



An  
Bord  
Pleanála

## Inspector's Report

### ABP-308424-20

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<b>Development</b>	Development of a build to rent residential development comprising 90 no. apartments and associated site works.
<b>Location</b>	Blackhorse Avenue Industrial Estate, Blackhorse Avenue, Dublin 7
<b>Planning Authority</b>	Dublin City Council North
<b>Planning Authority Reg. Ref.</b>	2370/20
<b>Applicant(s)</b>	Blackhorse Avenue Partnership
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party V. Refusal
<b>Appellant</b>	Blackhorse Avenue Partnership
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	15 <sup>th</sup> January 2021
<b>Inspector</b>	Máire Daly

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## 1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.308ha and is located on the northern side of Blackhorse Avenue, approximately 2.5km northeast of Dublin city centre. The site is bound to immediate west by a narrow strip of mature deciduous trees and beyond this by the Phoenix Park Tunnel rail line, which runs in a trench circa. 11m below site ground level in order to access the Phoenix park tunnel. The site is bound to the east and northeast by two existing housing estates, namely Phoenix Manor and Blackhorse Grove.
- 1.2. The site has a triangular shape, narrowing to the northern end and currently has three number warehouse structures, varying in height from one to two storeys in height located on it which are utilised by a number of different businesses. The warehouse to the front of the site is currently in use by Blackhorse Tyres. The rear of the site is currently overgrown and several buddleia plants (invasive species) were visible in the area.
- 1.3. The site is well served by public transport infrastructure with existing bus services including the route no.46A which is one of the city's most frequent bus services. The site is also served by the no.37 route, which provides connections to other nearby routes such as the No.38, No.39a, No.46a and No.70. The Luas cross city (green line) stop is also located nearby in Phibsborough 1.1 km east of the subject site. Similarly the red line Luas is accessible at Heuston Station 1.2 kilometers south of the site.
- 1.4. The site is located in a primarily low rise residential area, however McKee Barracks is also located close by, approximately 40m south east of the site, to the western side of the rail line. The barracks contains a number of protected structures and also forms part of the Phoenix Park Conservation Area.

## 2.0 Proposed Development

- 2.1. The proposed development is to comprise:
  - Demolition of the existing 3 no. warehouse structures (1,863 sq m gross floor area) on site; and

- Construction of a part 4 to part 7 storey Build-to-Rent residential development comprising:
  - two perpendicular, interconnected blocks, which run alongside the south and west property boundaries which would provide 90 no. apartments (24 no. studios, 36 no. one bed apartments and 30 no. two bed apartments – with a gross floor space of 6,781 sq m);
  - part basement of 1,579sq.m in area principally providing car parking for 38no. car parking spaces (to include 2no. car club spaces), bin storage and plant;
  - set down area at grade and bicycle parking in one storey building to rear of site;
  - an external screened gantry access/walk-way facing east extending from first to seventh floor levels (598 sq m) and internal communal amenity facilities (300 sq m);
  - vehicular and pedestrian (ramp) access from Blackhorse Avenue;
  - roof garden facing west and south with screening provided to east and north;
  - hard and soft landscaping; and
  - lighting and all other associate site works including connection to utilities.

2.2. The Board should note that in response to a Request for Further Information from Dublin City Council (received 21<sup>st</sup> August 2020), the applicant now proposes the following amendments to the above proposal under appeal:

- The number of apartments proposed has been reduced from 90 to 88 apartments. (gross floor space of 6594sq.m excluding basement car parking);
- Reduced massing at 6<sup>th</sup> floor level from 6 no. units to 3 no. units (2-bedroom units) and further circa 4m setback from eastern boundary;
- Provision of 1no. additional one bed unit at first floor level (over bicycle storage shed);

- Addition of bathroom windows to eastern elevations of studio apartments at all levels;
- Greater variety of residential amenities now provided at ground floor and fifth floor level;
- Exterior brick finish has now been revised to a darker red brick mix which is to better reflect the local Architectural character and context;
- Dark grey zinc colour metal cladding with full height glazing is now proposed at 6th floor level;
- Further consideration and improvement made to the proposed designated external play area;
- 80% greenroofs to be provided.

2.3. The following tables set out the changes to the key elements of the proposed development between those originally submitted and those revised as part of the further information submitted to the planning authority of Dublin City Council on 21<sup>st</sup> August 2020:

**Table 1. Apartment Mix**

	Studio Apt.	One-bedroom	Two-bedroom	Dual Aspect	Total No. Apts
<b>Original</b>	24	36	30	71% (64 units)	90
<b>Amended</b>	23	35	30	70% (62 units)	88

**Table 2. Stated Development Standards**

	<b>Original</b>	<b>Amended</b>
<b>Site Area</b>	0.31ha	0.31ha
<b>Total Gross Floor Area (GFA)</b>	6,781 sq.m	6,594 sq.m
<b>Total floor area (including basement car park)</b>	8,350sq.m	8,173sq.m

<b>Building Height and stories</b>	24m - 7 stories with stepped floors at lower levels.	No change
<b>Plot Ratio</b>	2.19	2.13
<b>Site Coverage</b>	35%	35%
<b>No. of units per Ha</b>	290 per ha	284 per ha

**Table 3. Parking**

	Basement Carparking	At grade Carparking	Cycle parking
<b>Original</b>	38 (including 2no. car club spaces)	2	181
<b>Amended</b>	No change	No change	No change

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

- Planning Report
- Copy of Part V Validation Letter from Dublin City Council (DCC)
- Social and Community Infrastructure Audit
- Lifecycle Report
- Architectural Design Statement
- Landscape Proposal
- Site Specific Flood Risk Assessment
- Construction and Demolition Waste Management Plan
- Mobility Management Plan
- Traffic Assessment and Parking Strategy Report
- Engineering Services Report
- Basement Impact Assessment
- Architectural Visualisation
- Bat Assessment

- Proposed External Lighting Submission
- Childcare and School Demand Assessment
- Operational Management Plan
- Market Assessment Report
- Universal Access Statement
- Arboricultural Report
- Noise and Vibration Impact Assessment
- Operational Waste Management Plan
- Outline Construction and Demolition Waste Management Plan
- Daylight Assessment
- Landscape and Visual Impact Appraisal
- Screening Report for Appropriate Assessment
- Bat assessment

### 3.0 Planning Authority Decision

#### 3.1. Decision

The planning authority refused permission for the following reason:

1. *The proposed development is located in an area zoned residential Z1 with the objective -to protect, provide and improve residential amenities under the Dublin City Development Plan 2016 - 2022. Having regard to the scale and massing of the proposed development and its close proximity to the adjoining two storey dwellings to the east (within Phoenix Manor), it is considered that the proposed part 4 / part 7 storey building would, by reason of its excessive height, scale and massing result in the overdevelopment of a restricted site, a significant loss of outlook for adjoining properties and would appear overbearing when viewed from the private open space to the rear of adjoining dwellings. The proposed development would therefore, seriously injure the amenities of property in the vicinity and would be contrary to the provisions of*

*the Dublin City Development Plan 2016-2022 and to the proper planning and sustainable development of the area.*

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planning Officer's initial planning report (June 2020), noted the following and included nine requests for further information:

- It was noted that the Transportation Planning Division (TPD) identified a procedural issue with the application. The failure to provide a map of 3rd party (DCC) owned lands which form part of the application site but which are outside of the applicant's control. The TPD requested further information requesting the applicant to provide same.
- The proposed demolition works were considered acceptable.
- The Urban Development and Building Height Guidelines for Planning Authorities (2018) supersede CDP policies in relation to Building Heights. The area planner expressed serious concerns regarding the scale and height of the proposed western block and the 7 storey element in particular. These concerns related to the proximity of the site to the Phoenix Park Conservation area, the proximity of McKee Barracks which has a number of protected structures on site and the NIAH listed railway bridge which is located immediately to the west of the proposed site. Further information requested.
- Concerns raised in relation to impacts on the residential amenities of properties at Phoenix Manor (no. 1, 14, 15 and 16 in particular) located 10-20m to the east of the proposed apartment block, and the potential for overlooking from the proposed seven story building and the overbearing nature of same. Further information requested to address these concerns.
- Potential overlooking of rear gardens at Glenbigh Road (to west) and overlooking of properties in Blackhorse Grove (to east).
- Clarification required in relation to topographical levels on site, further information requested.

- The scale, height and design of the southern block facing onto Blackhorse Avenue is considered appropriate.
- All apartments appear to meet or exceed the minimum requirements as set out in the Design Standards for new Apartments Guidelines.
- Issues highlighted regarding privacy for bedrooms off proposed deck access walkway.
- The failure to incorporate any concierge/management space is detrimental to the scheme and would undermine its likely success as a Build to Rent and conflict with SPPR 8 of the apartment guidelines. Also further evidence of compliance with SPPR 7 is required. Further information requested to demonstrate an evidence base to show that the proposed facilities are appropriate to the intended rental markets as required by the guidelines and details of operational management.
- No. 16 Phoenix Manor would be significantly affected by overshadowing from the proposed tallest 7storey section of the building.
- The one-bed units located in the western block are not considered dual aspect. Further information sought requesting the applicant to explore the possibility of incorporating additional bathroom windows with opaque glazing.
- A contribution in lieu of public open space should be provided and further information was required in relation children's play area and evidence of how it complies with the requirements of the apartment guidelines.
- Adequate communal open space has been provided however the exact area needs to be confirmed. Further information requested on this.
- The provision of green roofs to at least 70% of all flat and gently sloping roofs should be considered. Further information requested.

Following receipt of further information, the Planning Officer's second report (September 2020) noted the following:

- The massing has been reduced at upper most levels on the rear (western) block, reducing the number of units from 6no. to 3no. units at 6<sup>th</sup> floor level and increasing the separation distance between the boundary with Phoenix

Manor to varying levels. In addition, the projecting balconies at 6<sup>th</sup> floor level on the western elevation have also been omitted and additional setbacks from both the northern and eastern boundaries are now proposed. Zinc colour type metal cladding is now also proposed at 6<sup>th</sup> floor level.

- An additional apartment is now proposed on the western side of the first floor above the bicycle store.
- The application now comprises 88 no. apartments.
- It was considered the above amendments did not address the concerns in relation to height and density of the proposed development and potential adverse impacts on Phoenix Manor to the east. It is considered the amendments and set back at 6<sup>th</sup> floor level are inadequate to fully address the impact of the proposed development in terms of overbearance, loss of outlook and overlooking, notwithstanding the proposed translucent screens along the eastern elevation.
- No CGI of the proposed view of development from within the Phoenix Manor housing estate has been submitted, however View 12 of the images submitted shows that there is a sufficient and abrupt transition in scale.
- Regarding the impact of the proposed translucent screening along the eastern deck area, the area planner stated although this translucent glass would prevent overlooking, it is an undesirable design feature which would reduce light to the access decks and residential units, and would present a poor quality elevation onto the Phoenix Manor estate and is indicative of the overdevelopment on the site.
- An updated daylight and sunlight analysis was submitted for the revised proposal. It noted that 7 of the of the 80 surveyed windows would fall short of the recommended target levels and would also experience a reduction in direct skylight access of greater than 20%. The area planner noted that the alterations proposed by the applicants have not made an appreciable difference to the impact of the building relating to overshadowing on the residential development to the east. The proposed development would not

serve to protect the residential amenities of adjoining residential development in line with the objective for Z1 zoned area.

- In terms of probable hours of sunlight it is considered that the proposed development performs poorly and that the amenity of any future residents on ground floor and first floor may be compromised.
- In terms of daylight it is not clear if the glass screens along the eastern elevation gantry have been taken into account when assessing the levels of daylight entering the rooms behind the screens.
- Based on the information submitted the area planner determined that while the proposed development would be visible from McKee Barracks, it is unlikely to have a detrimental impact on its setting. Similarly while the proposed development is visible from the south of the railway bridge (Old Cabra Road) the character of the bridge will remain unaffected.
- The submitted topographical survey shows that the lands slopes down from south to north by a difference of approx. 4m. It is considered that the podium level which has a FFL of +3m is to be screened sufficiently by an existing limestone wall which rises with the gradient and is to be retained and provide appropriate screening of the adjoining properties to the east.
- Notwithstanding the details submitted concerns still persist that there is no evidence base to suggest that the proposed facilities are appropriate to the intended rental market. This is a requirement of the 2018 Guidelines. In addition it is considered that 2.4sq.m of communal area per bed space appears to be low.
- In relation to apartment letting and departures, the applicants clarified that this would be the responsibility of the property manager, this was considered acceptable by the area planner. Building and landscaping maintenance proposals were also considered acceptable. The area planner has stated that a condition requiring the details of a management company to be agreed with the planning authority should be included in the event that permission is granted.

- Studio apartments within the eastern elevation now show opaque glazing to bathrooms. 70% of apartments are now considered dual aspect.
- The applicant acknowledges that the full 10% of site area requirement of public open space is not achieved as part of the proposal. The welcome mat cannot be considered as appropriate public open space. The applicant states they are willing to make a financial contribution in lieu. The parks department have recommended a condition for inclusion on any grant of permission.
- The play space (87sq.m) proposed within the podium area to the east of the site was considered acceptable.
- The applicant has submitted details showing that 80% of the proposed roof will be green. This was considered acceptable.
- A letter of consent with an attached map in connection with those lands in DCC ownership (specifically lands within the public footpath and roadway) was originally submitted with the application and was re-submitted in response to further information. The Transport Planning Division of DCC confirmed that the information presented was acceptable.
- In conclusion, the area planner noted the restricted nature of the site and the proximity of the proposed development to existing housing estates to the east. They considered that the design of the current proposal by reason of its excessive height, scale and massing would result in the overdevelopment of a restricted site, result in significant loss of outlook for adjoining properties and would appear overbearing when viewed from the private open space to the rear of adjoining dwellings. It is considered that the issues highlighted above, cannot be adequately dealt with by way of condition as a fundamental redesign of the scheme would be required. It is recommended that permission be refused on this basis.

### 3.2.2. Other Technical Reports

- Engineering Department (Drainage Division) - Report received dated 24/03/2020. No objection to the proposal, subject to conditions. Receipt of further information acknowledged, no changes to the initial response required.

- Transportation Planning Division - Report received dated 14/04/2020, sought further information in relation to a letter of consent permitting the inclusion of DCC lands within the site.

Updated report responding to further information received dated 10/09/20.

No objection, subject to conditions.

- Parks and Landscape Services Division - Report received dated 15/05/2020. No objection to the proposal, subject to conditions.
- Air Quality Monitoring and Noise Control Section - Report received dated 14/05/2020 which assessed the Noise & Vibration Impact Assessment received. No objection to the proposal, subject to conditions.

### 3.3. Prescribed Bodies

- Irish Water - No response received.
- Irish Rail – Response dated 19/03/2020 outlines a number of requirements, in relation to protection of the adjoining rail line.
- National Transport Authority - No response received.
- Transport Infrastructure Ireland - Comments received dated 27/03/2020 advising that the application site falls within the area of the Luas Cross-City S49 Supplementary Development Contribution Scheme.
- Minister for Culture, Heritage and the Gaeltacht - No response received.

### 3.4. Third Party Observations

3.4.1. One submission was received during the consultation period lodged by Mr. Ollie Cull of the Phoenix Manor Owners Management Company CLG ('PMC') on behalf of its members and the residents of Phoenix Manor. The key issues raised are summarised as follows:

- No objection in principle to appropriate residential development on site, however it is considered that the current development is highly unsuitable.
- High rise block will dominate the existing estate and surrounding locale.

- The plans do not conform to the City Development Plan 2016 to 2022 as regards quality housing (Appendix 2A). specifically, it falls down against the following criteria: Policies QH7, QH8, QH9, QH10 and QH22.
- Photomontages of CGI from the viewpoint of the Phoenix Manor estate are urgently required.
- Overshadowing, the submitted shadow modelling is selective in the time of day and year considered. The proposed western block will diminish light levels and greatly raise the skyline horizon for the existing estate to the east.
- Inadequate provision of parking which may in turn impact on the existing adjoining estate roads and roadways within the area.
- The planned development will exacerbate traffic levels on Blackhorse Avenue and yellow box markings on the roadway should be required. Road Traffic Safety may also be an issue due to lack of footpaths in the vicinity.
- Concerns in relation to noise which may be generated from the new development and also increased trespassing and litter in the area is expected.
- Query as to whether any examination was conducted of the effect that the development may have on the amplification of the trains on the railway line.
- In the best interest of the surrounding residents the development should be reduced in height and bulk.

## 4.0 Planning History

### 4.1. On site

- P.A. Ref. 3387/07 – Permission granted by Dublin City Council (DCC) in Feb 2008 subject to 25 conditions for demolition of existing buildings and permission for a new apartment development. The proposed apartment development includes a six storey building over basement on the south elevation which steps down to three storeys over basement on the north elevation, containing 70 no. apartments in total. Also included is 1 no. courtyard, 2 no. roof gardens over fourth floor level & penthouse level, balconies from first to penthouse level to all elevations, external walkways on

the east elevation, underground car park with 68 no. car parking spaces and 24 no. cycle spaces, ESB Sub Station, one main pedestrian access and one vehicle access point from Blackhorse Avenue, and ancillary site works.

Conditions of note included:

- No.2 revised plans to be submitted to show compliance with apartment standards.
- No.3 revised plans to be submitted to show provision of lightwells off access deck to improve residential amenities.
- No.5 revised plans to be submitted to show modification to elevation finishes fronting onto Blackhorse Avenue to take account of historic McKee Barracks.
- No. 6 revised plans to be submitted showing amended location of stair core area.

#### 4.2. Nearby Planning History – Apartment Schemes

- Former CIE Lands, Cabra, Dublin 7 - SHD located approx. 500m northwest of the site.

ABP Ref. 300492-17 – Permission granted by the An Bord Pleanála in March 2018 for 420 no. residential units (419 no. apartments/ 1 no. house), a neighbourhood centre comprising 4 no. retail units, office, community centre, creche, associated car and bicycle parking spaces, open space and all associated site works.

- Site at Marlborough Road located approx. 70m south of proposed site.  
P.A. Ref. 4582/19 – Permission refused by DCC in January 2020 for the construction of 2 no. apartment blocks 5 storeys high with a total of 40 no. dwelling units comprising 20 no. 2-bedroomed apartments, 15 no. 1-bedroom apartments and 5 no. 1 bed studio apartments with associated south and west facing balconies and all ancillary, new vehicular/pedestrian access off Marlborough Road, 23 no. car parking spaces including spaces off Marlborough Road and Mews, communal open space area, cycle parking, bin storage, hard and soft landscaping and boundary treatments works.  
3 no. refusal reasons related to:

1. *Quantum of useable communal amenity space falls significantly short of minimum standards set out in Apt Guidelines (March 2018).*
2. *The proposal for permanently obscured glazing to a level of 2 metres to all ground floor windows and to the majority of above ground floor windows to the east elevation of the blocks to address overlooking and privacy issues is not appropriate for habitable rooms, and would not provide adequate residential amenity to future occupants. Contrary to Z1 zoning objective.*
3. *Poor elevational design and incongruous roofscape, does not meet the standards of high quality urban design required in this Z1 residential area, directly adjacent to a Z2 conservation area, and proximate to the group of Protected Structures at McKee Barracks*

- 'The Pallet Site', Blackhorse Avenue - located 1km west of the appeal site adjacent to Park Crescent House apartments:  
ABP-300456-18 (DCC ref. 2925/17) – permission was granted by An Bord Pleanála in July 2018 for the demolition of an outbuilding and the construction of a three-storey building containing eight apartments on this triangular plot. Condition 2 of the Board's decision required the omission of an intermediary floor, comprising three apartments, thereby only permitting a three-storey building, as opposed to the four-storey building that had been applied for.
- 84-87 Prussia Street – located approx. 470m south east of the site:  
ABP Ref. PL29N.245898 (DCC ref. 3705/15) permission was refused by An Bord Pleanála in April 2015 for the mixed-use residential student accommodation and retail development lands at and to the rear of 84-87 Prussia Street, Stoneybatter, Dublin 7.  
3 no. refusal reasons related to:
  1. *Overbearing visual impact on the existing residences on St. Joseph's Road and would give rise to overshadowing. Therefore, seriously injure the amenities, depreciate the value of properties in the vicinity and would be contrary to the zoning objective of the area.*
  2. *Having regard to the proposed height, scale and massing of Block A and Block B, it is considered that the development would be visually*

*incongruous in its context and would have a serious negative impact on the visual amenities of the area.*

3. *The Board is not satisfied that the proposed development would not be likely to have significant adverse overshadowing impacts on (i) the proposed communal courtyards and (ii) adjoining properties along Aughrim Street, Saint Joseph's Road and Prussia Street; based upon lack of information provided in relation to shadow study.*

## **5.0 Policy Context**

### **5.1. National Guidelines and Policy**

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

- National Planning Framework (NPF) – the Government's high-level strategic plan for shaping the future growth and development of Ireland to the year 2040;
- Eastern and Midland Region Spatial and Economic Strategy (June 2019);
- Urban Development and Building Heights Guidelines for Planning Authorities (DHPLG 2018);
- Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (DHPLG December 2020) in particular Section 5 – Build to Rent Housing Development and Appendix 1.
- Urban Design Manual, A best practice guide (DEHLG May 2009);
- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (including the associated Urban Design Manual) (2009);
- The Planning System and Flood Risk Management – Guidelines for Planning Authorities (Office of Public Works, 2009);
- Quality Housing for Sustainable Communities (DEHLG 2007);
- National Transport Authority's 'Transport Strategy for the Greater Dublin Area 2016-2035'.

5.1.2. Quantitative methods for daylight assessment are detailed in the following documents:

- BRE209 - Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice' and;
- BS 8206 Lighting for Buildings, Part 2: Code of Practice for Daylighting'.

## 5.2. Development Plan

5.2.1. The operative development plan is the Dublin City Development Plan 2016-2022. The appeal site has a zoning objective 'Z1 - Sustainable Residential Neighbourhoods', with a stated objective '*to protect, provide and improve residential amenities*'.

5.2.2. McKee Barracks which is zoned Z15 Institutional and Community Uses is located approximately 40m to the sites southwest, across the Blackhorse Avenue railway bridge. This site has numerous protected structures and NIAH recognised buildings located on it and is within the designated Phoenix Park Conservation Area also.

5.2.3. Under Policy QH1 of the Development Plan, the Planning Authority will have regard to various Ministerial Guidelines, a number of which are listed in Section 5.1 above.

5.2.4. The subject site is located in the inner suburbs (or outer city as defined under Map K of the Development Plan). Section 16.7.2 of the Development Plan sets out building height limits, including a 16m restriction in the subject outer city area. However, the maximum height for locations under the 'low rise rest of the city/outer city' designation and locations within 500m of rail based transport or proposed Luas/mainline or Dart/Metro stations allows for heights of up to 24m. The subject site would fall under this category.

5.2.5. The following policies are also considered relevant:

- Policy SC13 - promotes sustainable densities with due consideration for surrounding residential amenities.
- Policy QH5 – addressing housing shortfall through active land management.
- Policy QH6 – sustainable neighbourhoods with a variety of housing.
- Policy QH7 – promotion of sustainable urban densities.

- Policy QH8 – promote the development of vacant and under-utilised sites.
- Policy QH11 – promotion of safety and security in new developments.
- Policy QH13 – new housing should be adaptable and flexible.
- Policy QH18 – support the provision of high-quality apartments.
- Policy QH19 – promote the optimum quality and supply of apartments.

5.2.6. Other relevant sections of the Development Plan include the following:

- Section 4.5.3 - Making a More Compact Sustainable City.
- Section 4.5.9 – Urban Form & Architecture.
- Section 9.5.4 - Sustainable Urban Drainage Systems (SUDS).
- Section 16.2 – Design, Principles & Standards.
- Section 16.10 - Standards for Residential Accommodation.
- Section 16.38 – Car Parking Standards Table 16.1 (Zone 3 – maximum of 1.5 spaces per residential unit) & Cycle Parking Standards Table 16.2 (minimum of one space per unit).

5.2.7. The site is located in Flood Zone C.

### 5.3. Natural Heritage Designations

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

Table 5. Natural Heritage Designations

Site Code	Site Name	Distance	Direction
004024	South Dublin Bay and River Tolka Estuary SPA	4.3km	east
000210	South Dublin Bay SAC	5.9km	east
004006	North Bull Island SPA	7.5km	east
000206	North Dublin Bay SAC	7.5km	east

## 5.4. EIA Screening

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

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. A first party appeal has been submitted in respect of the decision of Dublin City Council to refuse permission for the proposal. The following provides a summary of the grounds of appeal:
- In response to the planning authority's request for further information the scheme has been reduced in scale and is now to comprise 88 no. apartments (23 no. studios, 35 no. one bed apartments, 30 no. two bed apartments)
  - The applicant has submitted figures of 3D Models taken from various views to allow a more detailed understanding of how the proposed development will assimilate into its context and particularly to show its relationship with residential dwellings to the east. The applicant states that the gated nature of the development at Phoenix Manor prevented the design team from being able to gain access to photograph and model the development from the east even though access was requested. A photo montage taken from the nearest available point at Blackhorse Grove east of Phoenix Manor has been submitted instead.
  - The applicant is of the opinion that the outlook from the windows of the dwellings in Phoenix Manor would not be materially different if the upper floors of the development were omitted. The applicant states that that are cognisant

of the two storey dwelling houses to the east and have appropriately designed the development to ensure any potential for impact to these adjacent dwellings is minimised. They state that in response to the FI request they reduced the bulk at 6<sup>th</sup> floor level on the rear (western) block and incorporated substantial setbacks to increase separation distance to Phoenix Manor.

- The decision to refuse permission for the proposed scheme for reasons relating to outlook is unwarranted given that the properties located in Phoenix Manor do not have a right to a view (There are no protected views listed for this area under the current Development Plan).
- The applicant submits that whilst there is a visual transition between the two storey dwellings and the proposed development, such a transition should be expected on such an infill site and that Strategic Housing Developments (SHDs) of such height and scale have been previously and recently granted permission by the Board demonstrating the acceptability of such 'traditional low density' and 'new high density' relationships in urban context. The following examples are presented ABP Ref. 360102-19, Howth Road and ABP. Ref. PL29S.307221, former Bailey Gibson Site.
- The development has been placed as close as possible to the western boundary to promote visual relief from the existing two storey dwellings.
- The planning authority have continuously raised unreasonable concerns regarding the proximity of the subject development to low density properties. Regarding the dwellings located on Glenbeigh Rd, to the west of the appeal site, a substantial separation distance (45-50m) is provided across the wide railway line and existing extensive planting provides substantial screening.
- The applicant notes that the area planner previously accepted that the subject site is appropriate for a taller higher density building given its proximity to public transport and social/community facilities and commercial development.
- The development is a direct response to national planning policy which promotes compact growth and increased heights and densities in suitable urban areas.

- The subject site is located in an urban area where a national planning policy actively seeks increased heights thus a degree of change is expected. The design team have been cognisant of the Building Height Guidelines 2018 and have designed the proposed scheme accordingly. The applicant refers to SHD developments ABP Ref. 307444 (St. Paul's College SHD) and the Greenacres SHD development in support of this approach.
- The proposed development satisfies all quantitative assessments.
- The architectural design is subjective in nature and it is the applicant's opinion that the eastern façade presents a high-quality elevation (incl. gantry screening and setback) that does not result in loss of amenity for adjoining properties. In addition, zinc cladding and proposed selected red brick finish will also add to the aesthetics of the building.
- The development will in fact improve the views from the residential properties to the east which currently abut underutilised poorly maintained industrial buildings.
- The part 3, part 7 storey development afford a site coverage of 35% which in the applicant's opinion does not represent overdevelopment of the currently underutilised lands. The previous scheme which was permitted by DCC on the same site under P.A. Ref. 3387/07 had a GFA of 8,477sqm (the current scheme GFA is 6,594sqm) and was a 6-storey development.
- While acknowledged that the site has an irregular shape, the applicant disagrees with the planning authority that it is 'restricted' in nature and argues that the design team have presented an innovative scheme including gantry deck access. The daylight and sunlight assessment included the gantry screening in the modeling of the scheme at a diffuse transmittance value of 0.8 and this will address any concerns in relation to access to light for the apartment residents with 70% of the units remaining dual aspect. The applicant has presented examples where a similar approach to design has been approved previously including DCC Ref. 2509/14, Ref. 4458/17 and ABP. Ref. 304499-19 (Carr's Lane, Balgriffen).

- No element of the deck access forms part of the calculations for private or communal open space.
- The applicant in conclusion submits that the scheme is appropriately scaled for the site and will not be overbearing due to the separation distances afforded and the high end design solution proposed.

## 6.2. **Planning Authority Response**

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

## 6.3. **Observations**

- None.

## 7.0 **Assessment**

### 7.1. **Introduction**

7.1.1. The proposed development initially comprised a total of 90 Build to Rent apartments over 7 storeys. In response to a request for further information from the planning authority, the applicant clarified certain matters relating to the development and also proposed amendments to the number of units proposed. These amendments resulted in the omission of three apartments at sixth floor level on the rear (western) block, as well as an increased setback from the eastern boundary. In addition, an additional one-bedroom apartment has now been provided at first floor level (over the proposed bicycle parking area). These amendments result in an overall total proposed provision of 88 no. residential units over 7 storeys on site. Accordingly, it is the revised proposals submitted in response to the further information request that I consider as part of my assessments below.

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

- Principle of Zoning, Proposed Build to Rent Development and Building Heights
- Layout, Height, Scale & Design

- Apartment Standards and Standard of Amenity for Future Residents
- Residential Amenity of Property in the Vicinity
- Other Matters

## 7.2. Principle of Zoning, Proposed Build to Rent Development and Building Heights

- 7.2.1. The appeal site measures circa 0.31ha in area and has a zoning objective 'Z1 - Sustainable Residential Neighbourhoods' within the Dublin City Development Plan 2016-2022, with a stated objective '*to protect, provide and improve residential amenities*', where residential uses are a permissible use. Accordingly, the provision of 88 residential units on site accords with the land-use zoning. The immediate area is dominated by low-rise housing, with the nearest apartment development of similar densities to that proposed situated approximately 420m to the south, at Park Lodge Apartments on the North Circular Road.
- 7.2.2. The attention of the Board is drawn to the fact that this is a Build-to-Rent (BTR) Scheme. Section 5 of the Sustainable Urban Housing: Design Standards for New Apartments, (Dec 2020) provides guidance on BTR schemes. The guidelines define BTR as "*purpose built residential accommodation and associated amenities built specifically for long-term rental that is managed and serviced in an institutional manner by an institutional landlord*". These schemes have specific distinct characteristics which are of relevance to the planning assessment. The ownership and management of such a scheme is usually carried out by a single entity.
- 7.2.3. A rationale for the proposed Build-to-Rent development is included within Section 2 of the initially submitted Planning Report (February 2020). There is no upper limit for residential densities set within the current Development Plan and I consider that the proposed density would be reasonable having regard to the site's location within short walking distance of 150m walk from the North Circular Road, which is a route frequently served by public buses, including those connecting with the city centre. In addition, the site is within a 15min walk of the Phibsborough Luas stop, with plans in the future to develop a possible Cabra West Dart Station and improved bus services network. Furthermore, the National Planning Framework for Ireland has as one of its central tenets a requirement to build at more sustainable densities particularly on sites such as this, within existing urban areas, where services and facilities already

exist. It is also acknowledged that BTR can make a significant contribution to the required increase in housing supply nationally and the scale of increased urban housing provision envisaged by the NPF. The proposal will provide a viable housing solution to households where home-ownership may not be a priority. The residential type and tenure provides a greater choice for people in the rental sector. Having regard to the location of the site in close proximity to the city centre and well served by public transport facilities, I am satisfied that a BTR scheme is suitable and justifiable at this location.

7.2.4. The applicant has outlined within their initial Planning Report (dated February 2020) that a rail upgrade including the development of a 'Cabra West' Dart station is planned on the Phoenix Park Tunnel rail alignment under the National Transport Authority's '*Transport Strategy for the Greater Dublin Area 2016-2035.*' This new station is to be located between Cabra Road and Faussagh Avenue which would be approximately 460 - 600metres north of the subject site. Section 16.7.2 of the current Development Plan allows for an increase in height up to 24m for developments located within 500m of existing or proposed DART stations. Given the proximity of the proposed development to the proposed station and the proposed height at 24m the proposal is considered acceptable in principle. In addition, I note the planning authority raised no objection to the location of the proposed 24m building with regard to current building height policy and in fact note that the Urban Development and Building Heights Guidelines for Planning Authorities (2018) supersede CDP policies in relation to building heights and that a criteria-based assessment should now be undertaken in accordance with these guidelines when considering proposed tall buildings. Taking the aforementioned into account the height of the proposed structure is examined further under Section 7.3 below.

7.2.5. Notwithstanding the above, and as per the relevant Guidelines for Sustainable Urban Housing: Design Standards for New Apartments (Dec 2020) and Policies QH7, QH8, Q18, Q19 and SC13 of the current Development Plan, the acceptability or otherwise of the proposed development requires the proposals to respect and integrate with the surrounding character and to have due consideration for the protection of surrounding residents, households and communities in providing for increased residential development. An assessment of the impact of the proposed development on adjoining residential amenities is primarily addressed in Section 7.5 of this report.

Proposals also need to provide an appropriate level of amenity for the future occupants of the proposed development and these matters are addressed in Section 7.4 below.

### 7.3. Layout, Height, Scale, & Design

- 7.3.1. The layout of the proposed BTR apartment development would appear to be largely dictated by the irregular triangular shape of the site which narrows in width from approx. 51m on its southern boundary, which faces onto Blackhorse Avenue, to approx. 9m at the point where the northern end of the rear apartment block is to terminate. The railway embankment located adjacent to the western boundary of the site has also influenced the design of the proposed structures on site. The proposed apartment building would take the form of two perpendicular, interconnected blocks, which run alongside the southern and western boundaries of the site with building heights ranging from part 2 to part 7 storey over part basement, with an overall height of 24.45m. The Board should note that a similar scheme was previously permitted on site by the planning authority in 2008 (DCC P.A. Ref. 3387/07) for a part 3 to part 6 storey development which included 70 no. apartments with an overall height of 22.95m.
- 7.3.2. The planning authority outlines the excessive height of the proposed part 7 storey building (western block) as its main reason for refusal, and highlighted serious concerns regarding the impact of the development on the adjoining two storey properties to the east at the Phoenix Manor housing estate. The *Urban Development and Building Heights Guidelines for Planning Authorities* (2018) supersede Development Plan policies in relation to building heights and they require that a criteria-based assessment should be undertaken, when considering proposed tall buildings. According to these Guidelines, building-up urban infill sites is required to meet the needs of a growing population and '*increased building height is a significant component in making optimal use of the capacity of sites in urban areas*'.
- 7.3.3. Section 3.1 of these Guidelines outlines that it is Government policy that building heights must be generally increased in appropriate urban locations. Given this site's proximity to the city centre and the availability of current and proposed future public transport in the area this would be considered an appropriate location for a building

of increased height and density , however obviously this is dependent on other factors also which are outlined under Section 3.2 of the 2018 Guidelines and include the scale of the relevant neighbourhood and street and also the scale of the site/building, these are examined in more detail below.

- 7.3.4. Contiguous elevation drawings submitted with the application illustrate the existing and proposed variations in building height along Blackhorse Avenue (see Proposed Elevation DWG. No. 3.1\_200 Revision P2)). In addition, the Architectural Statement submitted in response to further information at planning application stage included detailed computer-generated images (CGIs) of the proposed development. Having reviewed the submitted drawings and documents I am satisfied that the stepped building arrangement along the southern section of the 18.45m, 6 storey building, fronting onto Blackhorse Avenue takes account of and provides for an appropriate transition from the existing two storey housing to the south (St, David's terrace) and east (Phoenix Manor). In addition, I consider the separation distances to other nearby structures, including dwellings along Glenbeigh Road and the protected structures and other architectural features within McKee Barracks and the Phoenix Park conservation area, would be sufficient to ensure that there would not be an abrupt transition in building heights or any significant impact on their historical setting. I do however have serious concerns regarding the rear 7 storey western block element of the proposed development and the impacts that its mass and height may have on properties to the east at Phoenix Manor.
- 7.3.5. While I note the applicant in their appeal submission has highlighted that there are no protected views within the area and therefore that residents of the properties to the east at Phoenix Manor do not have a right to a view, the concerns raised by the planning authority in relation to loss of outlook and the overbearing nature of the proposed development are still relevant.
- 7.3.6. As part of the first party appeal documentation the applicant has submitted photographs of 3D models (Figures 1.1 to 1.4) stating that these are to allow a more detailed understanding of how the proposed development will assimilate in its context and particularly to show its relationship with residential dwellings to the east. Figure 1.4 in particular shows the proposed development when viewed from the east, however the angle of this photo is not taken from ground/street level and I believe a more accurate representation of the possible future views are presented in

the *Method Statement-Photo-montage* production (produced by Digital Dimensions) which was submitted to the planning authority as part of the response to further information on 21<sup>st</sup> August 2020. For the purposes of this assessment the amended proposal is to be assessed, therefore the photos relating to the original proposal, while useful for comparison purposes, shall not be discussed further. The Board should note View 2 and View 12 of this document in particular. These give a good visual representation of the scale and mass of the rear element of the proposal (western block). The Board should also note however that there appears to be some discrepancies on the location map provided as part of the *Method Statement-Photo-montage* document submitted, the location of View 1 is not taken from within Phoenix Manor as suggested and is in fact taken from within Blackhorse Grove and the location of View 2 is in fact taken from the North Circular road and not Blackhorse Grove. The locations of these photos are in fact taken at a much greater distance from the proposed development, therefore the impact of the development if taken from the developers stated locations could in a way be considered amplified.

- 7.3.7. View 2 taken from street level at the junction between Blackhorse Avenue and North Circular Road, shows the significant difference in height between the existing two storey dwellings at Phoenix Manor and the proposed western block. View 12 in my opinion only emphasises this difference in height further. Section 3.2 of the 2018 Building Heights Guidelines outlines criteria which should be satisfied for proposals at both the scale of the local district/neighbourhood/street and at the scale of the site/building. While the site may be able to accommodate an increased degree of height in some parts, in particular having regard to its position adjacent to the railway line which allows visual relief, the remainder of the adjoining lands and land uses to the east also need to be considered, in particular those adjacent low rise residential dwellings at both Phoenix Manor and Blackhorse Grove.
- 7.3.8. The Building Height Guidelines state that at the scale of district/ neighbourhood/ street, proposals should make a positive contribution to the urban neighbourhood and streetscape, should not be monolithic and should be situated and integrate in a cohesive manner into the wider urban area. From an examination of the proposal from the east, in particular from View 12, I do not believe this to be the case. View 12 shows the abrupt increase in height associated with the proposed western block and the subsequent impact on the wider urban area. In addition View 10, which is taken from within the

adjacent Blackhorse Grove housing estate, shows the magnitude of the western block when viewed from a position on the open green of this housing estate. No equivalent is available from the private open space of the houses visible (i.e. Nos 37,35,33 and 31) but given the proximity of the proposed 7 storey structure it would be expected that this impact would be significant.

- 7.3.9. In considering the proposed building height, I recognise that following an appeal in 2018 under ABP-300456-18 (DCC ref. 2925/17) a four-storey building containing 11 apartments, on a site located approx. 1km to the west of the appeal site adjacent to the walls of Phoenix Park, was conditioned by the Board to be reduced in height to three storeys in the interests of the visual and residential amenities of neighbouring properties, which appears to have been in direct response to the three-storey complex of adjacent apartment buildings at Park Crescent House. In the case of the current application no nearby apartment blocks exist to associate an appropriate height with, however the same issues in relation to visual and residential amenity exist.
- 7.3.10. I note the applicants appeal submission and the changes which have been incorporated into the scheme in relation to the 6<sup>th</sup> floor, which has seen a reduction in mass (including setbacks) and associated reduction in quantum of units from 6 no. apartments to 3 no. apartments at this level. While the increased set back and reduction in mass goes some way towards addressing the visual impact of the development on the surrounding residential landuses, I would be in agreement with the planning authority in that I do not believe this provides sufficient relief to the adjoining residential land uses and that the presence of this 6<sup>th</sup> floor within 15m of the site's eastern boundary and these existing two storey dwellings is excessive on this particular site. While I note the applicant's previous comments in their response to further information, which stated that omitting the sixth floor would ultimately result in an unviable scheme, this should not influence the Board's decision, given that private financial considerations are not planning considerations. Given the constrained nature of the site and the proximity of the western (rear) block to the adjoining residential two storey properties to the east, I would consider it justified to request a reduction in height and the omission of the 6<sup>th</sup> floor of this western block. If the Board are minded to grant permission this can be required by way of condition.

#### 7.4. Apartment Standards and Standard of Amenity for Future Residents

7.4.1. The amended scheme would provide 88 Build to Rent units comprising the following:

	Studio Apt.	One-bedroom	Two-bedroom	Dual Aspect	Total No. Apts
<b>Amended</b>	23	35	30	70% (62 units)	88

7.4.2. In accordance with SPPR 7 of the Apartment Guidelines which were updated most recently in December 2020, the public notices refer to the scheme as 'Build-to-Rent' and a draft deed of covenant from solicitors acting on behalf of the applicant indicates that the applicant is willing pursuant to a grant of permission to accept a condition requiring that the residential units remain in use as BTR accommodation, that no individual residential unit within the development be disposed of to any third party for a period of 15 years only from the date of first occupation of the units. I see no issue with this proposal, however I consider that any subsequent extension of use of the subject accommodation as BTR beyond the 15 years should be agreed with the planning authority prior to the expiration of the covenant, or any proposal to alter the tenancy type should be subject to a further planning application so as to allow further assessment of residential amenity associated with the subject units or suitability of the scheme for any other purpose that maybe proposed in the future. This matter could be adequately dealt with by means of condition.

7.4.3. As the 88 apartments are proposed under a Build to Rent housing development a number of distinct planning criteria apply, these are specified under Specific Planning Policy Requirement 8 (SPPR 8) of the Apartment Guidelines. It is noted that no restrictions on dwelling mix applies under this type of proposed scheme. The application was accompanied by a schedule which indicated that the proposed apartments comply with the minimum floor areas set out in the Appendix 1 to those guidelines both with respect to their total area (37sq.m for studio units, 45sq.m for a one-bedroom unit and 73m<sup>2</sup> for a two-bed (4 person) unit) and the areas and dimensions of their living/dining/kitchen rooms, bedrooms, storage and private amenity space as well as the floor to ceiling heights proposed. The schedule is consistent with the submitted drawings. Furthermore, although not strictly required

under BTR developments the schedule indicates that most of the apartments would exceed the minimum floor area by 10% or more.

- 7.4.4. 70% of the apartments/studios would be dual aspect (62 units), this includes the studio apartments within the eastern elevation (rear western block) which were amended in response to further information at planning application stage and now include opaque glazing to each of their bathrooms. 26 apartments (30%) within the proposed development therefore remain as single aspect, however 25 of these single aspect units have a south facing main elevation and 1 no. apartment (L1-18) which is the apartment located over the bike storage shed has additional west facing windows to allow sufficient light to the unit. The requirement for a maximum of 12 apartments per floor per core does not apply to BTR scheme and therefore the arrangement proposed on the submitted drawings and floor plans is considered acceptable.

#### Standard of Amenity for Future Residents

- 7.4.5. An integral design element of the rear (western) 7 storey block is the proposed external screened gantry/deck access along the 1st to 6th floor, with its proposed 1.8m opaque glazing and feature fins along the eastern facade. While this layout, would to a degree directly inhibit the privacy and amenity of 29 no. apartments along these floors, consequent to persons passing the bedroom windows when accessing other apartments, I am satisfied that the arrangement would be acceptable given that an offset from the eastern elevation façade is provided by voids which afford more privacy to the bedrooms and also increase ventilation and light. In addition, all the apartments along these gantry sections are dual aspect, with their principal living areas generally facing west, therefore limiting the amount of direct impact on those areas.
- 7.4.6. I note the planning officer's concerns in relation to the level of transparency proposed by the obscure glazed screening. In response to this concern the applicant has stated that the updated Daylight Assessment (Revision 02 completed by BPG3 dated 20<sup>th</sup> August 2020) which was submitted in response to the planning authority's further information request, included for the gantry screening in the modelling of the scheme. The applicant states in their appeal statement that the screen would be single glazed (given that it is external) and therefore the level of translucency

assumed in the model adopted a diffuse transmittance value of 0.8. This diffuse transmittance value was adopted based on the assumption that a product like Pilkington Opifloat Opal would be utilized for screening. For the Board's information Opifloat is an acid etched glass with a high light transmittance. The applicant compares this type of glass to that which is typical of bathroom windows due to its opaqueness and states they are willing to submit samples of same to the Planning Authority for written approval if necessary. Having reviewed the details submitted, which state that a 4mm single glazed screen of this sort would allow for 83% light transmittance (which would ensure that light is diffused in a natural manner to the access deck and the proposed bedroom windows on the eastern elevation), I am satisfied that there will be no additional impact on the availability of light to these apartments as a result.

7.4.7. The Daylight Assessment submitted provides an assessment of the amended scheme, which is currently under assessment as part of this appeal and includes an assessment of Average Daylight Factors (ADF) and Annual Probable Sunlight Hours (APSH) and has regard to the methods outlined in the BRE209 – *'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice'* and BS 8206 *'Lighting for Buildings, Part 2: Code of Practice for Daylighting'*.

7.4.8. The assessment points chosen for the proposed accommodation include 65 of the proposed rooms, which include all the habitable rooms located at both podium and first floor level and also include the proposed additional apartment L1-18 (over bike storage shed at first floor level). I would agree with the applicant's assertion that it is reasonable to propose that acceptable levels of internal daylight amenity would be achievable within the equivalent units at upper levels and therefore a separate detailed assessment of these is not required. The ADF for each room on both levels is presented in Table 7 of the Daylight Assessment report. The report demonstrates that adequate natural light would be available within the proposed apartments in accordance with the BRE guidance cited in the Development Plan for all but two rooms in the apartments, where certain departures from standards are required. These rooms are identified as the front northern most bedroom of apartment PL-14 and the principal living space/kitchen within studio PL-13. Both these units are located on the ground floor, at podium level. However, the departures from the standards are considered to fall within tolerable bounds and the predicted daylight

factor distribution indicates that good levels of natural light would be provided to local areas proximate to external windows. Study E of the same report presents the results of the assessment of the levels of sunlight amenity which would be available to the accommodation, again at podium and first floor level. The results of this study demonstrate high levels of conformity with guideline recommendations would be achieved and it follows that good levels of indoor sunlight amenity can be anticipated.

7.4.9. Having examined the submitted documents I note that an embankment in the ownership of Irish Rail bounds the western portion of the site. This provides screening and protection to the railway line which runs approx. 11m below the ground level of the site in a railway cutting to the west. A letter submitted as part of the application states that in the interest of continued safe operations of the railway, Irish Rail intend to cut back and remove the trees on the embankment along the boundary with the site. As can be seen the bicycle storage shed is to be constructed right up to the embankment (western boundary), with the subsequent area left to its south to form the space for the terraces and balconies of the ground floor units. I would question the resultant quality of open space, daylight and sunlight and overall amenity that these terraces will provide for units PL-14, PL-15 and PL-16. As evidenced in the section drawing DWG No.3.1\_301 Revision P2, submitted as part of the response to the further information, this embankment increases in height from south to north along the western boundary, with Section 03 of DWG 3.1\_301 Rev P2 showing a height of circa. 4m to the west of both one-bedroom apartments PL-15 and PL-16. A retaining wall measuring from 2m to 3m in height is to be constructed to the front of the western elevations and balcony/terrace areas of apartments PL-14, PL-15 and PL-16. It is unclear from the submitted Daylight Assessment if the removal of these trees from the embankment or indeed the embankment itself have been taken into account in the determined results. It would appear that apartments PL-15 and PL-16, should be more significantly impacted by the high embankment/retaining wall and the fact also that the balconies on the floors above overhang their private amenity space and principal living space windows. In addition, I note the significant planting proposed on the inner podium area to the front of the eastern elevation of these ground floor apartments. I note that the submitted Landscape Proposal (dated August 2020) states under the heading 'Tree Planting'

that 'groves of *Betula pedula* and *Betula pubescens* have been specified to the north podium level to provide visual separation screening without obstructing natural daylight'. However, given that the trees are immediately proximate to the eastern elevation of apartment PL-16, I would have concerns here regarding the amount of daylight and sunlight that may be obstructed. Taking all the aforementioned into account I do note that a certain degree of leeway may be afforded in cases where a smaller number of units may be impacted, as Section 6.5 of the Apartment Guidelines (Dec 2020) states that in assessing development proposals, a balance needs to be struck between the need to maximise daylight provision and the need to ensure an appropriate scale of urban residential development. Therefore, I would suggest that if the Board are minded to grant this proposal that the windows present at ground floor level on the eastern elevation for the proposed one bedroom apartments PL-15 and PL-16 should be enlarged to allow a greater degree of light to enter the living spaces proposed and in addition a revised landscaping scheme for this area of the site should be submitted, which removes the semi-mature trees proposed and replaces same with low level screen planting which will not act as an obstacle for light to these ground floor apartments. These requirements can be dealt with by way of condition.

- 7.4.10. In addition to the above, the privacy of the eastern facing rooms of the podium level apartments has also been examined and it is noted the applicant proposes to provide planted privacy strips which would include grown shrubs, to the front (east) of these units. The majority of these privacy strips are approx.1m wide, which is somewhat less than the 1.5m width which Section 3.41 of the Guidelines (Dec 2020) recommends. However, considering there is provision for an outer walkway along the eastern boundary of the site which provides an increased separation distance from these windows, I consider the planting proposed would be reasonably effective.

#### Public and Communal Open Space

- 7.4.11. In response to the planning authority's further information request the applicant clarified a number of issues in relation to public and communal open space. The proposed development will provide a landscaped public realm/public open space in the form of a welcome mat of 480sqm to the south of the front elevation, adjoining Blackhorse Avenue. This was not deemed suitable by the planning authority given that the area comprises of a public pedestrian footpath with tree planting, bicycle

stands, some car spaces and a set down area. I agree with the planning authority on this matter and I note that the applicant acknowledged that this did not meet the full 10% requirement as set in Section 16.10.3 of the Development Plan. The applicant has stated that they are willing to accept a condition for a financial contribution in lieu of the shortfall of public open space provided. If the Board are minded to grant permission this can be dealt with by way of condition.

- 7.4.12. In relation to Communal Open Space the applicant has confirmed that an 87sq.m play space is to be provided within the podium area in the eastern area of the site. The equipment proposed and details of the all-weather surface are outlined in under Section 2.7.1 of the response to further information (report dated August 2020). Access to the podium level communal open space is provided via a ramp off Blackhorse Avenue which rises along the eastern boundary. I consider the details submitted and proposed plans and size of the area acceptable.

#### Resident Support Facilities

- 7.4.13. In terms of resident support facilities and resident services and amenities within the proposed BTR scheme, I note that the proposal includes for a communal amenity space comprising both lounge and game space and a multipurpose space at ground floor level, totaling 228sqm. This area also incorporates the concierge desk, and all areas are accessible from the southern entrance off Blackhorse Avenue and a side entrance from the western elevation. The applicant has also stated in response to the planning authority's further information request that each residential unit will be fully sufficient in terms of laundry facilities, thus removing the requirement for a central laundry facility. In addition to the communal amenity area at ground floor an additional area of 66sq.m is to be provided at 5<sup>th</sup> floor level. This space will be available for general use by all residents and has been designed as a multi-purpose space.
- 7.4.14. An Operational Management Plan (dated 21<sup>st</sup> August 2020) was also submitted in response to the planning authority's request for further information. This contains details of the proposed property management approach, including management of open spaces and resident facilities. This management plan and the details presented in the submitted plans, which include for a multipurpose communal amenity areas and residents support facilities at first and fifth floor levels (including an accessible

rooftop terrace) are considered acceptable and in compliance with the requirements of SPPR7.

- 7.4.15. Having regard to all of the above, I am satisfied that the level of amenity being afforded to future occupiers of the proposed scheme is acceptable and the proposal if permitted would be an attractive place in which to reside. I am also satisfied that the slight shortfall in daylight provision for the two aforementioned apartments and their future residents would not be so great as to warrant a refusal of permission and believe that minor amendments to the window size on the eastern elevation of these apartments can be dealt with by way of condition.

## 7.5. Residential Amenity of Property in the Vicinity

- 7.5.1. The subject site is currently partially vacant, overgrown and somewhat derelict. Evidence of some anti-social behaviour was visible at the time of my site visit and overall and subject to the below consideration of impacts, I believe that the appropriate redevelopment of the site would be of benefit to the wider area. However, having regard to the orientation of the site, the separation distances involved and the design of the proposed units, I do have concerns regarding the impacts on the amenity of properties in the vicinity as a result of the development also.
- 7.5.2. The planning authority in their reason for refusal cite the scale and massing of the proposed development and its close proximity to the adjoining two storey dwellings to the east within Phoenix Manor. The applicant states in their submission that to expect the subject site to remain as a low lying development going forward, to protect the outlook from two story dwellings is not in accordance with the principles of proper planning and sustainable development and would result in the inefficient use of **scarce development** land. While I acknowledge the applicant's submission, it is not just the outlook from the dwellings at Phoenix Manor that needs to be considered. The potential for overshadowing, overlooking and overbearing impacts of the proposed development were also raised by the area planner which are different from concerns regarding outlook **alone**.
- 7.5.3. The applicant in their response to the further information request stated that they along with their design team had explored the feasibility of omitting the 6th floor level

in an attempt to address the planning authorities previous concerns regarding height, scale and massing, however they stated that it would ultimately result in an unviable scheme that could not be implemented. The applicant's design team attempted to address the concerns of the planning authority by introducing a setback change in architectural presentation at sixth floor level to reduce the visual impact of the scheme particularly when viewed from the neighbouring Phoenix Manor estate.

#### Topography/Changes in Site Levels and Overlooking

- 7.5.4. The topography of the site is an important factor to consider when assessing the possible impacts of the development on residential lands to the east. The subject site has a south to north downward sloping topography, with the existing contours on the site gradually decreasing northwards by approximately 4 meters. This provides the opportunity to access a basement/ lower ground level from Blackhorse Avenue without the resultant need for significant excavation. Figure 6.2 (page 45) of the initial planning report submitted with the planning application illustrates the various levels on site and the change in levels between the existing site and that to its east at Phoenix Manor.
- 7.5.5. The applicant has stated that the eastern boundary wall which is comprised of limestone rubble is in good condition and is proposed to be retained as part of the development. The existing eastern boundary wall, when measured from the site is circa. 4m at its tallest point and provides significant screening from the proposed development to the adjoining two storey dwellings to the east. While noting the decrease in wall height as one travels north to south along the eastern boundary towards the front of the site, it is considered at 1.8m at its lowest height, and with the increased separation distance to the eastern elevation of the apartment building, as well as the proposed landscaping, there will still be sufficient screening provided to protect the privacy of the adjoining dwellings in Phoenix Manor from residents at podium level. The Board should refer to Proposed Section 03 and 04 of DWG No. 3.1\_301 Revision P2 for evidence of same and also proposed North Elevation DWG No.3.1\_200 Revision P2.

#### Potential Overlooking from Gantry Levels

- 7.5.6. As mentioned under Section 7.4.5 above, an integral design element of the rear (northern) block is the proposed external screened gantry/deck access from 1st to 6th floor levels, with its proposed opaque glazing and feature fins along the eastern facade.
- 7.5.7. In relation to possible overlooking from this area, the Board should note that there is a discrepancy on the 'Proposed Elevations Eastern Elevation' DRG. No. 3.1\_201, Revision P2 in relation to this apartment (L1-18). The revised drawings should show an extension of the gantry access walkway to allow access to the proposed apartment at first floor level, however none is illustrated, while the submitted floor plans (Dwg. No. 3.1\_101 Revision P2) illustrates the required extended walkway. This required access walkway would run almost adjacent to the site boundary with no. 37 Phoenix Manor.
- 7.5.8. The applicant in their appeal statement stresses that the proposed obscure glazing rising to 1.8m in height along the gantries should ensure that there is no potential for overlooking, thus protecting the privacy of third parties to the east. Having examined the details of the glazing proposed previously under Section 7.4.6 above, I am satisfied that the Opifloat acid etched glass (or similar) proposed will ensure sufficient screening and prevention of overlooking of properties to the east will still allowing for a high light transmittance to the proposed apartment units.

#### Overbearing and Overshadowing

- 7.5.9. Section 01 of Dwg. No. 3.1\_101, Revision P2 details the changes in topographical levels between the rear western block of the proposed development and that of the adjoining site at no. 37 Phoenix Manor. What isn't obvious here is the proximity of same dwelling house to the proposed two storey building (6metres) and also the proximity of no. 35 Phoenix Manor to the development at 8.5m. The building at its closest point to the eastern boundary is 1.6 metres from the rear garden boundary of No. 37 Phoenix Manor (see proposed Section 01 of DRG. No.3.1 301). At this point on north eastern corner of the building the structure rises to two storeys (6.3m in height) to include for the additional one-bedroom apartment over the bike storage area (apartment L1-18). This apartment was added as part of further information received by the planning authority in order to compensate for the loss of 3 no. apartments at 6<sup>th</sup> floor level. No windows are included on the eastern façade of this

new apartment, and given the topography of the proposed site, which would see this section of the building set below that of the garden level of No.37 and the fact that the existing boundary wall is 4m tall on the site side no issues in relation to over shadowing and overlooking are considered to exist with this particular element.

- 7.5.10. Fortunately, in this case the ground levels on the adjoining sites at Phoenix Manor are approximately 2m higher than that on site, therefore this element of the structure should not be overbearing on these dwellings. However, the potential impacts of the remainder of the development which increases in height from 2 storey to seven storey and the potential resultant overshadowing and overbearing impacts needs to be considered further.
- 7.5.11. The proposed development is comprised of two interlinked block structures that are much larger and taller than the two storey houses that predominate in the vicinity. There will be visibility of the proposed development from the garden areas of nearby properties at Phoenix Manor, and it will therefore impinge upon these properties to some extent and would affect residents' perception of the neighbourhood. The question for this assessment is whether its effects would seriously interfere with the amenities of those properties in a manner that would justify refusing permission or altering the proposed development. This is considered further below.
- 7.5.12. The applicant emphasises in their appeal submission that the heights proposed are reduced and appropriate setbacks are provided within the scheme as the proposed forms approach neighboring boundaries, in particular the properties located in Phoenix Manor to the east. The subject site is at a lower level than the adjoining site to the east and therefore I do not consider that the 2 storey, 4 storey or even the part 5 storey elements of the stepped western building would cause any significant sense of overbearingness.
- 7.5.13. The existing warehouse building no.2 on site, which is located directly adjacent to the eastern boundary of the site, would have a prevailing height of 3 storeys at a current height of 8.2m (DWG. No. 3.1\_111 Revision P1). The majority of the proposed building is higher than this, with the 7 storey element to reach a parapet height of 24.45, almost triple that of the existing building on site. The highest element of the western block (24.25m) is located approx. 11.2m from the boundary wall with no. 15 Phoenix Manor, with additional distances to the relevant house. The 7 storey

element would lie within 11.5m of the rear garden of 16 Phoenix Manor, within 20m of the rear garden of 14 Phoenix Manor and within 24.2m of the rear garden of 1 Phoenix Manor. In my opinion and having examined the submitted photomontages, in particular View 2 and View 12, the tallest section of the western block, even with the revised step back provided would still be likely to significantly overbear a number properties within Phoenix Manor, given its very close proximity to a number of these residential properties.

- 7.5.14. A revised Daylight Assessment was submitted in response to further information in August 2020, which gave an updated assessment incorporating the setbacks at 6th floor level. The assessment submitted details that 49 of the 80 surveyed windows of the residential properties to the east of the site would retain direct skylight access levels which satisfy the recommended Vertical Sky Component (VSC) target levels within the *Site Layout Planning for Daylight and Sunlight (BRE, 2011)* and that a further 24 of the surveyed windows would retain 'reasonable' direct skylight access (i.e. would not experience a reduction of greater than 20% of their current level).
- 7.5.15. 7 of the surveyed windows would fall short of the recommended target levels and would also experience a reduction in direct skylight access of greater than 20%. As a result of this detailed secondary testing has been undertaken. The secondary testing was carried out with regard to the average daylight factor approach outlined in BS 8606-2: 2008 '*Lighting for Buildings- Part 2: Code of Practice for Daylighting, British Standards Institute 2008*'. I note the planning authority highlighted No. 16 Phoenix Manor as a particular concern. The Board should note Window Set C (page 14) of the submitted assessment for reference. As part of the secondary testing it was found that an adequate level of internal skylight amenity would remain available within these spaces with the proposed development in place. The Board should note however that the results as stated in the assessment (see Appendix E) are determined using an alternative VSC target of 20%. The assessment states that while it stands that a VSC of 20% will not provide as much daylighting potential as the 27% recommended in the BRE guide, that it is reasonable to propose that this alternative target (20%) can be considered acceptable in urban environments where wider planning imperatives prevail. While I note the applicant refers to the National Planning Framework and Section 1.10 of the Building Heights Guidelines 2018 for supporting guidance, I would also highlight to the Board that the 'obstruction angle'

of 38° from ground floor windows (as referred to by the applicant) relies on a separation distance of at least 22m, as demonstrated in figure 13 (page 61) of the assessment. The current separation distance between the 6th storey and no.15 Phoenix Manor (which is the closest of the two storey dwellings to the east) is 15.38m, the current separation distance between the 7th storey (stepped back) and no.15 is approximately 19m. These distances are significantly below the 22m referenced in the applicant's Daylight Assessment.

7.5.16. Having considered the assessment submitted and the results presented I would therefore have to agree with the planning authority that the proposal, in its current design would not serve to protect the residential amenities of adjoining residential development in line with the zoning objective for Z1-zoned areas "*to protect, provide and improve residential amenities*".

7.5.17. In conclusion, having regard to all the above, I am satisfied that the proposed development addresses any previous concerns in relation to overlooking but has not adequately addressed concerns in relation to the overbearing and overshadowing impacts that the development would cause to those properties mentioned within the Phoenix Manor housing estate, which is located within close proximity to the immediate east of the site. However, having considered the national policy presented in the NPF in relation to the need for consolidation and densification in meeting our accommodation demands and supporting the provision of increased building heights in appropriate locations, I do not consider the impacts above would warrant a refusal of permission when modifications to the design can be made. This is a zoned, serviceable site and I consider the proposal in general appropriate at this location. I would suggest that if the Board are minded to grant the proposal that the 6<sup>th</sup> floor (top floor) of the western rear block and its associated 3 no. 2 bed apartments be removed from the development and that revised plans are submitted illustrating this alternative arrangement. I would suggest that this matter can be adequately dealt with by means of condition.

## 7.6. Other Matters

### Car parking

- 7.6.1. The development proposes vehicular and pedestrian access from Blackhorse Avenue; 38 no. car parking spaces including 2 no. car club spaces at basement/ground floor level; 2 no. car club parking spaces and a set down area at grade and both visitors and residents bicycle parking. As stated under SPPR 8 part (iii) of the Dec 2020 Apartment Guidelines '*There shall be a default of minimal or significantly reduced car parking provision on the basis of BTR development being more suitable for central locations and/or proximity to public transport services. The requirement for a BTR scheme to have a strong central management regime is intended to contribute to the capacity to establish and operate shared mobility measures*'.
- 7.6.2. Based on the above and an assessment of the submitted *Traffic Assessment & Parking Strategy Report* (dated 25<sup>th</sup> February 2020), I am satisfied that adequate parking will be provided on site and that the proposal would not lead to the creation of traffic or obstruction of road users and I therefore consider the proposal to be acceptable in this regard. Construction related traffic can be addressed by way of a detailed construction traffic management plan and this matter could be adequately dealt with by means of condition.

### Flood Risk

- 7.6.3. The site-specific flood risk assessment submitted as part of the application identifies the site within Flood Zone C for both fluvial and coastal flooding and is not at apparent risk of flooding due to pluvial or groundwater flood events. Therefore, it was determined in accordance with the '*Planning System and Flood Risk Management Guidelines for Planning Authorities*' that there is no significant risk of flooding within the proposed site and it is appropriate for use for such a highly vulnerable development. Having examined the site and the information submitted as part of the application, I would agree with this assertion and I am satisfied that there is no flood risk on site.

### Basement Impact Assessment

- 7.6.4. The basement impact assessment which was submitted as part of the application included several mitigation measures required in connection with the basement construction and operation. These include continuous groundwater dataloggers, temporary groundwater pumping floors to be monitored and proposed treatment of all surface water runoff prior to discharge to the public sewer network. I am satisfied that the measures included mitigate any significant impacts which may result from the basement construction.

### Bat Assessment

- 7.6.5. A Bat Assessment was submitted as part of the application. This concludes that there was no evidence of usage of any of the buildings within the site and overall the buildings have no potential internally for bat usage. The buildings also show no evidence of bat occupancy historically. Bat activity was noted however along the edge of the railway towards Cabra and it was noted that the trees close to the railway were used as a feeding area by common and soprano pipistrelles. Therefore, proposed mitigation including three number back boxes were proposed on site to provide bat roost opportunities. These bat boxes are to be proposed to the rear (north) of the proposed bike shed and apartment L1-18, which I consider an appropriate area given its secluded nature and remoteness from higher footfall areas and illuminated areas. Motion activated sensor lighting was also recommended as preferable lighting on site and a list of criteria in relation to spectrum warm and luminaires was also included. If the Board is minded to grant the current proposal these recommendations can be addressed by way of condition.

### Section 49 Development Contributions

- 7.6.6. I note that the subject site falls within the area of the Luas Cross-City Section 49 Supplementary Development Contribution Scheme and that Transport Infrastructure Ireland in their response to the planning authority (dated 27<sup>th</sup> March 2020) recommended that a condition in relation to same should be attached to any grant of permission. I would agree with this assertion, given the nature of the proposal, and consider that this matter could be adequately dealt with by means of condition.

## Part V

- 7.6.7. As part of their initial application, the applicant submitted a letter outlining proposed compliance with Section 96 (Part V) of the Planning and Development Act 2000, as amended. The letter outlines that the Part V is subject to agreement and is without prejudice. The applicant stated that their preferred option is to provide the equivalent value of 10% of the site in the form of units on site in order to comply with Part V. DWG No. 3.1\_120 Revision P1 identifies 10 number proposed Part V Units at Podium Level. The planning authority state that the Housing and Community Services section of the local authority has been consulted and has advised that discussions have taken place in relation to this development, in respect of Part V obligations. Given the nature of the build to rent scheme and my recommended reduction in unit numbers on site, I would recommend that if the Board are minded to grant permission that this matter may be adequately dealt with by means of condition.

## **8.0 Appropriate Assessment**

### **8.1. Stage 1 – Screening**

- 8.1.1. A 'Screening Report for Appropriate Assessment', has been submitted with the application compiled by Openfield Ecological Services. The contents of this report appear reasonable and robust. It is noted that the site is not located within or directly adjacent to any Natura 2000 area. The site is composed of artificial habitats such as buildings and hard surfaces, with small stands of scrub mainly dominated by non-native butterfly-bush (*Buddleja davidii*). There are no watercourses in the vicinity.
- 8.1.2. The submitted assessment states in its conclusion that '*significant effects to Natura 2000 areas are not likely to arise, weather alone or in combination with other plans or projects*'.

### **8.2. Relevant European Sites**

- 8.2.1. The nearest European sites are listed in Section 5.3 of this report and identified in the applicant's Screening Report for AA. The Screening Report for AA has also included the Poulaphouca Reservoir SPA given that the drinking water for the

proposed development originates from here. Details of qualifying interests and special conservation interests of these relevant European Sites are presented in Table 6 below.

**Table 6. Relevant European Sites for the purposes of AA Screening**

Site Name & Code	Qualifying Interest / Special Conservation Interest	Distance
South Dublin Bay and River Tolka Estuary SPA [004024]	Light-bellied Brent goose <i>Branta bernicla hrota</i> [A046] Oystercatcher <i>Haematopus ostralegus</i> [A130] Ringed plover <i>Charadrius hiaticula</i> [A137] Grey plover <i>Pluvialis squatarola</i> [A141] Knot <i>Calidris canutus</i> [A143] Sanderling <i>Calidris alba</i> [A149] Dunlin <i>Calidris alpina</i> [A149] Bar-tailed godwit <i>Limosa lapponica</i> [A157] Redshank <i>Tringa totanus</i> [A162] Black-headed gull <i>Chroicocephalus ridibundus</i> [A179] Roseate Tern <i>Sterna dougallii</i> [A192] Common Tern <i>Sterna hirundo</i> [A193] Arctic Tern <i>Sterna paradisaea</i> [A194] Wetland and waterbirds [A999]	4.3km east
South Dublin Bay SAC [000210]	Mudflats and sandflats not covered by seawater at low tide [1140] Annual vegetation of drift lines [1210] Salicornia and other annuals colonising mud and sand [1310] Embryonic shifting dunes [2110]	5.9km south east
North Bull Island SPA [004006]	Light-bellied Brent Goose <i>Branta bernicla hrota</i> [A046] Shelduck <i>Tadorna tadorna</i> [A048] Teal <i>Anas crecca</i> [A052] Pintail <i>Anas acuta</i> [A054] Shoveler <i>Anas clypeata</i> [A056] Oystercatcher <i>Haematopus ostralegus</i> [A130] Golden Plover <i>Pluvialis apricaria</i> [A140]	7.5km east

	<p>Grey Plover <i>Pluvialis squatarola</i> [A141]</p> <p>Knot <i>Calidris canutus</i> [A143]</p> <p>Sanderling <i>Calidris alba</i> [A144]</p> <p>Dunlin <i>Calidris alpina</i> [A149]</p> <p>Black-tailed Godwit <i>Limosa limosa</i> [A156]</p> <p>Bar-tailed Godwit <i>Limosa lapponica</i> [A157]</p> <p>Curlew <i>Numenius arquata</i> [A160]</p> <p>Redshank <i>Tringa totanus</i> [A162]</p> <p>Turnstone <i>Arenaria interpres</i> [A169]</p> <p>Black-headed Gull <i>Chroicocephalus ridibundus</i> [A179]</p> <p>Wetland and Waterbirds [A999]</p>	
<p>North Dublin Bay SAC [000206]</p>	<p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Annual vegetation of drift lines [1210]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows [1330]</p> <p>Mediterranean salt meadows [1410]</p> <p>Embryonic shifting dunes [2110]</p> <p>Shifting dunes along the shoreline with marram grass <i>Ammophila arenaria</i> (white dunes) [2120]</p> <p>Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</p> <p>Humid dune slacks [2190]</p> <p>Petalwort <i>Petalophyllum ralfsii</i> [1395]</p>	<p>7.5km east</p>
<p>Poulaphouca Reservoir SPA [004063]</p>	<p>Greylag Goose (<i>Anser anser</i>) [A043]</p> <p>Lesser Black-backed Gull (<i>Larus fuscus</i>) [A183]</p>	<p>23.3km south west</p>

8.2.2. With the exception of the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024), the South Dublin Bay SAC (Site Code: 000210), the North Bull Island SPA (Site Code: 004006) and the North Dublin Bay SAC (Site Code: 000206), I am satisfied that other European sites proximate to the appeal site can be ‘screened out’

on the basis that significant impacts on these European sites could be ruled out, either as a result of the separation distance from the appeal site, the extent of marine waters or given the absence of any direct hydrological or other pathway to the appeal site. The conservation objectives for the four above named coastal sites (available on <https://www.npws.ie/protected-sites>) largely relate to water-dependent habitats and species, as listed in table 6 above, including coastal and inter-tidal habitats and migratory wintering birds.

### **8.3. Receiving Environment**

8.3.1. The subject urban site, as described in Section 1 above, contains three large buildings and hard-surfaced areas, as well as overgrown vegetation and a variety of trees and shrubs including the invasive species Buddleia. Habitats identified on site as part of the applicant's Screening Report for AA include buildings and artificial surfaces, amenity grassland and ornamental/non-native shrubs. Surface water bodies have not been identified on the site and the report states that currently there is no attenuation of rain run-off and this is likely to enter the public sewer. In accordance with the Greater Dublin Area Strategic Drainage Study this project will incorporate sustainable drainage systems that will appreciably reduce the current runoff rate. This will include the installation of appropriately sized storage at podium level and hydrobrakes will limit discharge to drain network while a class one oil grease interceptor will remove pollutions. Additional measures include the use of green roofs and excess surface water will ultimately enter the combined sewer. Foul effluent from the proposed development will be sent to the wastewater treatment plant at Ringsend. As stated previously fresh water supply for the development will be via a main supply that originates in the Poulaphouca reservoir.

### **8.4. Test of Likely Significant Effects**

8.4.1. The project is not directly connected to or necessary to the management of any European site. The proposed development is examined in relation to any possible interaction with European sites to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites.

8.4.2. Taking account of the characteristics of the proposed development in terms of its location and the scale of works both during construction and operational phases, the following issues are considered for examination in terms of implications for likely significant effects on European sites:

- impacts on water quality, for example via release of suspended solids, accidental spills or the release of contaminants from made ground during construction;
- loss or disturbance of habitat/species, for example, use of the appeal site by qualifying species.

## 8.5. Potential Effects

8.5.1. The site is currently occupied by three large warehouse/commercial type buildings and contains no substantive features of ecological significance. Based on the source-pathway-receptor model, the nearest downstream pathway to designated sites from the appeal site is the River Liffey 1km to the site's south, flowing in an easterly direction into Dublin Bay.

8.5.2. Having regard to the above, the urban context and the residential nature of the proposed development, I consider that the only potential pathways between the appeal site (source) and the European sites (receptors) would relate to drainage during construction and operation. Due to the nature of the application site and the proposed development, there is no direct pathway to a European site, however there is a potential indirect pathway to coastal SACs and SPAs via surface and foul drainage networks and Ringsend WWTP.

8.5.3. Surface water from the site would be discharged at rates compliant with the Greater Dublin Regional Code of Practice for Drainage Works to the public surface water drainage system after passing through an attenuation tank and a flow-control hydrobrake. I note that SUDS measures have been incorporated into the project design also and therefore there will be no change to the quantity or quality of surface water leaving the site.

8.5.4. There is theoretically an indirect hydrological pathway between the application site and the four named coastal sites via the public drainage system and the Ringsend

WWTP, where wastewater from the proposed development would be treated. All foul water from the proposed development would be discharged via the public system to the Ringsend Wastewater Treatment Plant (WWTP). Permission has been granted (ABP Ref. 301798-18) for works that would increase the capacity of the plant from a population equivalent of 1.9 million to 2.4 million. I note that the submitted Screening Report for AA states that while the issues at Ringsend wastewater treatment plant are being dealt with in the medium term, evidence suggests that some nutrient enrichment is benefiting winter birds for which the SPAs have been designated in Dublin Bay (Nairn & O' Halloran eds, 2012). In any event, additional loadings to this plant arising from the operation of this project are not considered to be significant as there is no evidence that pollution through nutrient input is affecting the conservation objectives of the South Dublin Bay and River Tolka estuary SPA. I am satisfied that the distances are such that any pollutants post treatment from the Ringsend WWTP would be minimal and would be diluted and dispersed and, therefore, there is no likelihood that pollutants arising from the proposed development, either during construction or operation, could reach the designated sites in sufficient concentrations to have any likely significant effects on the designated sites in view of their qualifying interests and conservation objectives.

## **8.6. In-combination Impacts**

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

## **8.7. Stage 1 – Screening Conclusion**

- 8.7.1. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024), South Dublin Bay SAC (Site Code: 000210), North Bull Island SPA (Site Code: 004006) and North Dublin Bay SAC (Site Code: 000206), or any other European sites, in light of the sites' Conservation Objectives', and a Stage

2 Appropriate Assessment and the submission of a Natura Impact Statement is not therefore required.

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

## 9.0 Conclusion and Recommendation

- 9.1.1. In conclusion, I am of the opinion that this is a residentially zoned, serviceable site within an established urban area where a wide range of services and facilities exist. I am satisfied that with the amendments outlined above, including the omission of the 6th floor level of the rear (western) block, that the proposal will not adversely impact the visual or residential amenities of the area, to such an extent as to warrant a refusal of permission. In my opinion, the proposal will provide a development, with an appropriate mix of units and an acceptable density of development catering to a range of people at varying stages of the lifecycle. I consider the proposal to be generally in compliance with both national and local policy, together with the provisions of the National Planning Framework and relevant section 28 ministerial guidelines including the Sustainable Urban Housing: Design Standards for New Apartments (DHLG&H December 2020) and the Urban Development and Building Heights Guidelines for Planning Authorities (DHPLG 2018).
- 9.1.2. Therefore, I recommend that planning permission for the proposed development should be granted, subject to conditions, for the reasons and considerations set out below.

## 10.0 Reasons and Considerations

Having regard to the land-use zoning objectives for the site, as set out in the Dublin City Development Plan 2016-2022 and to the nature, scale and design of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density in this urban location, would be acceptable in terms of layout, height, scale and design, would provide a suitable level of amenity for future residents, would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and convenience, would be

served by adequate parking and environmental services and would comply with the provisions of the Dublin City Development Plan 2016-2022, the Urban Development and Building Heights Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in December 2018 and the updated Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government issued in December 2020. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 21<sup>st</sup> day of August 2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development, or as otherwise stipulated by conditions hereunder, and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

**Reason:** In the interest of clarity.

2. Prior to commencement of any works on site, revised details shall be submitted to and agreed in writing with the planning authority with regard to the following:
  - (I) Omission of the 6th floor of the rear (western) block, which would include the removal of apartments L6-01, L6-02 and L6-03.
  - (II) Windows on the eastern elevation (to kitchen/living rooms) and western elevation (to bedrooms) of podium level apartments PL-15 and PL-16 respectively are to be enlarged to a suitable size to allow increased natural light to enter these apartments.

**Reason:** In the interests of proper planning and sustainable development and to safeguard the amenities of future resident and the residential amenity of properties in the surrounding area.

3. The development hereby permitted shall be for build to rent units which shall operate in accordance with the definition of Build-to-Rent developments as set out in the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (December 2020) and be used for long term rentals only. No portion of this development shall be used for short term lettings.

**Reason:** In the interest of the proper planning and sustainable development of the area and in the interests of clarity.

4. Prior to the commencement of development, the owner shall submit, for the written consent of the Planning Authority, details of a proposed covenant or legal agreement which confirms that the development hereby permitted shall remain owned and operated by an institutional entity for a minimum period of not less than 15 years and where no individual residential units shall be sold separately for that period. The period of fifteen years shall be from the date of occupation of the first apartments within the scheme.

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

5. Prior to expiration of the 15-year period referred to in the covenant, the developer shall submit ownership details and management structures proposed for the continued operation of the entire development as a Build to Rent scheme. Any proposed amendment or deviation from the Build to Rent model as authorised in this permission shall be subject to a separate planning application.

**Reason:** In the interests of orderly development and clarity

6. The number of residential units hereby permitted is 85 no.

**Reason:** In the interests of clarity

7. 3 no. bat boxes shall be fitted in the areas outlined on site and the recommendations of the Bat Assessment report including the installation of

suitable bat friendly lighting shall be carried out on the site unless otherwise agreed in writing with the planning authority.

**Reason:** To ensure the protection of the natural heritage on the site.

8. Details of the materials, colours and textures of all the external finishes to the proposed building including samples of the translucent glazing to be used on the gantry screening shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

9. The landscaping scheme shown on drawing no. 19-521-SDA-DR-PD-PL-001, as submitted to the planning authority on the 21<sup>st</sup> day of August 2020, shall be amended as follows:

- The three proposed *Betula pendula* trees (Bpd) to the front (eastern elevation) of apartment PL-16 at podium level and shade tolerant perennial mix (P2) and *Corylus avellana* (Ca) to the front (eastern elevation) of apartment PL-15, also at podium level, shall be removed from the landscape plan and replaced with raised planters with low level suitable screen planting species, to ensure no obstruction to the windows of those aforementioned apartments.

A revised landscaping plan detailing these changes shall be submitted to the planning authority for agreement and the subsequent agreed scheme shall be carried out within the first planting season following substantial completion of the external construction works.

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

**Reason:** In the interest of residential and visual amenity.

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

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

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

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

12. A minimum of 10% of all car parking spaces should be provided with EV charging stations/points, and ducting shall be provided for all remaining car parking spaces facilitating the installation of EV charging points/stations at a later date. Where proposals relating to the installation of EV ducting and charging stations/points has not been submitted with the application, in accordance with the above noted requirements, the development shall submit such proposals shall be submitted and agreed in writing with the Planning Authority prior to the occupation of the development.

**Reason:** To provide for and/or future proof the development such as would facilitate the use of Electric Vehicles.

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

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

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

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

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

**Reason:** In the interest of public health.

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

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

17. Proposals for a naming and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of the development. Thereafter, all signs, and apartment numbers, shall be provided in accordance with the agreed scheme. The proposed name shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.

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

18. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

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

19. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of the development. This plan shall be prepared in

accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. This plan shall provide, inter alia, details and location of the proposed construction compound, details of intended construction practice for the development, including hours of working, noise and dust management measures, measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network, details of arrangements for routes for construction traffic, parking during the construction phase and off-site disposal of construction/demolition waste. The plan shall include details of waste to be generated during site clearance and construction phases, which shall be carried out in full, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

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

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

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

21. Prior to the commencement of development, the developer shall contact Iarnród Éireann to ensure an agreed safe system of work in accordance with Guidelines RSC-G-010A. Any works associated with the proposed development shall ensure that the integrity of the railway is maintained

**Reason:** To protect the railway and public safety

22. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance

until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion and maintenance of the development until taken in charge

23. Prior to commencement of the development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

**Reason:** To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

24. The developer shall pay to the Planning Authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the Planning Authority may facilitate and shall be subject to any applicable indexation

provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the Planning Authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

25. The developer shall pay to the planning authority a financial contribution in lieu of public open space in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

26. The developer shall pay to the planning authority a financial contribution in respect of the Luas Cross City extension in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the

Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

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Máire Daly  
Planning Inspector

15<sup>th</sup> February 2021