materials with reference to some of the materials already found in the existing context. The materials proposed consist of a textured concrete, rendered prefabricated panels, decorative mild steel railings and grey windows.
- 7.4.6. The massing of the building is reduced as it is shown divided into 3 sections, the ground floor, the first – third floor and separately the fourth floor setback from the Old Navan Road frontage. In addition, details are given of external finishes to distinguish and reduce the impact of the proposed building. 3D Visualisations have been included with regard to the overall design and external finishes of the proposed development. The Proposed Contextual Sections show that the fourth floor set back will not be very visible from the street (Old Navan Road) due to the set back. Regard is had further to the height issue in the context of the streetscape relative to the impact on the character and amenities of the area in that section below.

## **7.5. Landscaping and Open Space**

- 7.5.1. Section 12.7 of the Fingal CDP requires that all residential units be they traditional type housing or apartments are to be provided with private open space. Also, that qualitative and quantitative standards are set out so as to ensure that the maximum benefit is derived from the open space. Private open space for apartment and duplex units, is generally in the form of private balconies, roof terraces or winter gardens. In this case private open space is provided by balconies.

- 7.5.2. The Council's Parks and Green Infrastructure Division's Report note that the applicant proposes to locate public open space on the roof which while acceptable as communal open space is not acceptable as public open space. That there is a shortfall in the quantum of public open space of 1,700sq.m. based on occupancy rates and bed spaces. It is provided that the applicant is required to make up this shortfall by way of a financial contribution in lieu of open space in accordance with section 48 of the Planning and Development Act 2000 (as amended). Objectives DMS57 and Objective DMS57B of the current development plan refer. It is noted that this contribution will be applied towards the continued upgrade of local class 1 open space/recreational facilities in Tolka Valley Park.
- 7.5.3. The Site Layout Plan shows that there is a play area proposed on a narrow strip to the north of the proposed building. The Parks Division consider this area to be poorly located. In the A.I response, this is shown relocated to the area of open space to the rear of the proposed building which is preferable. While they consider that the Landscape Plan submitted not be acceptable, they recommend conditions in the event of a permission. These include that a revised Landscape Plan be submitted to ensure the provision of amenity afforded by appropriate landscape design.
- 7.5.4. The site contains 6no. large mature trees at the entrance of the site within the car park. It is considered that these add to the street scene. It is noted that in response to the Council's A.I request that an Arboricultural Report was submitted. This includes a Preliminary Arboricultural Method Statement and a Tree Protection Plan. They provide that 3 of the specimens are in poor condition and recommend their removal and replacement stock. As shown on the Tree Plans submitted 3 of the existing mature trees are to be retained. They have regard to Construction Works and Likely Impacts of the proposed development and to tree protection measures.
- 7.5.5. The Parks Division recommend a post construction report on the condition of trees to be undertaken by the project Arborist. They also recommend that a tree bond of €80,000 be lodged with the Council prior to the commencement of development. It is considered that if the Board decides to permit that appropriate landscaping, play facilities, tree bond etc conditions should be included.

## 7.6. Impact on the Character and Amenities of the Area

- 7.6.1. The Design Statement submitted provides that demolition of the current derelict structures on this site and the construction of the new development is considered to provide a more appropriate development and to enhance what is currently an underutilised brownfield site, that does not provide an interactive streetscape including residential accommodation. The proposed development is orientated with a North East to South West orientation and the concept of a mixed use development that would be of some merit in this location, is to be supported.
- 7.6.2. Regard is had to the Contextual Elevations and Sections submitted at A.I stage. The site including the parking area has been levelled/surfaced but there is an upward slope on the Old Navan Road along the frontage with the eastern end facing Church Road on a higher level. The proposal varies in height from 3/4/5 stories in part and will appear higher than other proximate 3 to 4 storey development. It is noted that the adjoining development to the west is 2 storey. Therefore, this and the additional proposed increase in height to facilitate higher FFLs (c. 600mm above ground level, relative to flood risk issue) will result in a higher/taller building that will appear more dominant in the streetscape. To appear less dominant and more in character with the existing streetscape the Board may wish to consider the removal of one of the central floors to reduce the overall height.
- 7.6.3. However, it is noted that the height was not referred to as an issue relative to the consideration of the previous application. As shown on the revised plans, account is taken of the locational context adjacent to and set back from the River Tolka (Proposed North East Elevation 3.3 refers). The ground levels of the rear of the site of the public house are set down below the Old Navan/Church Roads (Proposed South East Elevation 2.2 refers) and the 5 storey element being set back from the Old Navan Road frontage (Proposed South West Elevation 1.1). The Proposed North West Elevation 4.4 shows the view from the surface car park and the 3 storey set back in context of the adjoining 2 storey structure. Also, regard is had to the 3D Visualisations submitted.
- 7.6.4. I would consider that the proposal could contribute to a sense of place with the design proposal of this mixed-use development though the use of high quality materials, detailing and layout. The proposed building has frontage to the Old Navan

Road and to Church Road, and a further set back has been provided from the River Tolka to the north. The Commercial Units seek to add to the street context with regard to its community contribution and increased vitality derived from the proposed uses, creating a streetscape to improve activity and attractiveness in the area. In addition, the retention of some of the existing trees on the site has regard to their contribution to the character of the area.

- 7.6.5. In view of the location of the site adjacent to the River Tolka and to the northern part being within the High Amenity Area, I would consider that landscaping of the site is very important. The 9m set back of the building from the northern site boundary is to be supported and should allow for an improved landscaping strip. The communal open space on the roof is of benefit to future residents. If the Board decide to permit it is considered that the issues raised relative to landscaping, open space, play area/facilities, trees and boundary treatment should be conditioned.

## **7.7. Access and Parking**

- 7.7.1. It is proposed to use the existing access to the public surface parking area, from the Old Navan Road to include some modifications. It is submitted that parking spaces have been kept clear of the pedestrian crossing at the site entrance to ensure pedestrian movements are not inhibited by vehicle movements. Drawings include relative to sightlines, which are as existing. As originally shown 84no. surface car parking spaces are to be provided to serve the proposed development. In addition, 7no. undercroft car parking spaces are shown at lower ground floor level. Space has been allocated surrounding the Delivery Zone, to allow larger vehicles an adequate turning circle.
- 7.7.2. Additional Information was submitted in response to the concerns of the Council's Transportation Planning Section. Details submitted include revisions to the entrance layout to be more pedestrian friendly. A revised layout to provide for greater segregation of HGV reversing manoeuvres within the car parking area in order to minimise pedestrian and vehicular conflict points. Also, a revised layout to identify parking spaces to be designated to each residential unit, visitor parking and commercial parking including visitor parking. It is noted that the revised layout does not show spaces allocated for public parking within the site.

- 7.7.3. The Transportation Planning Section provides that the parking should not exceed the Development Plan Standards of 74 parking spaces (they note tables relative to parking requirement based on these standards for residential and commercial developments). They advise that some of the under-croft parking should be omitted and replaced with individual secure cycle parking. In response the applicants note their revised parking layout and provide that 68 no. cycle parking are provided as part of this application. The location of this is shown on the revised Lower Ground Floor Plan.
- 7.7.4. It is noted that subsequently, the Transportation Section sought clarification of A.I to include secure residential parking separate from the commercial parking for private residential parking. That this be secure and separate from public parking and not be accessible to the public. That a revised layout providing inter-visibility at the entrance to the under-croft parking area should be provided. In addition, that a revised layout for parking and loading area on the public road should be provided including a swept path analysis for the delivery area.
- 7.7.5. The First Party response provides that the concerns of the Council's Transportation Planning Section in relation to parking segregation between commercial and residential spaces can be dealt with by way of a barrier system keeping both separated. In addition, their concerns in relation to deliveries, parking areas and loading areas to the public road have also been mitigated against, by way of an autotrack carried out by Moloney Millar Consulting Engineers, drawing as prepared under Appendix F.
- 7.7.6. There is an existing public pedestrian access path along the front/South West façade from which all 3no. commercial units and residential units can be accessed. The main circulation areas from the back of the house, storage, staff areas etc can be accessed from the Old Navan Road entrance to the carpark. The proposed development can also be accessed via a pedestrian path to the west of the site, whereby access can be gained to the rear of the retail units and both apartment stair/lift cores. 2 no. lift and stair cores are proposed allowing access to each of the floors above.
- 7.7.7. The Council was concerned that the development would appear to contravene Objective DMS32 of the Fingal DP which seeks to *Prohibit proposals that would*

*create a gated community for any new development.* In response the First Party provide that as shown on the revised drawings any proposed or existing gate has been removed from the proposed site plan thus mitigating this as a concern.

- 7.7.8. I note the standards of the national guidance, DMURS and the revised design and I consider that the access to the site is acceptable provided it is in accordance with the Council's requirements. Some revisions are needed relative to parking issues raised and some clarity on whether any element of public parking is to be provided. It is recommended that if the Board decide to permit that it be conditioned that revised plans be submitted to address these issues.

## 7.8. Land Ownership

- 7.8.1. Issues were previously raised under Reg.Ref. FW18A/0187, with regard to the title of part of the subject site. It is provided in the Solicitor's letters submitted with the current application, that the applicant is the registered owner of the property and reference is made to the folio number. They note that an issue was raised by the Council that the proposed development would result in inadequate parking facilities for members of the public. Reference is made to an indenture between the Council and the former owner of these lands (1989) requiring the subject lands be available for parking by members of the public. They note that the Council provided that no amendment to this indenture or consent allowing an application to be made on these lands has been made. The Solicitors provide that under the indenture the Council is obliged not to refuse or object to the application on the basis of parking facilities. Also, that the requirement for the owner of the lands to maintain public parking facilities ceases to apply once the owner takes steps to *extend the premises*.
- 7.8.2. The Planner's Report notes that in this case the proposal is not for an extension to the public house but for demolition and redevelopment. They provide that the Property Services Section of the Council highlight the indenture between the Council and the former owner of these lands (to which the applicant is successor in title) requiring the subject lands to be available for parking by members of the public. It was also noted that the Proposed Site Layout Plan indicates the provision of automatic gates to the entrance. The Planner considered that such issues have not been addressed, and A.I was requested as no amendment to the indenture has been



made. Accordingly, the Applicant was requested to submit proposals and particulars demonstrating how the proposed scheme will comply with the legal agreement in place.

- 7.8.3. The Planner's response noted that the applicant has submitted a response in the form of a cover letter and legal opinion addressed to Clerkin Lynch Solicitor's signed by Niall Buckley. They noted that it appears that the inclusion of the various Folios and correspondence is in support of this opinion. They considered this to be a legal opinion that relates to a different indenture associated with carparking. They provide that it is not clear how the proposed scheme complies with the legal agreement in place whereby the issue of concern is the potential conflict between the indenture requiring that the lands be made available for parking by members of the public and the current application.
- 7.8.4. The First Party Appeal submission provides that any concerns over legal issues have already been dealt with by the response and legal documentation as prepared by Clerkin Lynch Solicitors, under Appendix G. This includes regard to much of the details already submitted.
- 7.8.5. As noted above this is clearly an issue between the Applicant and the Council and not within the remit of the Board. The Development Management Guidelines for Planning Authorities advise that the planning system is not designed as a mechanism for resolving disputes about title to land or rights over land and these are ultimately matters for resolution in the Courts. As section 34(13) of the Planning and Development Act 2000, as amended, states, a person is not entitled solely by reason of a permission to carry out any development. Having regard to the facts of the case, I therefore do not consider it necessary to inquire further into this matter, since any grant of permission will be subject to the provisions of section 34(13), placing the onus on the applicant to be certain under civil law that he has all necessary rights in the land to exercise the grant of permission.

## 7.9. **Drainage**

### Foul Water Drainage

- 7.9.1. It is of note that the Board's previous decision for refusal on this site, included a reason relative to drainage. This noted in summary that the subject site has a foul

sewer traversing the site and that details were not included relative to the location of the pipe or any diversion proposals. Also, that the site is constrained by its location along the Tolka River and that in the absence of any proposal and /or agreement to divert this foul sewer that the proposal would be premature and contrary to the proper planning and development of the area.

- 7.9.2. An Engineering Report by Moloney Millar has been submitted with the current application. This has regard to connection to existing services including relative to foul water. This notes that drawings have been submitted showing that there is a combined sewer that runs along the northern boundary of the site, another combined sewer traverses the site from north to south and exits at the entrance. They provide that in accordance with the Board's suggestion they also considered the possibility of diverting the foul sewer and have included drawings showing the possible diversion and await a response from Irish Water.
- 7.9.3. The Council's A.I requested that a survey of the site be carried out to determine the exact location of this infrastructure and to submit the findings to the Council. They advised that the location of infrastructure which inhibits access for maintenance or endangers structural or functional integrity will not be permitted. In addition, that diversion of the existing infrastructure may be required subject to the resultant revisions to the layout of the scheme and to ensure appropriate separation distances are achieved. It was noted that a wayleave in favour of Irish Water will be required over the infrastructure which is not located within the public area.
- 7.9.4. The Molony Millar Engineering response, included regard to ground levels and existing drainage and notes that a topographical survey was carried out. They provide that a pumping station is not required, as the wastewater can discharge by gravity. They provide details on survey work and drawings relative to the location of sewers and manholes. They note, that Irish Water is currently constructing a new 900mm foul sewer on the opposite side of the Tolka River. Also, that this will bring great improvements to the area in terms of capacity and relief to the network passing through the site. They provide that they have been in touch with Irish Water and that they confirmed that the new 9C Duplication Project *will rectify the issue and the flooding risk will be removed*. They submit that given the proliferation of surface water and foul drainage services in the site, it is not considered practical to carry out

any diversion of the existing sewers. The building is to be set back 9m from the 900mm combined sewer.

- 7.9.5. It is noted that Irish Water do not object to the drainage response as provided in the Additional Information submitted. They recommend standard conditions in respect to connection agreements. In this case I would concur with Council's Planning response to the A.I that the request is considered to have been satisfactorily addressed. Therefore, I would consider that this is no longer a reason for refusal of the subject application.

#### Water Connections

- 7.9.6. It is proposed to connect the development to the existing public watermain at two separate points and details are given of this system and relative to two hydrants proposed to adequately serve the proposed development.

#### Surface Water Drainage

- 7.9.7. Details are given relative to surface water attenuation, including the use of a sedum blanket extensive green roof on a large section of the roof of the development. The Engineering Report provides that this combined with permeable paving will provide a sufficiently large volume of storage space for storm water arising from the site and provide details of surface water storage capacity. This includes that an oil/silt separator is proposed to filter the surface water before it is discharged to the river Tolka. A hydrobreak manhole is proposed to limit discharge from the site.
- 7.9.8. It is noted that the Council's Water Services Department had no objection to surface water proposals subject to standard conditions. It is recommended that if the Board decides to permit that appropriate drainage conditions be included.

#### **7.10. Flood Risk**

- 7.10.1. The Board's first reason for refusal in Ref. ABP-303919 -19 relates to flood risk. The Council's reason for refusal in the current application reiterates this reason for refusal. It is noted that a Flood Risk Assessment has been submitted with the current application. This has regard to '*The Planning System and Flood Risk Management Guidelines*', to OPW Flood Hazard Maps, CFRAM Study Catchment FRA and Management and to Reports from County/City Councils that mention the site.

- 7.10.2. Regard is had to the said Guidelines and it is noted that the proposed development site is primarily within Flood Zones A (high probability of flooding) with a small frontage area in B (moderate probability of flooding). Table 3.1 provides a Classification of Vulnerability for different types of development. Residential is classed as *Highly vulnerable (including essential infrastructure)* and commercial as *Less vulnerable development*. This provides that Development in Zone A should be water compatible or avoided and/or only considered in exceptional circumstances, such as in city and town centres and where the Justification Test has been applied. Zone B is also concerned about siting highly vulnerable development and also calls for a Justification Test to be applied.
- 7.10.3. The Guidelines include regard to the sequential approach and investigation of alternatives and avoiding or minimising the risk (Section 3.1 Planning Principles). It is noted that alternative less vulnerable more compatible sites in Flood Zones B and C, including on zoned lands have not been considered. It is provided that the proposed development for the redevelopment of the site, is to be laid out in a similar manner to the existing development, with the large car park to the rear closer to the River Tolka providing parking for residents/commercial units and the general public, adjacent to the existing public house on site. This is a commercial development and there is not currently a residential element on the subject site.
- 7.10.4. The FRA provides that the 2004 and 2010 flood zoned mapping for the Tolka predate some major infrastructural changes in the M3 area. Regard is had to past flooding events. It is noted that a protective berm between the Tolka River and the Navan Road was constructed in 2004, to provide flood defensive improvement works due to previous severe flooding that had taken place in the general area. Reference is had to the Tolka River (Dublin, Fingal & Meath) Flood Relief Schemes. The Tolka River Flooding Study was underway when the November 2002 flood occurred, and various subsequent studies. The replacement of Mulhuddart Bridge was completed in 2011. Also, that the OPW Flood Risk Management Plan for the Liffey & Dublin Bay references the Tolka Flood Alleviation Scheme. This notes that the scheme constructed in Mulhuddart put in place by the OPW comprises flood defence walls, embankments and a pumping station. Part of this flood defence wall forms the northern boundary to the subject site. This is to provide protection against the 100 year flood providing protection against the 1% AEP flood event.

- 7.10.5. It is noted that in the current application as shown on the Site Layout Plan, the existing reinforced concrete flood protection wall along the northern site boundary is 2.57m – 2.9m high is to be retained and faced with stone on the site side of the wall. This was designed previously by the OPW to prevent a 1% AEP storm event; with an additional stone wall along its length on the site side.
- 7.10.6. Having regard to Fluvial Flooding they note that CFRAM maps for the site are currently unavailable, as the Tolka river area is currently under review following large scale building projects along the N3. Map 18 of 24 from the Fingal DP 2017-2023 indicates the flood extents for the area surrounding the site in question. The map highlights the site as a defended area, which is in agreement with the reports regarding the installation of flood defences against a 1% AEP Flood Event.
- 7.10.7. They provide that Pluvial Flooding is not an existing issue. The addition of a green roof, permeable paving and hydrobrake within the site will improve on-site surface water attenuation. Tidal Flooding does not pose a risk to the site in question as the river Tolka is not tidal in the area surrounding the site. They note that the hydro-geological conditions in the FEM FRAM study area together with other available information indicated that the conditions do not exist for groundwater flooding; therefore, groundwater flooding is not a significant risk within the FEM FRAM study area. They note that there is a risk to basements or deep excavations. In this case as there is a lower ground floor proposed, any structure below ground must be designed to current standards.
- 7.10.8. Regard is had to impact on the Storm Water Network, and note is had of measures for attenuation of surface water proposed on the site. Note is had to SuDS measures proposed including the extent of green roof on top of the proposed buildings and permeable paving. Also, to the hydrobrake proposed to regulate flow and discharge of surface water, before discharging to the river Tolka.

#### Justification Test

- 7.10.9. Reference is had to the application of the Justification Test in Development Management as provided in Box 5.1 of the 'The Planning System and Flood Risk Management Guidelines' 2009. The issue is whether the criteria in the Justification Test are satisfied. It is noted that the lands are zoned in the urban area and in part have been designated as a local centre where the proposed use types are

acceptable in principle. The lands zoned as high amenity are within the northern part of the site, adjacent to the river Tolka and are primarily to be used as surface car parking area. The FRA provides that the development proposed will not increase flood risk elsewhere in view of the provision of attenuation and controls on discharge. It is noted that the existing site does not contain provision for stormwater attenuation and the current proposal does.

7.10.10. Having regard to Criterion 2(ii) Details of ground and finished floor levels are provided and are given relative to the site, Church Road, the riverbank etc. The Lower Ground Floor has no habitable areas. It is provided that the use of SuDS will also help to minimise the risk to people, property, the economy and the environment. They provide that criterion 2(iii) is dealt with by providing safe access/egress to the Church Road and Old Navan Road and by preparing a Flood Event Management Plan for users. Compliance is had with criterion 2 (iv) as the proposed development complies with the zoning for the site and provides commercial, residential, private and public parking facilities for the neighbourhood.

7.10.11. It is concluded that the predicted 1% AEP level is not known, although flood defences installed by the OPW are designed to protect the site from a particular flood event. It is submitted, that the criteria for the Justification Test as provided in Box 5.1 of the Guidelines have been satisfied. They refer to the use of water compatible (car parking) and highly vulnerable (commercial and residential) proposed at a higher FFL level within defended Flood Zone A. Appendix 1 contains photographs of the existing flood defence wall and notes the set back of the proposed development from the river.

#### Regard to Additional Information submission

7.10.12. The Council's Water Services Department requested that Additional Information (A.I) be submitted regarding Flood Risk. This to have regard to the Tolka Flood Study, 2002, published in 2003. They were concerned that mapping which arose from this study shows that the 100 year flood level to be higher than the finished floor level on the ground floor which is stated at 54.86m which would not be acceptable. The A.I requested in summary included a full hydrology assessment of the Tolka River, a Flood Event Management Plan and an updated hydrology assessment.

7.10.13. The A.I submitted refers to the Flood Risk response prepared by JBA Consulting, also to revised drawings and floor levels indicated. Their Flood Risk Assessment Summary includes that the site is protected by the River Tolka flood defences, but that at present there is no provision of flood levels for the 0.1% AEP flood event, no residual risk information and the SFRA places emphasis on this flood event for mitigation of residential development. Currently the residential design offers a freeboard of 0.9m over the 1% AEP event, but to provide clarity on the 0.1% AEP level and validate the 1% AEP flood level, additional assessment is required. They note that some of the development levels within the site area are not flexible and the justification of floor levels will need to be made on the basis of residual risk analysis and appropriate mitigation methods such as an emergency management plan. They provide that a full FRA and associated hydraulic model is required to address the RFI Point 1(a) i.e: *The following scenarios/results will be provided:*

- *Confirmation of predicted 1% and 0.1% AEP levels,*
- *Assessment for climate change (High End Future Scenario)*
- *Residual Risk i.e Blockage of the Church Road Bridge and 0.1% AEP overtopping levels/depths within the site.*

7.10.14. The Water Services Section of the Council provided that a clarification of A.I should be requested as the applicant has not carried out a full hydrology assessment of this section of the Tolka River to explore and address the issues raised. They note the letter from JBA Consulting. They conclude that the proposed development is considered premature awaiting a full flood risk assessment and associated hydraulic model. Also, that the applicant be requested to submit a Flood Event Management Plan with the updated hydrology assessment. The Planner's Report concluded that there remains an identified flood risk on the subject site which has not been resolved.

#### First Party response

7.10.15. The First Party provide that the concern over flood risk to the site and development has now been mitigated against by way of the accompanying flood reports carried out by JBA Consulting under Appendix E. This Report includes regard to the locational context of the site, watercourses, proximity to the Tolka river, site topography, geology and flood mapping etc. Note is had of the 2004 River Tolka

Flooding Study and flood extent mapping. Also, of the Fingal DP 2017-2023 Strategic Flood Risk Assessment (SFRA). Regard is had to Flood Sources, including Fluvial which is of most relevance to the general area of the subject site. The main risk is from the Tolka River which runs along the north-east of the development site. A tributary of the Tolka is culverted in the area and discharges to the River Tolka at the site's northern boundary. The site while located in Flood Zone A is situated behind flood defences as part of the River Tolka FRS but is at risk of inundation during the 0.1% AEP event. Note is had to watercourses in the area and catchment areas.

- 7.10.16. The Summary of the Hydraulic Modelling provides, that while within Flood Zone A, with the Tolka flood defence in place the site is protected from the 1% AEP event. Inundation of the site does occur during the 0.1% AEP and residual risk events. From review of the range of scenarios that have been undertaken, the 1% AEP blockage scenario of the Blanchardstown Bridge produces the highest flood levels at the site with a peak level of 56.20mOM predicted. Details are given of Model Results – Existing and Defended Scenarios (Figs. 4.3 and 4.4 relate).
- 7.10.17. Section 5 considers the Flood Risk Strategy and this includes Mitigation Measures. It is noted that the current proposal provides for parking on the lower ground floor and mixed use comprising commercial on the ground floor and the FRA provides residential is from First Floor Level. However, as shown on the Proposed Contextual Sections it is proposed that there be a raised FFL for the residential from Ground Floor to Fourth Floors. It is noted that as shown on the Floor Plans that 5no. apartments are included to the rear of the commercial units at ground floor level. The block including these units will be closer to the river than other residential in the area. The strategy is to place the residential properties above the flood levels in accordance with the SFRA guidelines.
- 7.10.18. Mitigation measures include regard to increasing the Finished Floor Levels of the proposed residential element of the development. The minimum FFL proposed for the residential development is set at 56.5mOD to minimise the flood risk to residential properties. The final FFL provides a freeboard of 0.77m above the 0.1% AEP flood event to the residential properties. The commercial (public house and retail units) development located on the ground floor has a proposed FFL of



54.86mOD. To maintain access to the public house/retail units it is necessary to retain the existing FFL's for the lower ground floor and ground floor level.

- 7.10.19. They refer to the findings of the report, following the modelling carried out by JBA Consulting, and conclude that if the finished floor levels of the residential element of the development were to increase in height by 600mm, this would mitigate risk associated with the 100-year and 1,000 year flood level. They provide that this can be achieved within the development and the difference between the additional information submitted drawings and the now proposed finished floor levels has been indicated on the accompanying revised drawing under Appendix D.
- 7.10.20. They submit that flood risk to the commercial/car park needs to be managed by the development of an Emergency Escape Plan. This includes regard to sign up to a flood warning system and site specific measures such as a water level meter to be installed along the Tolka River defences to warn of high water levels. Regard is also had to stormwater design/pluvial flood risk and to attenuation measures. It is submitted that if overtopping of the system were to occur the flood risk will be limited to the lower ground floor car park/storage area. Additional Assessment is also had, relative to issues of Climate Change, Stormwater system failure blockage, failure of the Tolka FRS and to Blockage of Church Road/Blanchardstown Road bridges.

#### Conclusion

- 7.10.21. Section 6 of the JBA Consulting FRA, has regard to the Justification Test for Development Management. It provides conclusions to each of the criterion in Part 1 and Part 2. Their overall conclusion is that the commercial development is at risk of inundation if failure of the flood defences or blockage of Church Road bridge were to occur. They submit that the risk of these events occurring are considered to be extremely low and the proposed emergency management plan will ensure that the commercial premises will have been excavated prior to a 1% AEP flood event. They provide that the proposed increase in the residential FFL ensures that the apartments are protected from a possible failure of the flood defences and minimised during a potential blockage of the Church Road and Blanchardstown Road bridges.
- 7.10.22. An overview of the hydrology assessment is provided in Appendix B. This notes that as there are multiple watercourses of different sizes in this study area, joint probability and the timing of peak flows must be considered and worst case

scenarios be applied to allow for a conservative approach. While unlikely this is to allow a robust review of the site to be undertaken in relation to flood risk. Regard is had to CFRAM and other study Comparison. A discussion is had of summary results.

- 7.10.23. It is noted that the Council's Planning response to the Appeal provides that no new information has been provided which was not considered in their assessment of Reg.Ref. FQ19W/0189 relevant to the overturning of their reason for refusal. Also, that the policies and objectives seeking regeneration in areas in need of renewal are inappropriate in this case.
- 7.10.24. I note that as shown on the revised drawings submitted as per Appendix D, and as discussed in the JBA Consulting, FRA, that the flood risk to the residential element which is the primary usage of the scheme has been somewhat reduced by proposed increase in the FFL's. The Board may decide to grant on this basis.
- 7.10.25. However, I would have some concerns that the issues raised by the Council's Water Services and in particular relative to those in the Clarification of Further Information have not been fully addressed in the First Party Response to the Appeal. The proposal which includes highly vulnerable residential development is to be located on a site that is within Flood Zone A and is dependent on the continued upkeep and maintenance of the flood defence and a Flood Event Management Plan. It is noted that alternative less vulnerable more compatible sites in Flood Zones B and C, including on residential zoned lands have not been considered. The Guidelines include regard to the sequential approach and investigation of alternatives and avoiding or minimising the risk (Section 3.1 Planning Principles). In this case, I am not convinced having visited the site and having regard to the documentation submitted that relative to the potential risk for flooding and the precautionary approach that this is the most suitable or desirable site for the location of the scale and nature of the proposed development. An element of doubt relative to flood risk and need for further investigation is still extant. Therefore, I would consider that the decision to refuse relative to a level of uncertainty regarding the flooding issue has not been overcome.

## 7.11. Screening - Stage 1 Appropriate Assessment

- 7.11.1. Note is had of the issues of Appropriate Assessment Screening in the Board Order relative to Ref. ABP-303919-19. While this accepted and adopted the screening assessment and conclusion carried out in the Inspector's Report, the Board was not satisfied 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 SAC (Site Code: 000210) and South Dublin Bay and Tolka Estuary SPA (Site Code: 004024), or any other European site, in view of the site's Conservation Objectives.
- 7.11.2. An AA Screening Report by Enviroguide Consulting has been submitted with the current application. This is a Stage 1 screening report, to determine the potential for significant impacts on the relevant Natura 2000 sites, alone and in combination with other plans and projects, and considers whether it can be objectively concluded that these effects will not be significant. Section 3.3 includes Table 3 which provides an identification of the *Natura 2000 Sites within the Precautionary Zone of Influence of the Proposed Development Site*. This also provides a list of their Qualifying Interests and the distance from the site. Section 3.3.1.1 provides a Brief Description of each of the Relevant Natura 2000 Sites. The Conservation Objectives for each of these Qualifying Interests is in summary to maintain its favourable conservation condition. Appendix 1 provides the NPWS Natura 2000 Site Synopses of each site.
- 7.11.3. Table 4 provides a Record of Designated Species Observed within the 10km grid squares. Table 5 provides an Identification and Assessment of Likely Significant Effects on Natura 2000 Sites within the Precautionary Zone of Influence of the Proposed Development. Below is a summary Table based on the details as provided in the AA Screening Report:

### Summary Table of European Sites within a possible zone of influence of the proposed development

European Site (code)	List of Qualifying Interest/Special Conservation Interest	Distance from proposed development	Connections, (source, pathway, Receptor)	Considered further in screening Y/N
-------------------------	--	---	--	--

<p>Rye Water Valley/Cartron SAC (001398)</p>	<p>Petrifying springs with tufa formation</p> <p>Narrow mouthed Whorl Snail</p> <p>Desmoulin's Whorl Snail</p>	<p>7.2km</p>	<p>There is a lack of any hydrological connection between the Proposed Development and the SAC.</p> <p>There is a lack of any habitat types listed as qualifying interests (QIs) for the SAC present at the Site of the Proposed Development.</p> <p>Intervening distance</p>	<p>No potential for likely significant impacts to the SAC</p>
<p>South Dublin Bay SAC (000210)</p>	<p>Tidal Mudflats and Sandflats</p> <p>Annual vegetation of drift lines</p> <p><i>Salicornia</i> and other annuals colonising mud and sand</p>	<p>14.3km</p>	<p>The proposal will result in an insignificant increase in the loading at Ringsend Wastewater Treatment Plan as a result of the Proposed Development.</p> <p>Best practice construction measures will be followed on site; and the suite of surface water management and treatment design features are included in the Proposed Project Design.</p>	<p>No</p>

			The lack of habitat types listed as qualifying interests (QIs) for the SAC.  Intervening Distance	
Malahide Estuary SAC (000205)	Tidal Mudflats and Sandflats <i>Salicornia</i> Mud Atlantic Salt Meadows Mediterranean Salt Meadows Marram Dunes Fixed Dunes	14.5km	There is a lack of any hydrological connection between the proposed development and the SAC  The lack of habitat types listed as qualifying interests (QIs) for the SAC.  Intervening Distance	No
South Dublin Bay & River Tolka Estuary SPA (004020)  <i>It is noted that the NPWS provides this SPA is (004024)</i>	Light-bellied Brent Goose (wintering - w) Oystercatcher (w) Ringer Plover (w) Grey Plover (w) Knot (w) Sanderling (w) Dunlin (w) Bar-tailed Godwit (w) Redshank (w) Roseate Tern (passage) Common Tern (breeding)	12.2km	The proposal will result in an insignificant increase in the loading at Ringsend Wastewater Treatment Plan as a result of the Proposed Development.  Best practice construction measures will be followed on site; and the suite of surface water management and treatment design	No

	<p>Artic Tern (breeding/passage)</p> <p>Wetland and Waterbirds</p>		<p>features are included in the Proposed Project Design.</p> <p>Lack of suitable habitat for SCI species of the SPA within, or within close proximity to the Proposed Development</p> <p>Intervening distance</p>	
<p>Malahide Estuary SPA (004025)</p>	<p>Great Crested Grebe (wintering &amp; breeding)</p> <p>Brent Goose (w)</p> <p>Shelduck (w &amp; b)</p> <p>Pintail (w)</p> <p>Goldeneye (w)</p> <p>Red-breasted Merganser (w)</p> <p>Oystercatcher (w)</p> <p>Golden Plover (w)</p> <p>Grey Plover (w)</p> <p>Knot (w)</p> <p>Dunlin (w)</p> <p>Black-tailed Godwit (w)</p> <p>Bar-tailed Godwit (w)</p> <p>Redshank (w)</p> <p>Wetlands</p>	<p>14.5km</p>	<p>Lack of any hydrological connection between the proposed development and the SPA</p> <p>The lack of suitable habitat for SCI species of the SPA within or within close proximity to the proposed development.</p> <p>Intervening Distance</p>	<p>No</p>

7.11.4. The nearest watercourse to this site is the River Tolka, which runs c.7m from the site along its northern boundary. This river flows c.14.5km until it reaches the South

Dublin and River Tolka Estuary SPA and c.18km until it reaches the nearest point of South Dublin Bay SAC to the east. The AA Screening Report notes that the only water to be discharged from the site to the proposed development to the River Tolka is treated storm water during the Operational Phase of the said development. There will be no discharge of water from the site into this or any waterbody during the Construction Phase of the proposed development. The proposed project design includes a range of water management and treatment measures, which include the aforementioned SuDS measures, an Oil/Silt Separator to filter surface water prior to its discharge to the River Tolka, a hydro break manhole to limit discharge, the reinforcing of the current flood defence wall along the northern site boundary. These are all considered to be measures integral to the construction of the development. The objective is of ensuring that the water quality of the Tolka is safeguarded existing independently of the Natura 2000 sites.

#### Risk of Flood Impacts

- 7.11.5. Regard is had to the Flood Risk Assessment submitted, including the Justification Test carried out. This has been discussed in detail in the FRA Section above. The AA Screening Report submits that based on the water management and treatment measures included in the proposed project design, the existing flood protection measures present on site, the further design detail described in the FRA report; including the proposed placement of all highly vulnerable infrastructure at higher levels, it was concluded that the proposed development satisfied Part 2 of the Justification Test.
- 7.11.6. They provide that should any flooding occur at the site, it is deemed that there is no potential for contamination of the Natura 2000 sites located downstream, due to the increased attenuation to be provided by SuDS at the site, but in particular the proposed Oil/Silt Separator which will treat all surface waters that leave the site before they enter the river, including those generated during any flooding events.
- 7.11.7. They submit that the combination of these factors and the considerable flow distances involved between the proposed development and downstream Natura 2000 sites will ensure that any flooding events, should they occur, will cause no significant impacts to these designated sites.

### Increased loading at Ringsend Wastewater Treatment Plant

- 7.11.8. They refer to the letter from Irish Water stating that the connection to the Irish Water network can be facilitated subject to the necessary upgrade of the relevant waste water/foul sewer network. They provide that the proposed development is considered to be an insignificant increase in terms of the overall scale of the facility and does not have the capacity to alter the effluent released to the WWTP to an extent so as to result in likely significant effects to any nearby Natura 2000 sites. In addition, they note that upgrade works are ongoing at Ringsend WWTP to increase the capacity of the facility.
- 7.11.9. They note the River Tolka flow distances between the site and the South Dublin Bay SAC and South Dublin Bay Tolka Estuary SPA (C.14.5km and c. 18km respectively). They consider that any potential flooding events at the site or the marginal increase in wastewater loading at Ringsend WWTP will not cause significant changes in water quality and /or resources at these, or any other Natura 2000 Sites.

### Conclusion

- 7.11.10. A Summary of Impact Assessment on Natura 2000 sites from the proposed development is provided in Table 6 of the AA Screening Report. This provides there are no impacts on any of the aforementioned Natura 2000 sites.
- 7.11.11. Regard is had to In-Combination Effects. A review of other off-site developments and proposed developments was completed as part of the AA Screening Process. Note is had to the projects and plans reviewed and considered for possible cumulative effects with the proposed development. Upon examination of the listed plans and projects (including the Tolka River Drainage Project Ref. FW17A/0083 – as referred to in the Planning History Section above), it is concluded that there is no possibility for any cumulative impacts including the proposed development.
- 7.11.12. They note the range of surface water management and treatment facilities included in the proposed development design, the suite of best practice construction measures, the confirmation of the connection feasibility from Irish Water and the attenuation measures proposed relative to surface water discharge that no potential effects have been identified during construction or operational phases. They provide that no contamination of the River Tolka will occur as a result of the proposed development, and therefore no adverse in-combination effect on this waterbody and



the downstream Natura 2000 sites are envisaged. The Report concludes that the proposed development will not have any significant impact either individually or cumulatively of the aforementioned Natura 2000 sites.

- 7.11.13. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in-combination with other plans or projects would not be likely to have a significant effect on the South Dublin Bay SAC (Site Code:000210) South Dublin Bay & River Tolka Estuary SPA European (Site Code. 004024), or any other aforementioned European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

## **8.0 Recommendation**

- 8.1. I recommend that permission be refused for the reasons and considerations below.

## **9.0 Reasons and Considerations**

1. The proposed development is in an area which is deemed to be at risk of flooding, by reference to the current Development Plan for the area and the documentation on file. The proposed development includes a reinforced concrete wall along the north of the site and is defined as within a defended area in Flood Zone A in the Strategic Flood Risk Assessment of the Fingal County Development Plan 2017-2023. Having regard to The Planning System and Flood Risk Management Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in November 2009 and the provisions of the Development Plan in relation to development proposals in areas at risk of flooding, it is considered that, in such locations a precautionary approach needs to be adopted, in particular relative to the inclusion of highly vulnerable residential development. In this case, there is a lack of clarity that adequate information relating to the risk of flooding, analysis of such risk, and appropriate mitigating measures to address any risk have been submitted. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

---

Angela Brereton  
Planning Inspector

20<sup>th</sup> of January 2021