



An
Bord
Pleanála

Inspector's Report

ABP-308770-20

Development	Demolition of vacant industrial building and 2 dwellings, and all associated site works.
Location	Site at No's, 24, 26 and 28, Foster's Avenue, Mount Merrion, Blackrock, Co. Dublin
Planning Authority	Dún Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D20A/0406
Applicant(s)	Strand Court Limited
Type of Application	Permission
Planning Authority Decision	Grant permission with Conditions
Type of Appeal	Third Party vs Decision
Appellant(s)	<ol style="list-style-type: none">1. Colm and Dominique Carey2. Robert Hussey3. Noel Sheridan4. Jean Cooper5. Elizabeth and Joseph Connolly

6. Desmond and Elizabeth O'Reilly
7. Declan Hayes and Elma Anna O'Reilly
8. Alex and Dolores Wadkin
9. Nico Petris
10. John Collins
11. Francis J Moran for Mount Merrion Residents Association

Observer(s)

1. Michael Ryan
2. Cormac and Dianne Commins
3. Teresa Hussey

Date of Site Inspection

28th January 2022

Inspector

Phillippa Joyce

1.0 Site Location and Description

- 1.1. The appeal site is located at Foster's Avenue (R112) in Mount Merrion, County Dublin. The site is located to the south (opposite) of the Nova entrance to the wider UCD campus, c.250m southwest of the junction with the Stillorgan Road (R138) dual carriageway and Quality Bus Corridor (QBC), and c.650m due north of Mount Merrion village.
- 1.2. The site is rectangular in configuration and indicated as measuring c.0.6 ha in area. The majority of the site comprises the industrial buildings of the former Glenville Industrial Estate (26 Foster's Avenue), with two residential properties adjacent to the east (24 Foster's Avenue 'Glenville' (a two storey over basement detached dwelling) and west (28 Foster's Avenue 'Sunnyside' (a detached dormer bungalow)). The structures within the site have been vacant for a number of years with disrepair, littering and vandalism of the buildings evident.
- 1.3. The site is located in an established residential area characterised by detached residences of varying building height, on relatively large plots and/ or with long rear gardens. Adjacent to the west is 30 Foster's Avenue, a detached dormer bungalow, the garage of which is attached to that of 28 Foster's Avenue, to the east are detached dormer bungalows 22 Foster's Avenue, 1 and 2 The Foster's, and to the south are detached dormer bungalows/ two storey dwellings, 21-29 St. Thomas Road (five properties, uneven numbers).
- 1.4. The northern boundary of the site extends for c.70m along Foster's Avenue and comprises a rendered stonewall. The remaining site boundaries comprise stonewalls (including a retaining wall along the southern boundary), wooden/ palisade fencing, and treelines/ hedgerows with the adjacent residential properties. The site contains a notable number of mature trees and vegetation associated with the gardens of the residential properties and screening for the industrial buildings. The presence of four bat species has been confirmed at the site, with bat activity including commuting, foraging, and roosting (roosts are identified in the industrial structures of 26 Foster's Avenue).
- 1.5. The topography of the area is notable as the site is at a lower level than lands further to the west along Foster's Avenue and to the south along North Avenue. From St. Thomas Road, ground levels fall from c.34m OD by 5.5m to c.28.5m OD at the site's

southern boundary (ground level at the adjacent southern properties/ level at top of the site's retaining wall) and continue to fall by a further 2.5m to 26m OD at the site's northern boundary on Foster's Avenue.

2.0 Proposed Development

- 2.1. The proposed development comprises the demolition of the existing buildings within the site and all associated site works. The floor areas of the buildings to be demolished are indicated as follows: 24 Foster's Avenue 362sqm, 26 Foster's Avenue 3,135sqm, and 28 Foster's Avenue 160sqm, yielding a total of 3,657sqm.
- 2.2. The extent of the proposed demolition works is down to but not including the ground floor slab level for the industrial buildings of 26 Foster's Avenue, down to but not including the lower ground floor/ basement slab level of 24 Foster's Avenue, and 28 Foster's Avenue in its entirety, including the garage structure attached to that of 30 Foster's Avenue.
- 2.3. The total quantum of demolition waste arising is estimated as c.662 tonnes, which includes 63 tonnes of asbestos containing material to be disposed of to an off-site licensed facility. The proposal does not involve any underground excavation with existing underground services infrastructure to remain intact.
- 2.4. The associated works within the proposal include removal of the front boundary wall along Foster's Avenue and its replacement with a 2.4m high timber hoarding, and the removal of 21 trees (83 trees identified in total), with the protection/ stabilising of the remaining trees and hedgerows.
- 2.5. In addition to the standard plans and particulars, the application as initially lodged was accompanied by the following reports and documentation:
 - Planning Report;
 - Structural Inspection of Existing Buildings;
 - Outline Demolition Plan;
 - Landscape and Arboricultural Statement;
 - Bat Assessment;
 - Ecological (Biodiversity) Appraisal;

- Demolition Waste Management Plan (DWMP); and
- Screening Report for Appropriate Assessment (SRAA).

2.6. Following a Further Information (FI) request, additional information was submitted in respect of protection measures for biodiversity including bats and surface water. The FI response was deemed to be significant FI (SFI) and readvertised accordingly. At SFI response stage, the following updated and/ or revised reports were submitted:

- Cover letter with National Parks and Wildlife Service (NPWS) Derogation Licence No.: DER/BAT 2020-93;
- Structural Inspection of Existing Buildings;
- Outline Demolition Plan;
- Bat Assessment;
- Ecological (Biodiversity) Appraisal; and
- SRAA.

3.0 Planning Authority Decision

3.1. Summary of Decision

3.1.1. On 4th November 2020, the planning authority issued a Notification of Decision to Grant Permission subject to 12 conditions. The following is an overview of the attached conditions (there is a degree of crossover in the scope of some conditions):

Conditions 2, 3, 4 and 7: bat protection measures including compliance with stated mitigation measures, the terms of the NPWS derogation licence, and a final report from a bat specialist;

Conditions 2, 6 and 7: biodiversity protection measures including compliance with stated mitigation measures, appointment of an ecologist with a final report from same;

Conditions 5 and 12: landscaping and tree protection measures including the management of invasive species, the appointment of a landscape consultant and provision of a completion certificate from same; and

Conditions 7, 8, 9, 10, and 11: demolition related items including the agreement of a demolition management plan (with a traffic management plan detailing the routes, hours of operation, parking arrangements), specification of the site's access point, pedestrian and traffic safety protection measures, and agreement of a demolition waste management plan and an environmental management demolition plan.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The planner's reports are the basis for the planning authority decision. The key items from the planner's initial report and the subsequent SFI report can be summarised as follows:

- Rationale for proposal is stated as being due to substandard derelict nature of buildings and to allow site clearance and making site safe for future development;
- Refers to pre planning consultations for known future development proposals;
- Existing structures do not contribute to the area (visually, character, accommodation type) and their demolition is acceptable;
- No issues or concerns raised in planning history cases relating to the demolition works, and No. 24 Foster's Avenue is not on the National Inventory of Architectural Heritage (NIAH);
- Bat surveys between 2018-2020 identified three bat roosts in 26 Foster's Avenue only, not in the two dwellings or any trees in the site;
- Mitigation measures for bats include optimal timing of demolition works and tree removal, and provision of new bat boxes;
- 21 trees, 25% of site's total tree cover, to be removed to facilitate the demolition works (62 trees to remain);
- Extent of tree removal and protection of remaining trees (to be undertaken in accordance with BS5837) considered acceptable;
- No objection to/ issues raised in respect of waste management, landscaping, surface water drainage, and transportation can be addressed by conditions;

- Screening for environmental impact assessment (EIA) undertaken which concludes that the need for EIA has been excluded at preliminary examination;
- Proposed development not subject to a development contribution;
- FI requested on eight items relating to biodiversity/ environmental issues including on bats (NPWS derogation licence, monitoring, reporting), surface water runoff measures, and updating associated reports;
- SFI response included the NPWS Derogation Licence No.: DER/BAT 2020-93 and updated bat assessment, ecological appraisal, and AA screening reports as necessary;
- Screening for AA undertaken which concludes the proposed development would not significantly impact on a Natura 2000 site; and
- Concludes that, subject to conditions, the proposal would accord with the residential zoning and the proper planning and sustainable development of the area.

3.2.2. Other Technical Reports

Biodiversity Officer: Initial report states the Bat Assessment, EclA (i.e. Ecological (Biodiversity) Appraisal) and AA Screening reports had been reviewed and FI was requested on a number of biodiversity/ environmental items. Subsequent report notes satisfactory resolution of items. No objection subject to six conditions (form the basis of Conditions 2, 3, 4, 5, 6 and 7).

Transportation Planning: No objection subject to four conditions (form the basis of Conditions 7, 8, 9 and 10).

Surface Water Drainage Planning: No objection, no conditions.

Environment Section Planning: No objection subject to two conditions (form the basis of Condition 11).

Parks Department: No report received.

3.3. **Prescribed Bodies**

No reports from prescribed bodies.

3.4. Third Party Observations

- 3.4.1. The planning authority received 19 submissions (initial and SFI stages) from third party observers during the processing of the application. The majority were in objection to the proposed development, while a small number sought to raise certain issues such as the managed removal of asbestos from the site.
- 3.4.2. The issues raised in the third party submissions to the planning authority continue to form the basis of the grounds of appeal for the third party appellants, which are outlined in detail in Section 6.0 The Appeal below.

4.0 Planning History

Appeal Site

ABP 309966-21, Referral case

Third party referral case invalidated on 13th April 2021 as the Board has no jurisdiction on the posed question: 'Whether an application for permission (reg. ref: D20A/0670) is the same development or development of the same description as ref: D20A/0406 which is subject of a current appeal (ABP-308770-20)'.

PA Ref. D20A/0670, ABP 309931-21

Permission granted to the applicant on 18th March 2021 for the demolition of existing buildings and site clearance works, and construction of three apartment blocks, a communal amenity building, communal open space areas, parking spaces, vehicular, pedestrian and servicing access from Foster's Avenue, utilities, and all associated site works.

The planning authority decision to grant permission is subject of an appeal, ABP 309931-21, which is being assessed presently (at the time of writing ABP decision pending).

ABP 304063-19, SHD application

Permission refused to Foster Stack Limited on 12th July 2019 for 123 no. Build to Rent apartments, childcare facility and associated site works, for two reasons:

1. *Having regard to the design, scale, bulk and height of the development, to its proximity to site boundaries and to the proposed removal of trees at the development site, it is considered that the proposed scheme would be overbearing when viewed from adjacent residential properties and would seriously injure the residential amenities of adjoining properties through undue levels of overlooking, overshadowing and noise impacts. In addition, the development would have an adverse visual impact on Fosters Avenue due to its bulk and scale in close proximity to the road in advance of the established building line to the west of the site, and to the extensive nature of the façade at the road frontage. The proposed development would be contrary the National Planning Framework and Ministerial Guidelines, which promote innovative and qualitative design solutions and would seriously injure the amenities of property in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*
2. *The Bat Survey Report indicates that there are three bat species present at the development site, that is the Soprano Pipistrelle, Common Pipistrelle and Leisler's Bat, which are all protected under the European Communities (Birds and Natural Habitats) Regulations 2011 and the Wildlife Act 1976 (as amended). It is considered that the proposed development would have a significant adverse impact on the bat species present at the site due to the removal of existing trees that provide connectivity and foraging habitat and to potential light spillage from the apartment building and the public lighting serving the development. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

5.0 Policy Context

5.1. Local Planning Context

Change between Dún Laoghaire Rathdown County Development Plans

- 5.1.1. The Dún Laoghaire Rathdown County Development Plan 2016-2022 (2016 CDP) was in effect at the time the planning application was lodged and assessed, and when the appeals were made on the planning authority decision. As such, the application and appeal documentation both refer to policy and objectives in the 2016 CDP (which, where relevant, are stated in Section 6.0 The Appeal in this report).

5.1.2. In the interim, the Dún Laoghaire Rathdown County Development Plan 2022-2028 (2022 CDP) came into effect on the 21st April 2022 (the Draft Ministerial Direction issued to the planning authority is not applicable to the appeal case). Accordingly, therefore, this appeal is assessed with regard to the provisions of the 2022 CDP.

Dún Laoghaire Rathdown County Development Plan 2022-2028

5.1.3. The relevant 2022 CDP map based designations include:

- The site is zoned as ‘A’ with the stated objective *‘To provide residential development and improve residential amenity while protecting the existing residential amenities’*;
- Along Foster’s Avenue, the site’s northern boundary, are a Strategic Road Reservation with a specific local objective (SLO), SLO 4 seeking to promote future leisure, recreational, biodiversity uses along the Dublin Eastern Bypass reservation corridor;
- Opposite the site, the entrance gate and piers (Nova entrance into UCD campus) associated with Merville House is included as part of that protected structure entry, RPS 94; and
- The site does not contain, is not located within, nor subject to any other CDP designations (e.g. protected structures, architectural conservation area, sensitive landscape character area), or other map based SLOs.

5.1.4. Chapter 12 Development Management contains requirements for new development and redevelopment proposals:

- Section 12.3.9, Demolition and Replacement Dwellings – replacement of a single dwelling with multiple units will be weighed against a number of factors including distinctiveness of dwelling and gardens, and whether any such dwelling is habitable, and encourage retention of exemplar 19th and 20th century dwellings on sites in excess of 0.4 ha;
- Section 12.3.9 states regard is to be given to Chapter 11 Policy Objectives HER 20 and HER 21 for demolition proposals:
 - Section 11.4.3.2, Policy Objective HER 20: Buildings of Vernacular and Heritage Interest – retain where appropriate and rehabilitate older

buildings/ structures/ features which make a positive contribution to the character and appearance of the area and streetscape in preference to their demolition and redevelopment; and

- Section 11.4.3.3, Policy Objective HER 21: 19th and 20th Century Buildings, Estates and Features – encourage the appropriate development of exemplar 19th and 20th century buildings and estates, including features that contribute to their character;
- Section 12.7.1, Green Infrastructure – works affecting a protected species require a derogation licence from the NPWS in advance of works being undertaken, preferable that the licence is obtained before planning permission applied for, and undertake an Ecological Impact Assessment to address impacts;
- Section 12.7.2, Biodiversity – precautionary approach to environmentally sensitive sites, a derogation licence from the NPWS required in advance of permission, ecological risk and/ or impact assessments and an invasive species management plan required as necessary;
- Section 12.8.11, Existing Trees and Hedgerows – existing trees and hedges to be incorporated as far as practicable, arboricultural assessments required, and tree protection undertaken in accordance with referenced standard (BS 5837); and
- Section 12.9.6, New Developments/ Change of Use: Environmental Impacts – design specifications for/ plans addressing impacts arising from climate change, stormwater, SuDS, sediment and water pollution control, construction management (including waste, environmental, and traffic management plans), operational waste management, waste storage facilities, flood prevention of basement levels, flood risk management.

5.2. Natural Heritage Designations

- 5.2.1. The appeal site is not located in or immediately adjacent to a European Site, a Natural Heritage Area (NHA) or a proposed NHA. There are no watercourses at or adjacent to the site.

5.2.2. The European Site designations in proximity to the referral site include (measured at closest proximity):

- South Dublin Bay and River Tolka Estuary SPA (site code 004024) is c.1,254m to the northeast;
- South Dublin Bay SAC (site code 000210) is c.1,394m to the northeast;
- North Dublin Bay SAC (site code 000206) is c.6,201m to the northeast;
- North Bull Island SPA (side code 004006) is c.6,287m to the northeast;
- Rockabill to Dalkey Island SAC (site code 003000) is c.8,057m to the east;
and
- Dalkey Islands SPA (site code 004172) is c.8,115m to the southeast.

5.2.3. There are pNHA designations that align/ overlap with the two European Site designations above, including the:

- Booterstown Marsh pNHA (site code 001205) is c 1,254m to the northeast;
and
- South Dublin Bay pNHA (site code 000210) is c.1,394m to the northeast.

5.3. Screening Determination for Environmental Impact Assessment

5.3.1. Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended, and section 172(1)(a) of the Planning and Development Act 2000, as amended, identify classes of development with specified thresholds for which an Environmental Impact Assessment (EIA) is required.

5.3.2. The project comprises the demolition of structures (total floorspace of c.3,657 sqm), felling of 21 trees (of a total of 83 trees, representing c.25%), the removal of the front boundary wall and replacement with timber hoarding in a site measuring 0.6 ha located within a built up area. There are no underground works and subsurface infrastructure will remain intact. The proposal does not include for any construction works. I note that the application and appeal documentation make references to the future redevelopment of the site, and there is a concurrent appeal case at the site, ABP 309931-21 (which is subject of a separate screening determination for EIA), for demolition and site clearance works, and the construction of an apartment scheme (permission applied for 72 apartments, 67 apartments granted by condition).

5.3.3. I identify the following classes of development in the Regulations as being of relevance to the proposal:

- Class 10(b) relates to infrastructure projects that involve:
 - (i) Construction of more than 500 dwelling units,
 - (iv) Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere;
- Class 14 relates to works of demolition carried out in order to facilitate a project listed in Part 2 of Schedule 5 where such works would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7 of the Regulations; and
- Class 15 relates to any project listed in Part 2 which does not exceed a quantity, area or other limit specified in that Part in respect of the relevant class of development, but which would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7.

5.3.4. The proposed development is sub-threshold in terms of mandatory EIA requirements arising from Class 10(b)(i) and/ or (iv) and, by association, Class 14 of the Regulations. Class 15 is of relevance as the demolition works can reasonably be considered to facilitate a project (e.g. a Class 10(b) infrastructure) that would not exceed a quantity, area or other limit specified in respect of the relevant class of development (i.e. would facilitate a project of less than 500 dwelling units and/ or an urban development on a site less than 10 hectares). As such, the criteria in Schedule 7 of the Regulations are relevant to the question as to whether the proposed sub-threshold development would be likely to have significant effects on the environment and should be the subject of an EIA. The criteria include the characteristics of the proposal, the location of the site, and any other factors leading to an environmental impact. I have completed an EIA Screening Determination based on the criteria in Schedule 7, which is set out in Appendix A of this report.

5.3.5. Of the characteristics of the proposal, the nature and the size of the proposed development are notably below the applicable thresholds for EIA. The proposal differs from the surrounding residential area, but the difference is not considered to

be significant in terms of character or scale. The proposal will cause physical changes to the appearance of the site and its boundaries though, similarly, these are not considered to be significant in effect. The demolition works produce waste including asbestos containing material, a hazardous substance, that will be removed, transported, and disposed of. The proposal will also cause noise and vibration, and air (asbestos and dust) impacts. Mitigation measures addressing these impacts are contained in the submitted Outline Demolition Plan (ODP), expanded on in Demolition Management Plan (DMP, submitted with the applicant's appeal response) which supplements the provisions of the Demolition Waste Management Plan (DWMP). In summary, the works are short term in duration, estimated to be over a 12-week period, and the impacts arising will be temporary, localised, addressed by the mitigation measures, and not considered likely to result in significant effects on the environment. The proposal does not cause a change in site topography, land use, or waterbodies, or a significant use of natural resources during the demolition process. The proposal does not involve underground excavation works, or discharge of pollutants to ground or surface water environments. There is no risk of major accidents given nature of project, nor is it part of a wider large scale change in the area as the site is an infill site within an established built-up location, and no cumulative significant effects on the area are reasonably anticipated.

- 5.3.6. Of the location of the proposed development, the site is not in, on, or adjoining a European site, a designated or proposed Natural Heritage Area, or any other listed area of ecological interest or protection. There are no archaeological features recorded at the site, and no architectural heritage or landscape designations pertaining to the site. There are no high quality or scarce resources on or close to the site. There are no watercourses within or under the site, or direct connections to watercourses in the area. The site is not located within a flood plain. Traffic generation associated with the project is of a scale that is not anticipated to contribute to congestion. Of most note regarding the site's location is the presence of four protected bat species, and its being adjacent to residential development, a sensitive receptor. Bat activity recorded at the site includes commuting, foraging, and roosting (three roosts are identified in 26 Foster's Avenue). The proposal will cause impacts on the local bat populations, and mitigation measures addressing these impacts are contained in the Bat Assessment, Ecological (Biodiversity)

Appraisal, and DMP. The proposal will cause impacts on the residential amenity of adjacent properties, and mitigation measures and provisions addressing these impacts are contained in the DMP and DWMP. The location of the proposed development does not contain designations, include features, or display sensitivities such that the proposal is considered likely to result in significant effects on the environment.

- 5.3.7. Of whether there are any other factors which could lead to environmental impacts, the proposal is at an infill site within an established built-up location. As such, and given the nature of the proposal, the associated impacts arising will be temporary and localised. While appellants refer to development works in the wider area, which are noted, including at the UCD campus, there are no cumulative significant effects on the area that are reasonably anticipated. There are no transboundary effects arising. There is a concurrent appeal case at the site, ABP 309931-21, which is under consideration. As is discussed in Section 7.2 of this report below, I consider the current appeal and the concurrent appeal to be mutually exclusive projects, and the concurrent appeal is subject of a separate EIA Screening Determination.
- 5.3.8. To enable the EIA Screening Determination, the appeal documentation includes an EIA Screening Statement (Appendix 7 of the applicant's appeal response). The Statement includes information required to be provided under Schedule 7A of the Regulations. The information comprises references to reports included in the application and/ or appeal documentation, and analysis and descriptions of impacts and mitigation measures proposed to address same.
- 5.3.9. I have reviewed the reports referred to, confirm the nature of impacts identified, and the range of mitigation measures proposed. I am satisfied that the submitted EIA Screening Statement identifies and describes adequately the effects of the proposed development on the environment. The EIA Screening Statement submitted with the appeal response concludes that an EIA is not required due to the project not being a Schedule 5 Part 1 class of project requiring EIA, for being significantly below thresholds for Schedule 5 Part 2 classes of project requiring EIA, and there being no likelihood of any significant effect on the environment as per the Schedule 7 criteria.
- 5.3.10. Having regard to the foregoing, I have concluded that the proposed development would not be likely to have significant effects (in terms of extent, magnitude,

complexity, probability, duration, frequency, or reversibility) on the environment and that the preparation and submission of an environmental impact assessment report is not therefore required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The planning authority decision to grant permission has been appealed by 11 third party appellants with addresses given at Foster's Avenue, St. Thomas Road, Wilson Road, and The Rise. The main issues raised in the third party grounds of appeal can be summarised as follows:

- Project Splitting and EIA Requirement:
 - Incomplete application as only demolition works are indicated;
 - Two step approach is deliberately misleading and strategic;
 - Unable to make an informed decision without details of future development;
 - Inappropriate to have demolition with no redevelopment plan for this suburban site;
 - Reject proposal until accompanied by a development proposal;
 - Permission should be refused, due to uncertainty of how long there would be a partially demolished site, or time linked to a future development to avoid any unspecified delay;
 - Now known there is a parallel/ concurrent application (i.e. PA Ref. D20A/0670) which DLRCC is yet to assess and applicant has split the projects to avoid assessing their cumulative impacts;
 - Applicant is seeking to circumvent the proper planning process and EU legislation by project splitting;
 - Reasons given for project splitting (e.g. time bound demolition works, residential development more likely to undergo a lengthy planning process) are unlawful;

- Demolition and construction works should be treated as a sub-threshold project for the purposes of EIA; and
- Proposal requires an EIA due to cumulative impacts from both applications/ projects.
- Planning Authority Decision and Procedural Matters:
 - Local residents have not been contacted or consulted with by the applicant;
 - DLRCC did not take residents' concerns into account (e.g. at FI request stage);
 - Permission should not have been granted until a final decision reached on concurrent application;
 - DLRCC permission has many conditions requiring final reports to be submitted which indicates the application is incomplete;
 - No reference to or inclusion of a condition stipulating a completion date for the demolition works;
 - Six conditions protecting bats and biodiversity, no conditions protecting residents and/ or the Mount Merrion area;
 - Conditions 7 and 11 require final reports but without the written approval of DLRCC with arrangements/ agreements which residents/ third parties are excluded from; and
 - Condition 11 (sic) (Condition 12) is not sufficiently robust as inspection by DLRCC will be too late after the landscaping works are done.
- Demolition Works and Waste Management:
 - Demolition of the dwellings, which are structurally sound, is contrary to and national, regional and local policies relating to maintaining housing stock;
 - Applicant's Structural Report is only based on a visual inspection;
 - 28 Foster's Avenue has suffered damage and dereliction due to change of ownerships;

- Dwellings are not on the Council's condemned buildings list/ register of derelict sites;
- Dwellings should be retained and incorporated into a more considered proposal;
- Due to the housing crisis, the dwellings should be renovated and not demolished;
- Dwellings are both of historical value (24 Foster's Avenue 'Glenville' dating from the 1930s, 26 Foster's Avenue 'Sunnyside' from the 1950s) and have distinct characters (24 Foster's Avenue unique in the area, 26 Foster's Avenue one of a number of uniformly designed Wates Dormy/ Waites Builders dwellings);
- 24 Foster's Avenue will be proposed by local councillors as a candidate/ proposed protected structure in the Council's draft development plan and should not be demolished;
- Demolition of buildings, which are of heritage interest, is material contravention of Section 6.1.3.5 Policy AR5 of the 2016 CDP;
- Demolition works will damage the natural environment and result in the significant loss of trees;
- Phoenix Environment Safety Report (asbestos survey) was not on the DLRCC public planning file;
- Insufficient information on the management of 63 tonnes of asbestos, the location and type of asbestos;
- Outline demolition plan has very little information/ is devoid of any useful data (e.g. length of time for works, number of staff, parking, machinery, hours of operation); and
- Absence of traffic information for the demolition works.
- Residential Amenity and Amenities of the Area:
 - Very little reference to impacts on residents from demolition works or from the site being vacant for an unqualified period of time until the completion any approved development;

- Scale of demolition will result in a large vacant site attracting anti-social behaviour and vandalism affecting the amenities of the area;
 - Dead wasteland for an indefinite period of time;
 - Removal of front boundary wall and metal gates is a security concern for adjacent properties as it will increase the risk of break-ins, burglaries and threats to residents' safety;
 - Front boundary wall to be replaced by 2.4m timber hoarding which will be insufficient to secure the site, attract unwanted and undesirable attention, be vandalised, an eyesore for local residents, and a blot on the streetscape of Foster's Avenue;
 - Proposal will have a particularly adverse impact on the residential and visual amenity of 30 Foster's Avenue, adjacent to the west, as shared site/ garden boundary, difference in levels, garages have a shared party wall, and impact of the proposed hoarding (security concerns, ugly, intrusive);
 - Unclear if works will remove buildings' foundations and therefore potential pollution risk to groundwater/ contamination of Trimbleston (sic) Stream which has not been definitely identified;
 - Adverse impacts of construction works ongoing in UCD from traffic, dust and dirt nuisance will be exacerbated by the proposal;
 - Proposal is not in accordance with the zoning objective 'To protect and/ or improve residential amenity' as stated by the planning authority; and
 - If ABP grants permission requests conditions to protect amenity of 30 Foster's Avenue (hours of operation of 8am-6pm, site entrance from gate at centre of site not at 28 Foster's Avenue, measures to prevent parking and nuisance on grass verge/ in proximity to 30 Foster's Avenue).
- Bats:
 - ABP refusal reason about bats in SHD application has not been overcome;
 - Inconsistencies between the information in the SHD application and current application about the number and species of bats and trees at the site;

- Remarkable that the applicant and DLRCC have minimised the legislation cited in the ABP refusal reason;
- Proposal not in compliance with the Bat Mitigation Guidelines from the DoEHLG as bat boxes are not a like for like replacement for roosts, 2 years of monitoring of replacement boxes has not been undertaken, and the main outcome should be for avoidance of impact;
- Bats will be disturbed twice, firstly from demolition works and secondly by future construction works, which cannot be in bats' best interests;
- Bat assessment is incomplete and defective in important aspects (eg. identification of trees, classification of impacts, mitigation measures at odds with those included in the concurrent application);
- Use of a derogation licence has not been sufficiently justified;
- Derogation licence for the proposal, involving bat roost destruction, is invalid as its stated purpose is to protect wild fauna and conserve natural habitats, whilst the obvious reason is to develop the site;
- Derogation licence does not meet the strict criteria of the Finnish Wolves case by, for example by not placing limits on the extent of activities licenced, and monitoring and implementation measures are vague;
- Differences in the application (extent of tree removal, 21 of 83 trees) and the concurrent application PA Ref. D20A/0670 (63 of 83 trees) renders the mitigation measures for bats (replacement bat boxes) in this application invalid; and
- EIA is required for this project as it involves the destruction of bat roosts which is by definition a significant effect on the environment.

6.2. Applicant's Response

6.2.1. The applicant has responded to the third party grounds of appeal, the main points of which can be summarised as follows:

- Project Splitting and EIA Requirement:

- Proposal is not premature pending the overall development proposal as it allows for site clearance to provide for a new high quality development in an orderly manner;
- Proposal is required to address health and safety concerns about buildings, and to allow for a timely and orderly demolition works and tree removal to minimise impacts on bats;
- Proposal is supported by arboricultural, biodiversity, bat specialist, and demolition reports with tree removal and mitigation measures specific to the demolition works;
- Proposal does not result in project splitting as the development does not require EIA;
- No automatic requirement for an EIA due to the destruction of bat roosts and/ or due to health impacts from asbestos removal;
- Concurrent application (PA Ref. D20A/0670) is for both the demolition and construction works and is accompanied by an EIA screening report which considers the in-combination/ cumulative impacts of both components; and
- An EIA Screening Statement submitted for the proposal concludes the project is not of a class requiring mandatory EIA, nor subthreshold EIA, and there is no likelihood of any significant effect on the environment.
- Planning Authority Decision and Procedural Matters:
 - Applicant has engaged with/ informed neighbouring property owners of development proposals.
- Demolition Works and Waste Management:
 - Demolition of existing vacant buildings is recommended in the structural engineering report due to poor condition, safety concerns, and their being beyond repair;
 - An Architectural Heritage Assessment submitted of 24 Foster's Avenue concludes the building has no features to warrant its retention or protection;

- Buildings to be demolished are not on the protected structures record, no concerns raised by the planning authority in its assessment, nor in the planning history;
- Planning authority's Environment Section report does not raise any concerns regarding the information provided in respect of asbestos;
- Asbestos removal has been addressed in the ODP, the DWMP, and the newly submitted preliminary DMP; and
- Proposal is in accordance with CDP policy Sections 8.2.3.4 (ix) (sic) (8.2.3.4 (xiv) demolition and replacement of dwellings), 8.2.9.7 (provision of necessary demolition information) and is not a material contravention of CDP policy Section 6.1.3.5 (as has no heritage value).
- Residential Amenity and Amenities of the Area:
 - Implementation of the standard demolition stage mitigation measures included in the demolition related plans (required by Conditions 7 and 11) will protect the residential amenity of nearby properties;
 - Further information on these measures is included in the newly submitted DMP;
 - Eastern, western, and southern site boundaries will be maintained and only the northern (front) boundary will be removed and replaced by hoarding;
 - Security measures have been and will be put in place for site safety;
 - Works required to weather the garage party wall and roof of 30 Foster's Avenue will be completed after demolition works (as set out in the ODP and the DMP);
 - No below ground excavation works, no changes in levels, and shared walls and boundaries will be assessed, monitored, and supported;
 - No requirement for significant excavation works so underground foundations and infrastructure remaining and no groundwater pollution arising; and

- A temporary surface water management facility to be installed ensuring runoff will drain to ground within the site and not flow to public road/ adjacent properties.
- Bats:
 - Additional mitigation measures were added to the Bat Assessment in the SFI response, and proposal is supported by a Derogation Licence from the NPWS;
 - Mitigation measures of the SFI response Bat Assessment and conditions of the Derogation Licence are incorporated into the SFI updated ODP;
 - NPWS was provided with all information for proposal and concurrent application (i.e. demolition and construction works) in the application for the Derogation Licence to allow an informed decision;
 - NPWS Derogation Licence is valid, time specific (spring/ autumn within a 2 year period), unchallenged, permissible under the Birds and Natural Habitats 2011 Regulations and, as such, the applicant can rely on and the Board can have regard to same;
 - Refers to Highlands case which found a grant of planning permission did not obviate the need to separately obtain a derogation licence;
 - Response to criticisms of the Bat Assessment (methodology and reference texts, tree assessment, bat survey work, and appropriateness for bat boxes and length of monitoring) is provided; and
 - Ecology and bat assessment reports ensure that the proposal does not have an adverse impact on bats thereby addressing the second refusal of the SHD application.
- Documentation supporting the appeal response includes:
 - Appendix 4: Copy of correspondence indicating engagement with/ informing of neighbouring property owners;
 - Appendix 5: Demolition Management Plan (DMP);
 - Appendix 6: Bat Specialist responses to criticisms of Bat Assessment;
 - Appendix 7: EIA Screening Statement; and

- Appendix 8: Architectural Heritage Assessment of 24 Foster's Avenue.

6.3. **Planning Authority Response**

- 6.3.1. A response has been received from the planning authority stating that the grounds of appeal do not raise any new matter which would justify a change of attitude to the proposed development.

6.4. **Observations**

- 6.4.1. Three observations have been made on the appeal by observers with addresses given at St. Thomas Road. The majority of issues raised in the observations have been raised previously in the third party grounds of appeal and summarised above. Other main issues not previously raised, can be summarised as follows:

- Concern for impact on mature trees in adjacent properties (in particular 29 St. Thomas Road) along the southern boundary of the site; and
- Proposal would set a very dangerous precedent whereby no certainty would be provided on what could be built, where and when.

6.5. **Prescribed Bodies**

- 6.5.1. On lodgement of the appeal, the Board referred the appeal to the Heritage Council, An Taisce, and the Minister for Culture, Heritage, and the Gaeltacht (for the NPWS). No responses have been received from these prescribed bodies at the time of assessment.

6.6. **Further Responses**

- 6.6.1. Further responses (section 131 submissions) were received on the applicant's response to the appeal grounds from each of the 11 third party appellants and one observer.
- 6.6.2. A number of issues raised in the further submissions are reiterations of issues raised previously in the grounds of appeal (which I have summarised above). The main issues raised in relation to newly submitted information can be summarised as follows:

- Project Splitting and EIA Requirement:
 - Incorrectly conflates the concept of cumulative effects with project splitting;

- Board does not have sufficient information to carry out a lawful screening determination for the proposal as another part of the project (i.e. the concurrent application) is under consideration by DLRCC;
- Board lacks jurisdiction to make a screening determination as the entire project is subject to an application pending before DLRCC; and
- EIA Screening Statement flawed as the safe removal of asbestos material has not been included for or satisfactorily demonstrated.
- Planning Authority Decision and Procedural Matters:
 - Applicant provides a self-serving narrative regarding timing and extent of consultation on the application; and
 - Still no reference to the length of time the demolition works may take and how long the site will remain vacant.
- Demolition Works and Waste Management:
 - Reference to a 2018 application which the planning authority refused permission for works to a structure at 74 Foster's Avenue due to architectural heritage protection reasons, and likens the subject buildings to that structure;
 - Only the architectural heritage of 24 Foster's Avenue has been addressed, not that of 28 Foster's Avenue or the industrial heritage aspects of 26 Foster's Avenue;
 - Board should consult directly with the Conservation Officer in the planning authority;
 - Architectural Heritage Assessment shows 24 Foster's Avenue is a striking and unusual domestic dwelling which should be renovated to its former glory and is part of the history of the street;
 - Notes that the Phoenix Environmental Safety asbestos survey report has been provided but questions DLRCC assessment of the application without it previously;

- Questions the manner in which asbestos removal/ demolition works can be achieved in Covid restrictions (e.g. over 12 week time period and staff travelling together);
 - Planning authority's Environment Section report did raise concerns and required an Asbestos Hazardous Waste Management Plan;
 - Due to environmental and health risks such a plan cannot be left over to post consent agreement;
 - DMP has no real substance and does not provide sufficient detail about the handling of asbestos containing materials;
 - DMP still lacks details e.g. on type of machinery, number, size and type of trucks, noise and dust levels;
 - Queries aspirational nature of the DMP, e.g. that the working hours are specified but open to modification and a community liaison officer to be appointed but will be paid for by the developer; and
 - Location of/ provision of site access, parking area, site compound and welfare facilities, as indicated in the Traffic Management Plan of the DMP, will result in tree removal that has not been identified in the Landscape and Arboricultural Statement.
- Residential Amenity and Amenities of the Area:
 - Security measures set out in the DMP are for the demolition contract, no recognition of security resources after the completion of the demolition works; and
 - Owners of 30 Foster's Avenue request a contract addressing the garage demolition works and asbestos roof removal, and parking prevention measures on the grass verge.
- Bats:
 - Remains legal fact that permission cannot be granted for a development without assessing impacts on Annex IV species and without a derogation licence being granted under article 16 where an activity prohibited under article 12 is likely;

- Assessment results of only one tree with potential for bat roosts are presented, potential for other trees is dismissed without sufficient evidence;
- An assessment of bat roosts for the purposes of the Habitats Directive must include potential roosts, a conclusion in relation to actual roosting activity is incomplete;
- Reference to BTHK (bat tree habitat key) 2018 is vague, out of date, and inconclusive;
- Acknowledges that the NPWS has particular competence for issuing the derogation licence but is challenging the validity of the licence by requesting the Board to disapply the licence since it is invalid on its face; and
- Applicant's reference to the Highlands case is incorrect for comparison and legal purposes.

6.6.3. I highlight to the Board that during the assessment of the appeal case, the omission of 'Appendix 1: Condition Tree Assessment' of the Landscape and Arboricultural Statement was noted. The applicant was requested (under section 132) to provide same, which on receipt was circulated to the appellants and observers. Subsequent further responses (section 131 submissions) were received from five third party appellants and one observer. The planning authority responded with no further comment.

6.6.4. A number of issues raised in the further submissions are reiterations of issues raised previously in the grounds of appeal (which I have summarised above). The main issues raised in relation to newly submitted information can be summarised as follows:

- Condition Tree Assessment:
 - Criticisms of methodology, terminology, mapping, and imagery used in the report;
 - Proposed to remove more trees than are recommended to be in the report;
 - No measures to improve the conditions of trees to be retained;

- Recommendations are only valid for a 12 month period which has passed, these may be invalid or require updating;
- Application invalid due to the report not being initially included;
- Two trees potentially not included (rear of garage at 28 and front of 30 Foster's Avenue);
- Trees (Ref.s 234-251) along the western site boundary with 30 Foster's Avenue provide screening and their retention and a second row of tall trees to provide screening should be conditioned;
- Proposed pruning of treeline along the southern boundary to be in agreement with adjoining property owners, who do not consent to this and this is not in the control of the applicant; and
- No consent for the removal of trees in the public grass verge.

7.0 Assessment

7.1. Introduction

7.1.1. Having examined the appeal and application documentation, including submissions, appeals and observations, inspected the site, and having regard to the relevant policies and guidance, I consider that the main issues in the appeal are as follows:

- Prematurity and Project Splitting;
- Demolition Works and Waste Management;
- Residential Amenity and Amenities of the Area;
- Biodiversity and Ecological Assessment; and
- Appropriate Assessment Screening.

I propose to address each item in turn.

7.2. Prematurity and Project Splitting

7.2.1. There is extensive opposition raised in the submissions, appeals and observations to the way in which the applicant is seeking to develop the site. Firstly, the proposal is described as being incomplete, two stepped, and premature as it comprises the demolition works only with no future development works, and secondly the manner

of applying for permission is described as misleading, strategic, and project splitting. For these reasons, the appellants and observers state the proposal should be rejected and permission refused. I propose to address each in turn.

Prematurity

- 7.2.2. As outlined in Section 4.0 Planning History above, there is a concurrent appeal, ABP 309931-21 (PA Ref. D20A/0670) for development at the site comprising the demolition of existing buildings, site clearance works, and the construction of three apartment blocks, a communal amenity building, open space areas, basement level with parking spaces, vehicular, pedestrian and servicing access from Foster's Avenue, utilities, and all associated site works.
- 7.2.3. In the interests of clarity for the Board, I highlight certain key dates in the application and appeal processes. The current proposal was granted permission by the planning authority on the 4th November 2020 and subject to third party appeals from the 25th November 2020. The concurrent application was granted permission on the 18th March 2021 and subject to first and third party appeals from the 12th April 2021.
- 7.2.4. At the time of the third party appeals, observations, and (initial) further responses on this appeal case (summarised in Section 6.0 above), the decision to grant permission for the concurrent application had not been made by the planning authority. As such, the appeal grounds include references to unknown redevelopment proposals and unknown environmental impacts. For a period of some 4 months (between November 2020 and March 2021), the current proposal had been appealed and a decision had not been made by the planning authority on the concurrent application. At the time of this assessment, both applications are appeal cases, are being assessed concurrently, and are due to come before the Board for determination.
- 7.2.5. The proposal comprises demolition and site clearance works without an indication of the future development proposals. In the application and appeal documentation, the applicant states the reasons for applying for demolition works only included the requirement to ensure site safety in respect of the vacant buildings and due to the time constraints associated with implementing the bat mitigation measures. I note the concerns of the appellants and observers in terms of the potential for site vacancy, time delays, repeat disturbances, and absence of certainty. However, I

consider the reasons put forward by the applicant for the purposes of making the application, which include the restrictive nature of the site clearance works due to the presence of bats, to be reasonable and acceptable.

- 7.2.6. I have reviewed the application and appeal documentation for both appeal cases, and consider the proposed developments to be distinct, standalone development proposals which are valid in their own rights. In addition to seeking permission for the demolition works, they feature a number of material differences. The current proposal is for demolition and site clearance works involving, for example, the felling of 21 trees, no underground excavation, maintenance of subsurface water services infrastructure, and a DMP with provision only for demolition activities and facilities. The concurrent application is for demolition and construction works involving, for example, the felling of 63 trees and three hedgerows, removal/ realignment of water services infrastructure, excavation for a basement level, and construction of three apartment blocks and a communal amenity building, with numerous applicable supporting reports.
- 7.2.7. In this regard, I do not agree with the appellants that the proposal is premature as I accept the bona fides of the applicant at the time of making the application (i.e. the purpose was to address site safety concerns and seasonal related restrictions). Neither do I agree that the proposal cannot be determined or should not be granted due to its comprising only demolition works. Nor that permitting the proposal would set a very dangerous precedent due to a lack of certainty as submitted by an observer, as any such future development would be duly assessed on its own merits.

Project Splitting

- 7.2.8. As stated above, I consider the applications to be distinct proposals, these are standalone applications which are valid in their own rights and which I believe can be assessed on their own merits. As such, the manner in which the applicant has applied for permission, in my opinion, does not constitute project splitting. The current proposal is for demolition works and the concurrent proposal is demolition and construction works. The claim of project splitting would be warranted if these were concurrent proposals, one for demolition works only and the other for construction works only, which is not the case.

- 7.2.9. I note the opposition of the appellants and observers to the manner in which permission is being applied for, and that the applicant does not add further save to refute the claim of project splitting. The planning authority provides no further comment. In my opinion, as the proposals are distinct, standalone projects, I also consider them to be mutually exclusive in terms of their implementation. That being, in the event that the Board is minded to grant permission for the proposed developments, I recommend that each consent be appropriately conditioned to be mutually exclusive of the other. Such conditions are necessary as only one of the proposals comprising the demolition works, which feature material differences in terms of subsurface works, tree removal, and mitigation measures, can be implemented. This approach can ensure clarity for third parties and effective control for the planning authority of the permissions.
- 7.2.10. In the grounds of appeal, appellants state that the applicant's project splitting approach to developing the site is to avoid an assessment of the cumulative impacts of the demolition works and the construction works thereby seeking to circumvent the proper planning process and EU legislation on EIA. As outlined in Section 5.3 of this report above, I have undertaken a Screening Determination for EIA for the current proposal. I have concluded that the proposed development would not be likely to have significant effects on the environment. As necessary, I have also undertaken a Screening Determination for EIA for the concurrent appeal, ABP 309931-21 (demolition and construction works) and I have concluded that the proposed development would not be likely to have significant effects on the environment.

7.3. Demolition Works and Waste Management

- 7.3.1. The substantive component of the proposal is the demolition of the buildings within the site, with facilitating works including the removal of the front boundary wall and felling of 21 trees. The appellants raise several issues relating to the demolition works and associated waste management requirements. These include the unjustified demolition of the dwellings in the housing crisis, the heritage value of the buildings, and insufficient information in the Outline Demolition Plan (ODP), Demolition Management Plan (DMP), and Demolition Waste Management Plan (DWMP). I propose to address these issues in turn.

Demolition of Dwellings

- 7.3.2. In respect of the demolition of the dwellings, the application includes (as updated in the SFI response) a Structural Inspection of Existing Buildings. The report provides detailed descriptions of the buildings with associated photographic records. The report recommends the demolition of all buildings describing them as vacant, semi-derelict, and beyond repair. In respect of the two dwellings, the report concludes that the structural condition of 24 Foster's Avenue is such that it is not fit for habitation and demolition would be prudent, and 28 Foster's Avenue is in poor condition and of questionable structural integrity.
- 7.3.3. In the grounds of appeal, appellants state the demolition of the dwellings is contrary to policy protecting the existing housing stock and dispute the recommended demolition of the dwellings as this is based on a visual inspection only. Additionally, appellants state that the structures are not on the planning authority's derelict buildings register, other similar houses (Wates Dormy bungalows) are in good condition, permission has been refused for the demolition of an older house on 74 Foster's Avenue, and renovation of the dwellings should be undertaken.
- 7.3.4. I have reviewed the applicant's Structural Investigation report and, from my site inspection, I confirm that the findings of the report are an accurate reflection of the buildings on the site. I note that CDP Section 12.3.9 identifies alternatives to demolition of single dwellings and replacement with multiple units, I consider the structures on site to be at an advanced stage of disrepair and their adaptation to not be justifiably warranted. The alternatives to demolition and replacement proposals in CDP Section 12.3.9 are for instances of distinctive detached dwellings and their landscaped gardens, for exemplar 19th and 20th century dwellings, and for habitable, structurally sound dwellings.
- 7.3.5. While I acknowledge the proposal results in the permanent loss of two dwellings, I consider the demolition of the dwellings to be appropriate having regard to their current uninhabitable condition and limited value (in terms of architectural heritage, streetscape, accommodation offer). The site as assembled represents an opportunity for future comprehensive redevelopment, and the achievement of a more efficient use of serviced lands, which are a finite resource. I am satisfied that the

proposal accords with CDP Section 12.3.9, and that the demolition of the dwellings in principle does not warrant a refusal reason in and of itself.

Heritage Value of Buildings

- 7.3.6. The grounds of appeal state the buildings have a heritage value and their demolition should not be permitted. From the available information, 24 Foster's Avenue is a 1930s detached three storey dwelling, 26 Foster's Avenue comprises 1950s industrial buildings, and 28 Foster's Avenue is a 1950s Wates Dormy designed detached dormer bungalow with a semi-detached garage. A number of appellants state that 24 Foster's Avenue was going to be placed on the record of protected structures (RPS) of the-then draft 2022 CDP. It is also submitted that the proposal is a material contravention of 2016 CDP Policy AR5: Buildings of Heritage Interest (I identify 2022 CDP Section 11.4.3.2, Policy Objective HER 20: Buildings of Vernacular and Heritage Interest as an equivalent policy).
- 7.3.7. I note that the planner's report states that no issues or concerns were raised in planning history cases in respect of the proposed demolition works. The buildings are stated as not being protected structures in the 2016 CDP, nor proposed protected structures in the-then draft 2022 CDP, and are not on the NIAH (specifically 24 Foster's Avenue). The structures are not considered to contribute to the area, in terms of their visual, character, or accommodation offer, and their demolition is deemed acceptable. There is no report from the Conservation Officer in respect of the demolition of the buildings.
- 7.3.8. In the applicant's appeal response, an Architectural Heritage Assessment has been undertaken in respect of 24 Foster's Avenue (newly provided as Appendix 8). The report comprises historical background, detailed descriptions of the exterior and interior with associated photographic records. From my site inspection, I confirm these to be an accurate reflection of the property. The report notes the dwelling has been extended on a number of occasions, with mixed results structurally and in terms of architectural style. The decorative style of the house has three features (use of wrought iron, dark timbers, and Adamesque plasterwork) which are described as clashing. The report concludes the house is unusual but there is nothing about the style, design or construction of the building to warrant its protection; a conclusion with which I concur.

- 7.3.9. In the further responses from appellants, the issue remains disputed and there is a request that the Conservation Officer be contacted directly. I note that the planning authority's response to the appeal states that the grounds of appeal do not raise any new matter which would justify a change of attitude to the proposed development.
- 7.3.10. I have reviewed the 2022 CDP and confirm that none of the buildings within the site, including 24 Foster's Avenue, are included in the RPS. In this regard, I concur with the planning authority and applicant, and I consider that the structures are not of sufficient architectural heritage value (i.e. not uniquely distinctive or examples of vernacular buildings as per Policy Objective HER 20; nor exemplar 19th and 20th century buildings as per Policy Objective HER 21) to justifiably refuse permission for their demolition and replacement. The site, and structures therein, lend themselves to modern redevelopment and a more efficient use can be gained from the assembled serviced lands. In this instance, I consider the proposal satisfies the provisions of 2022 CDP Section 12.3.9, and in turn, is not a material contravention of CDP Section 11.4.3.2, Policy Objective HER 20 (equivalent to 2016 CDP Policy AR5) as claimed in the appeal grounds.

Demolition Management Plan and Demolition Waste Management Plan

- 7.3.11. The principal component of the scheme is the demolition works entailing the demolition process (from site preparation through to reinstatement) and the management of demolition waste arising. The application and appeal documentation include a number of reports addressing each aspect, the planning authority's assessment considered both aspects, and opposition to both feature extensively in the grounds of appeal.
- 7.3.12. In respect of the demolition works, the application includes (as revised/ updated in the SFI response) a Structural Inspection of Existing Buildings and an Outline Demolition Plan (ODP). The Structural Inspection report recommends the demolition of all buildings within the site due principally to their poor structural conditions. The ODP indicates a site access point at the existing entrance of 26 Foster's Avenue, outlines 15 steps to the demolition process, and incorporates the bat mitigation measures and invasive species management measures from the associated ecological assessments.

- 7.3.13. In respect of the management of demolition waste, the application includes a Demolition Waste Management Plan (DWMP). The total quantum of demolition waste arising is estimated as c.662 tonnes, of which c.18% is to be reused on site, c.61% recycled/ recovered, and c.21% will be disposed of. Of note, the DWMP identifies 63 tonnes of asbestos containing material, all of which will be removed by an asbestos removal contractor and disposed of offsite in accordance with the applicable legislation.
- 7.3.14. The grounds of appeal include that the information in the ODP is insufficient and lacking in detail particularly in relation to traffic, that the information in the DWMP is insufficient regarding the removal and management of asbestos from the site, and that the Asbestos Survey report referred to in the DWMP was not contained within the planning authority public file.
- 7.3.15. The applicant's appeal response includes a new Demolition Management Plan (DMP). The applicant states the DMP is an update to the ODP including information from the other accompanying reports, incorporating requirements from the planning authority conditions, and addressing the grounds of appeal. The DMP incorporates information on the removal of asbestos containing material and the Asbestos Survey report is included as an appendix, and newly includes a Traffic Management Plan, and incorporates Bat Assessment mitigation measures including the terms and conditions of the National Parks and Wildlife Service (NPWS) derogation licence.
- 7.3.16. In the further responses, appellants maintain that the DMP lacks details in respect of the demolition process and traffic requirements, has no real substance in terms of asbestos handling and management, and is aspirational in nature and open to change. I have reviewed and compared the ODP and the DMP, and confirm the latter is more detailed and specific. As the DMP is the most recent and comprehensive plan, in respect of the demolition process, the following assessment focuses, as relevant, on same.
- 7.3.17. The DMP contains a description of: the demolition works (14 steps (bullet points with sub-points)), the site compound facilities (will be within site, potential location given, tree protection measures, reinstatement), access and traffic management (use of existing steel gates of 26 Foster's Avenue, potential location for vehicles parking, anticipated traffic generation e.g. staff coming by public transportation, two HGV

outbound trips per hour, and a Traffic Management Plan map with signage and controls indicated), road cleaning (access routes to and from the site), working hours (proposed 8.00-19.00 Monday-Friday, 8.00-14.00 Saturday, none on Sunday and public holidays), noise and vibration (to BS standards, monitoring to be undertaken, levels to be set, good site management practices for noise reduction at source), water pollution control (recorded removal of wastewater, installation of a temporary surface water drainage system allowing for suspended solids to be settled out and removed), biodiversity protection measures (incorporated from the Bat Assessment, the Landscape and Arboricultural Statement, and the Ecological (Biodiversity) Appraisal), existing services (protective measures during demolition works), dust control (good site management practices), and asbestos removal (specialist asbestos contractor undertake removal prior to demolition, on site air monitoring to be undertaken, site clearance certification required).

7.3.18. The DMP identifies involvement from the following personnel: main contractor (site preparation, good site management practices, traffic management, road cleaning, dust control, protection of underground services, surface water runoff management, records of wastewater removal), site liaison officer, noise and vibration specialist (monitoring), project arborist (tree removal and protection works), project ecologist (checking for nesting birds during tree removal), specialist ecological contractor (invasive species management), bat specialist (manage bat mitigation measures), specialist asbestos contractor (for removal works), and independent asbestos analysts (air monitoring and site certification).

7.3.19. In respect of asbestos and its removal, the Asbestos Survey report in the DMP identifies the different sources and types of asbestos containing material in each of the buildings, including roof material, rainwater goods, flue pipes, insulation boards, and floor tiles. The report provides an entry on each source with a corresponding photographic record and a location plan. The report concludes by recommending that all asbestos containing material will be removed by an asbestos removal contractor, will be disposed of as asbestos waste before the demolition works commence, and that all asbestos removal works will be undertaken in accordance with the applicable legislation.

7.3.20. Having regard to the above, I do not concur with the position of the appellants and observers. I consider the DMP (which expands the contents of the ODP and

supplements the DWMP) to be a comprehensive document which adequately outlines each step of the process that can be reasonably envisaged at planning stage. There are certain items which are not definitive at planning stage and by their nature can only be confirmed following retention of the contractor and/ or through agreement with the planning authority. These are minor in nature and are anticipated within the development envelope, such as the final location of the site compound. There are certain processes which are subject to specific legislation that are necessarily separate to the planning system, such as asbestos removal and bat derogation licencing. All likely impacts are identified, and corresponding mitigation measures are described. I consider that sufficient clarity is provided on the overall demolition process, for each step to be undertaken, and on the nature and extent of involvement of the site contractor and project specialists at the different stages.

7.3.21. I note that appellants are critical of the planning authority's Condition 7 (Demolition Management Plan) and Condition 11 (Demolition Waste Management Plan) stating these require final reports to be submitted by the applicant without requiring the written approval by the planning authority and which exclude third party involvement. I have reviewed these conditions and highlight that both conditions require the written approval of the planning authority. I consider these conditions to be standard in nature, conventional in requirements, and sufficiently comprehensive to allow developmental works to take place in an orderly manner whilst ensuring the protection of amenities of residents and the area.

7.3.22. I note that the appellants state there is no clarity on the length of time that the proposed works will be undertaken and/ or how long the site would be vacant following the works being undertaken. From the information provided by the applicant, I note that the DMP estimates that the demolition works and site clearance works will be undertaken over a 12-week period. The Bat Assessment (as incorporated into the DMP) indicates that the timing of the works is seasonally dependant, and the buildings will be demolished during the autumn or spring months, and tree felling will be completed in the autumn months of September, October, November, or the spring month of February. Similarly, the Ecological (Biodiversity) Appraisal indicates that tree removal shall be undertaken outside the bird nesting season (i.e. avoiding 1st March to 31st August) or otherwise under direction of the project ecologist. In this regard, I consider that there is clarity on the

reasonably anticipated length and timing of the proposed works. Furthermore, as is discussed in Section 7.5 below, the applicant has obtained a derogation licence from the NWPS for the demolition works which restricts the commencement of works to after 1st October 2020 and completion by 1st October 2022.

7.3.23. With regard to uncertainty about the length of time the site may be vacant, such an issue is part of the conventional development cycle process. In the event of a grant of permission, the standard appropriate period for the permission to be implemented is 5 years subject to sections 251/ 251A of the 2000 Act. I do not consider it necessary or reasonable to attach conditions, for example, limiting the appropriate period and/ or requiring a subsequent application to be made for construction works within a certain period of time. The applicant has indicated site security measures are being undertaken and I recommend a condition be attached to the maintenance of the hoarding along the front boundary.

7.3.24. In the further responses, appellants raise the location of the compound area as indicated in the Traffic Management Plan of the DMP. It is stated that the location of the compound area will involve the removal of trees that have not been identified in the Landscape and Arboricultural Statement. I have reviewed the Statement and the accompanying Tree Retention, Protection and Removal Plan. It does appear that the compound area is located along a mid-point on the western site boundary where there are no trees identified to be felled. However, I do note that the DMP indicates a location as a rectangular outline, states the compound will be outside of the tree protection fencing and root protection area, and that the site compound arrangement and layout are subject to final review and approval on appointment of the contractor. In this regard, to ensure clarity I consider it appropriate that in the event of a grant of permission that a condition be attached specifying the compound area be located within an area that does not cause or require further tree felling than has been indicated and assessed in this proposal.

7.3.25. In summary, I consider the demolition of the structures within the site to be acceptable given their condition and value, and having regard to the wider planning gains from a redevelopment of the serviced lands as assembled. Based on the information provided, which I consider sufficiently detailed and comprehensive, I consider the matters associated with the demolition process and the demolition waste generated can be suitably and appropriately addressed by condition in the

event of a grant of permission. Such conditions will require final versions of the demolition management plan and the demolition waste management plan, as submitted with the application and/ or appeal, to be prepared and agreed with the planning authority. I highlight that the latter condition defers to the national 2006 Guidelines on the Preparation of Waste Management Plans, which refer to and make provision for the removal and disposal of asbestos.

7.4. Residential Amenity and Amenities of the Area

7.4.1. The previous subsection considered the grounds of appeal relating to the nature of the demolition works, and the adequacy of the ODP, DMP, and DWMP. The grounds of appeal also include the impacts associated with the demolition works firstly, on the residential amenity of adjacent properties and secondly, on the amenities of the wider area. I propose to address each item in turn.

Residential Amenity

7.4.2. The grounds of appeal include that the proposal does not accord with the site's previous 2016 CDP zoning objective which seeks 'To protect and/ or improve residential amenity'. As outlined in Section 5.1, the 2022 CDP has come into effect in the interim since the appeals were lodged and is the applicable CDP for the assessment of the appeal case. The appeal site is zoned as 'A' with the stated objective 'To provide residential development and improve residential amenity while protecting the existing residential amenities'.

7.4.3. Additional grounds include that insufficient regard has been given to the impact on residents from the demolition works (more consideration and conditions have been given to the bats and biodiversity), the removal of the front boundary wall with metal gates and its replacement with hoarding is a security concern and increases risks to the safety of adjacent properties, particularly adverse impacts are on the adjacent property 30 Foster's Avenue (due to demolition of the attached garage, shared boundary, proposed hoarding), and if granting permission conditions requested to protect amenity of 30 Foster's Avenue (limited hours of operation, the entrance at 28 Foster's Avenue not be used for site access, measures to prevent parking and nuisance associated with the site works).

7.4.4. The applicant's appeal response submits that the demolition stage mitigation measures in/ provisions of the DMP/ DWMP will protect the residential amenity of

adjacent properties, security measures have been and will be put in place, all boundaries except the northern (front) boundary will be maintained, all shared walls and boundaries will be assessed, monitored and supported during the demolition works, and works required to weather the garage party wall and roof of 30 Foster's Avenue (works design, strengthening/ stability measures, investigative works, permanent weathering, cosmetic repair/ post demolition remedial works) will be undertaken after the demolition works.

- 7.4.5. In the further responses, appellants maintain that security is a concern as no security resources are identified after the demolition works, parking prevention measures on the grass verge are required, and a contract is requested in respect of the works to the garage of 30 Foster's Avenue.
- 7.4.6. In considering the residential amenity of the adjacent properties, I have reviewed the application and appeal documentation. Several of the impacts identified are typical of those associated with site developments adjacent to residential properties. I consider that the measures outlined in the DMP, including good site management practices, specified hours of operation, local traffic control measures, parking and compound area within the site boundaries, noise, vibration, dust and asbestos surveying and monitoring, and involvement of a range of personnel (main contractor with a traffic marshal, site liaison officer, noise and vibration specialist, specialist asbestos contractor, and independent asbestos analysts) will address and ameliorate the impacts.
- 7.4.7. In respect of safety concerns, the proposal includes for the demolition of the front boundary wall and its replacement with hoarding. While I note the concerns of residents about the change in boundary treatment, I consider the demolition of the wall to be a necessary facilitating element of the works. The replacement of the wall with 2.4m high timber hoarding is a standard proposal for development sites which I consider will offer a high degree of security. The applicant confirms all other boundaries will remain intact, so no issue arises in security risk for those adjacent properties. The applicant indicates that existing and proposed security measures include controlled access, monitoring of the site, and the fencing. I consider these measures to be sufficient and the extent of security provision reasonable. Any criminal activity is a matter for An Garda Síochána.

- 7.4.8. The proposal's impact on the residential amenity of the adjacent 30 Foster's Avenue is described by appellants as being particularly adverse. The property is located adjacent to the west of 28 Foster's Avenue, sharing a site boundary between the rear gardens (comprising vegetation, fencing, block wall) and a garage structure with a shared party wall and roof covering. The appellants raise concerns in relation to the demolition of the garage (i.e. weathering measures required for the party wall and asbestos roof removal), changes to the site boundary and ground level, security risk and visual intrusion of the hoarding. The applicant acknowledges that retention of the shared party wall is required, and lists design, investigative, stability, protective, weathering, and remedial measures to be undertaken as necessary. The appellants request conditions requiring a contract for the satisfactory demolition of the attached garage, restricted hours of operation of 8am-6pm, no use of the existing entrance at 28 Foster's Avenue for site access, and measures to prevent parking on the grass verge/ in proximity to 30 Foster's Avenue.
- 7.4.9. Due to its adjacent proximity and attached garage, I acknowledge that 30 Foster's Avenue will be impacted on by the proposed works. However, as outlined above, I consider that the range of protective measures are sufficient to ameliorate the demolition impacts. Of the request for a contract of works for the garage, I do not consider that to be an appropriate planning condition. The applicant commits to a list of measures in the DMP, and I highlight disputes over boundaries are a civil issue. Of the restricted hours of operation, I note that the demolition works programme is estimated as being for 12 weeks and I do not consider there to be exceptional circumstances to warrant an obviation from industry standard hours of operation. Of the potential use of the entrance at 28 Foster's Avenue for site access, I note that the Traffic Management Plan in the DMP indicates the site access being at entrance 26 Foster's Avenue, which has been assessed and conditioned accordingly by the planning authority (as per Condition 8), therefore the appellants' concern is somewhat unwarranted. Of the preventative measures for parking, the DMP states that parking will be managed by the main contractor, all staff parking will be within the site boundaries, and a traffic marshal will manage traffic at the site, all of which I consider reasonable and sufficient to address the concerns.
- 7.4.10. In respect of concerns raised in the grounds of appeal and an observation about the site boundaries, except for the front boundary wall's removal and replacement with

hoarding, the applicant indicates that other boundaries will remain intact. It is confirmed that there are no ground excavations, no alterations in ground level, and shared walls and boundaries will be assessed, monitored, and supported as necessary during the demolition works. I consider these measures, outlined in the both the Structural Inspection of Existing Buildings and DMP, to be sufficient.

Amenities of the Area

- 7.4.11. The grounds of appeal include that the scale of demolition proposed will result in a large vacant site, the vacant site and the hoarding will attract anti-social behaviour and vandalism affecting the amenities of the area and will be a blot on the streetscape of Foster's Avenue, insufficient regard has been given to the impact on the area from there being a vacant site for an unknown period of time, the potential risk for groundwater pollution as the extent of demolition is unclear and Trimbleston Stream (variously referred to as Trimblestown/ Trimlestown/ Trimelston, and Booterstown Stream in the case documentation) has not been identified, and adverse impacts from other construction works in the area will be exacerbated by an increase in traffic, dust and nuisance arising from the proposal.
- 7.4.12. The applicant's appeal response submits that security measures have been and will be put in place, all boundaries except the northern (front) boundary will be maintained, no excavation works are being undertaken with foundations and infrastructure remaining intact so there is no risk of groundwater pollution, a temporary surface water system is being installed which will also prevent pollution and ensure water run-off drains to ground within the site and not flow onto the public road and adjacent properties, and the mitigation measures in the DMP will address the demolition impacts so that significant cumulative impacts are not anticipated with other construction works.
- 7.4.13. In considering the amenities of the area, I have reviewed the application and appeal documentation. I consider that the provisions outlined in the DMP including the protection of ground and surface waters (wastewater removal, no underground excavations, installation of temporary surface water system), protection of existing infrastructure services (surveying and good site management practices), traffic management and public safety (plan with vehicular and pedestrian controls and signage, haulage routes to be agreed with planning authority, road cleaning, use of

the existing entrance at 26 Foster's Avenue), demolition waste management (reuse, removal and disposal of identified wastes, including of asbestos removal and disposal offsite requiring a site clearance certification) will address and ameliorate the impacts. As is considered in the following Section 7.5 below, the protection and mitigation measures outlined for bats, birds, and trees are similarly considered to address the impacts on the amenities of the area.

- 7.4.14. In respect of water pollution, in response to submissions made on the application, the potential for a locally known watercourse, Trimleston Stream, to run underground the site is investigated by the applicant. The engineering and ecological investigations, including desk top surveys, review of EPA, OPW and IW sources, site excavations, CCTV surveys and trial pits, do not locate the presence of a watercourse at the site. The investigations referred to in the SSRA locate the stream to the northeast of the site and indicate that groundwater underlying the site does not appear to discharge towards the Trimleston Stream. The applicant's position is accepted by the planning authority. On review of the available information, I consider the matter to have been reasonably investigated, I note no actual evidence has been provided by appellants indicating otherwise, and therefore I also accept the applicant's conclusion.
- 7.4.15. The DMP makes provision for a range of water pollution controls measures. These include the recorded disposal of wastewater off-site, and the installation of a new temporary surface water drainage system from which settled sediments will be removed from the surface water run-off for disposal off-site. The proposal does not include any underground excavation works which could affect groundwater conditions and provisions are made to protect the existing services infrastructure across the site during the demolition works. I consider that the nature of the proposal and the protective measures will collectively prevent any significant effects on ground and/ or surface water environments.
- 7.4.16. I note that appellants state there is a lack of certainty in respect of the length of time for the demolition works to take place and/ or for the site to be vacant. To protect the amenities of residents and the area, condition(s) are requested to stipulate completion dates for same. In similarity to my assessment of this issue in Section 7.3 above with regard to the adequacy of the DMP, I do not consider such

stipulations to be appropriate or reasonable. I consider that the standard appropriate period to implement the permission to be reasonable and necessary.

7.4.17. In summary, I consider that the residential amenities of adjacent properties and the amenities of the wider area will be adequately protected during the demolition works due to the nature of the proposal, and through provisions made in the range of supporting documents on the appeal case, including the Structural Inspection report, the DMP, and the DWMP. I note that the planning authority, evidenced in the reports of the Water Services Section, Environment Section, and Transportation Section did not cite any objection to the proposal, recommending conditions to address items. In particular, I note that no issue was raised in relation to traffic generation (staffing levels, parking demands, machinery or HGV trips) or, in each Sections' respective areas, any issue of culmination of impacts. The demolition works are estimated as being undertaken over a 12 week period, and I consider that any impacts arising on the amenities of residents and the area will be temporary, localised, and not significant in effect.

7.5. Biodiversity and Ecological Assessment

- 7.5.1. The site comprises three distinct properties, two dwellings with garden areas, and the industrial buildings complex. Reflective of this context, there are many mature trees and hedgerows along the historic site boundaries. The proposal comprises the demolition of all buildings within the site and the felling of 21 trees growing along the northern boundary of the site. There are no excavation or underground works proposed, and watercourse in or under the site. The presence of four protected bats species at the site with recorded commuting, foraging, and roosting activity is the most notable feature for the proposal in respect of biodiversity.
- 7.5.2. The grounds of appeal refer generally to the adverse impact of the proposal on the natural environment and the ecological value of the site through the loss of trees and asbestos damage. Raised more specifically and extensively by appellants and observers is the negative impact of the proposal on the local bat population. I propose to address these main grounds in turn.

Ecological Value of the Site

- 7.5.3. In respect of biodiversity, submitted with the application (as revised/ updated in the SFI response) are an Ecological (Biodiversity) Appraisal, a Bat Assessment, a

Landscape and Arboricultural Statement (with a Condition Tree Assessment, Tree Constraints Plan, and Tree Retention, Protection and Removal Plan), and a Screening Report for Appropriate Assessment (SRAA). There is also a degree of overlap with the demolition and waste management documentation on the case file, considered in Sections 7.3 and 7.4 above. The applicant's appeal response includes further information on the Bat Assessment (Appendix 6) and a new EIA Screening Statement (Appendix 7).

- 7.5.4. The Ecological (Biodiversity) Appraisal states a biodiversity walkover survey, and an ecological survey were undertaken in January and May 2020 respectively, with a final survey in September 2020. The site surveys included habitats, birds, invasive species, mammals, bats (daytime), and site evaluations for lepidoptera, amphibians, and reptiles. The Appraisal refers to the specialist prepared Bat Assessment for more in-depth survey information and impact assessment on bats species.
- 7.5.5. The Appraisal's main findings in respect of biodiversity at the site include there being no wildlife or nature conservation designations, no watercourses (underground investigations did not locate Trimleston Stream), no rare, threatened, or protected plant species (including trees and shrubs), no rare bird species (including red listed high conservation concern), no badgers or otters (protected mammals), and no protected amphibians, reptiles, or insects. The notable records of flora and fauna at the site include the identification of the three cornered garlic, a listed invasive species and, most notably, of four species of bats (details and impacts are assessed in greater detail in the following subsection).
- 7.5.6. The Landscape and Arboricultural Statement is accompanied by a Condition Tree Assessment, Tree Constraints Plan, and Tree Retention, Protection and Removal Plan (I highlight to the Board that the applicant has submitted the Condition Tree Assessment by way of a section 132 request, which was circulated to appellants and observers). The survey undertaken for the Condition Tree Assessment identifies 83 trees including four trees in the grass verge at the northern boundary, one treeline in adjacent properties along the southern boundary, and three hedges (one between 26 Foster's Avenue and 28 Foster's Avenue, and two along the eastern boundary). The Condition Tree Assessment indicates the tree species are primarily ornamental and details the classification of the trees into one of four qualitative categories (A, B, C, and U, corresponding with high quality to low quality recommending removal). Of

the 83 trees identified, there are no Category A trees, five Category B trees, and a combined total of 78 Category C and Category U trees (i.e. low quality and low quality recommending removal). The Landscape and Arboricultural Statement identifies the 21 trees to be felled and indicates their categorisation. Of the 21 trees proposed to be felled to allow for the demolition works, one is a Category B tree and the remaining 20 are Category C and Category U trees. Other works include cutting back the canopy of the treeline on the southern boundary where it overhangs 26 Foster's Avenue within the site.

- 7.5.7. In terms of ecological impacts, the Appraisal finds the demolition of the buildings and tree removal to have no impact on badgers, other large mammals, reptiles, lepidoptera, or other species groups, and no loss of habitat for overwintering birds. The trees to be removed have minimal ecological value (their species), and there will be no impact on breeding birds. The presence of three-cornered garlic/ leek, an invasive species listed in the European Communities (Birds and Natural Habitats) Regulations 2011, is identified and its eradication is identified as necessary and will be through a long term plan. Reference is made to details in the ODP, and I note that this information has been incorporated into the DMP. The plan includes the appointment of a specialist contractor, chemical treatment, disposal off-site to a licenced facility, cleaning of machinery and good site management practices. The presence of another invasive species winter heliotrope (though not listed in the 2011 Regulations) is identified and is stated as being treated similarly.
- 7.5.8. In terms of arboricultural impacts, the Statement finds the overall impact of the proposed tree removal on the tree population to be negligible and indicates that the bat specialist and ecologist have reviewed the tree felling proposals and consider there are no adverse impacts arising on existing biodiversity or bat populations. In the (subsequent) further responses received on the 'Appendix 1: Condition Tree Assessment', appellants raise issues relating to the methodology, terminology, and imagery in the report. I have reviewed the report and, read in conjunction with the main Statement, find these to be clear, detailed, and sufficiently robust in respect of the management of trees in the site and the impact of the proposal.
- 7.5.9. In respect of the recommendations in the Assessment being valid for a 12-month period, I note that the key recommendations relate to the manner in and standard to which the trees are proposed to be felled, pruned, and retained. Due to the nature of

the recommendations, I do not consider this to invalid the report and instead consider that, in the event of a grant of permission, this can be addressed by condition requiring a finalised Landscape and Arboricultural Statement with Condition Tree Assessment to be submitted to the planning authority for agreement. Of the identified trees requested for retention along the western boundary with 30 Foster's Avenue, I have reviewed the Tree Retention, Protection and Removal Plan and confirm these trees are being retained in the proposal. Of the treeline along the southern boundary, the proposal does not involve any subsurface works that could impact same, and consent for the pruning of the canopy or disputes over boundaries are a civil issue. Finally of the applicant not having consent to fell trees in the grass verge, I note that the 21 trees to be felled are all within the appeal site.

- 7.5.10. In respect of mitigation measures and monitoring proposals, I highlight there is a degree of overlap between those in the Ecological (Biodiversity) Appraisal, Landscape and Arboricultural Statement, and Bat Assessment (which is outlined in the following subsection). The Appraisal identifies mitigation measures in respect of tree removal (protection fencing), birds (outside of nesting season) and bats (bat boxes as roost alternatives) with monitoring as necessary from the project ecologist. The measures included in the Statement are that the canopy of the southern boundary treeline be cut back, all trees will be felled under the supervision of project arborist, and that the remaining trees, treeline, and hedges on site will be retained and protected in accordance with the requirements of BS 5837 (including being fenced off, root protection measures with extensive excavation works indicated being done by hand, and inspections by the project arborist).
- 7.5.11. I note that the planning authority, evidenced in the reports of the Biodiversity Officer, did not cite any objection to the proposal in respect of biodiversity, recommending conditions to address items following the SFI response. The planner's reports screened out the requirement for EIA and AA, and the grant of permission includes seven conditions relating to biodiversity, landscaping, and arboriculture. The grounds of appeal included that Condition 12 (completion certification of provisions in the Landscape and Arboricultural Statement) is not sufficiently robust. I have reviewed the condition and conversely find it to be robust. The issue can be addressed by condition requiring implementation of the measures of the Landscape and Arboricultural Statement (also requiring a finalised Condition Tree Assessment

to be undertaken prior to commencement) with documentary evidence of same submitted to the planning authority for its written agreement.

7.5.12. Save for the presence of bats species, which is considered in detail below, the site is not considered to be valuable in ecological, habitat, or arboricultural terms. The 21 trees to be felled from a total of 83 are not significant in and of themselves (their species), their limited ecological value (choice for birds nesting), with a significant number being retained with protective measures. In my opinion, the proposal, supported by the Condition Tree Assessment, is in accordance with 2022 CDP policy in Section 12.8.11 with trees and hedges retained as far as is practicable, and tree protection measures to be employed to the required standard.

7.5.13. While I note the concerns raised by the appellants and observers in relation to asbestos and the natural environment, as I outlined in Section 7.3 on demolition waste management, the identified asbestos containing material will be removed by an asbestos removal contractor and disposed of off-site in accordance with the applicable legislation. In summary, I am satisfied that the applicant has comprehensively surveyed the site for biodiversity (flora, fauna, habitats) and has demonstrated that the site has limited ecological value save for the presence of bats species. I consider the impacts identified and described as none or minor in effect to be an accurate assessment, and am satisfied these can be adequately addressed by the proposed mitigation measures.

Bats: Bat Assessment

7.5.14. The grounds of appeal are dominated by the proposal's impact on the local bat populations including that the Bat Assessment is incomplete and defective, the information submitted is inconsistent with that of the concurrent appeal and that of the SHD application, the mitigation measures are not in compliance with national Guidelines, the derogation licence is invalid, does not meet strict criteria set by case law, and is not sufficiently justified, the bats will be disturbed twice during the demolition works and future construction works, the SHD refusal reason relating to bats has not been addressed, and the project requires an EIA as the destruction of bats roosts is by definition a significant effect on the environment.

7.5.15. The applicant's appeal response submits that the Bat Assessment is fully comprehensive, with detailed surveys and mitigation measures that comply with the

Guidelines and are in line with best practice and key reference texts, the application and appeal information about the number and species of bats and trees is based on specialist expertise for this proposal, the NPWS was provided with all information on the proposal and concurrent application, the derogation licence is valid, was not challenged, accords with the applicable legislation European Communities (Birds and Natural Habitats) Regulations 2011, can be relied upon and regard had to, the derogation licence process is separate from the planning process with a reference to case law, and the Ecological Appraisal and Bat Assessment ensure that the proposal does not have an adverse impact on bats thereby addressing the SHD refusal reason.

- 7.5.16. In the further responses, appellants maintain that the Bat Assessment remains inconclusive in respect of the potential for other trees to be suitable for bat roosts and in reaching a conclusion on potential roosts, that permission cannot be granted due to the nature of the derogation licence and the manner by which it was granted, the licence is invalid and is being challenged through the planning system by requesting the Board to disapply the licence, and disputes the case law cited by the applicant.
- 7.5.17. I have reviewed the range of information in the application and appeal case relating to bat species recorded at the site and activity in the wider area. This includes the initially submitted Bat Assessment, the SFI response supplemented with additional mitigation measures and accompanied by the NPWS Derogation Licence No.: DER/BAT 2020-93, and the applicant's appeal response which includes responses from the bat specialist to issues raised in the grounds of appeal (Appendix 6).
- 7.5.18. The Bat Assessment outlines the extent of survey work undertaken in support of the proposal (stated as necessary to address the refusal reason of the SHD application). The survey work, including building and tree inspections, dawn and dusk surveys, walking transects, and use of static bat detectors, has been undertaken over different months during the summer active season for three years (2018, 2019, and 2020).
- 7.5.19. The survey work established the presence of four species of bats within the site: the common pipistrelle, soprano pipistrelle, and Leisler Bat (described as three of the most common Irish species), and the Brown long eared (a widespread species).

Three roosts were identified in 26 Foster's Avenue (two night roosts, one for an individual common pipistrelle and for an individual soprano pipistrelle, and a day roost for an individual brown long eared). These three roosts were identified in the 2018 and 2019 surveys as there were no roosts identified in the 2020 surveys. No maternity or hibernation roosts were identified within the site during the three survey periods.

- 7.5.20. No roosts or evidence of the presence of bats were identified internally or externally at 24 or 28 Foster's Avenue, nor in any of the trees within the site. The observed activity of the common pipistrelle and soprano pipistrelle bats included commuting, occasional foraging, and night time roosting (an individual of each species), of the Leisler bats included commuting and occasional foraging, and of the brown long eared bats included commuting and day time roosting. UCD campus to the north of the site (and to a lesser extent St. Helen's Woods) is identified as the main foraging habitat for the local bat populations.
- 7.5.21. The proposal comprises the demolition of buildings within the site and the felling of 21 trees along the northern boundary of the site, including one tree identified as a Category 2 tree with potential for bat roosting (PBR) (Ref.310, located at the front of 28 Foster's Avenue). In respect of the buildings to be demolished, three roosts of individual bat species were identified in 26 Foster's Avenue. In respect of the tree felling, as outlined in the previous subsection, the Landscape and Arboricultural Statement finds the overall impact of the proposed tree removal to be negligible and indicates that the bat specialist and ecologist have reviewed the tree felling proposals and consider there are no adverse impacts arising on existing bat populations.
- 7.5.22. All Irish bat species are protected under the Wildlife Act 1976, as amended, and are listed as Annex IV species of the Habitats Directive 1992 which is transposed into Irish law by the European Communities (Birds and Natural Habitats) Regulations 2011, as amended. The destruction, alteration, or evacuation of a known bat roost is a notifiable action, and a derogation licence must be obtained in accordance with Regulation 54 of the 2011 Regulations from the Minister for Culture, Heritage, and the Gaeltacht through the NPWS before works entailing same can commence.

7.5.23. The Bat Assessment finds the following about the appeal site, bat populations, and impact of the proposed development:

- Bat populations recorded are of local importance (four out of nine Irish species present);
- Overall level and type of bat activity is of a Low-Medium level;
- Site principally used by bats commuting to main foraging habitats in UCD;
- Site is of low importance for foraging bats;
- Site (specifically 26 Foster's Avenue) is occasionally used for roosting but is not an important roosting place for local bat populations;
- Site is a small area within an urban landscape network of connected mature gardens;
- Large number of trees and shrubs remain within the overall site and the felling 21 trees along the northern boundary will not reduce the commuting capacity for local bat populations;
- Demolition of buildings and the felling one PBR tree causes a loss of bat roosts which will have a minor negative impact on the common pipistrelle, soprano pipistrelle, and brown long eared bat species, and no impact on the Leisler Bat species; and
- Felling of trees, in terms of foraging and commuting habitats, causes no impact on any bat species due to the small number of trees being removed, and the retention of the majority of trees including two treelines (one between 26 Foster's Avenue and 28 Foster's Avenue, and one to the rear of 26 Foster's Avenue).

7.5.24. The Bat Assessment proposes several mitigation measures to reduce the identified impact including:

- Erection of alternative roosting sites prior to the demolition of the buildings (two rocket bat boxes in a dark zone at the rear of the site, and two temporary summer bat boxes on existing trees);

- Demolition works to be undertaken during spring or autumn months, in daytime hours with no external lighting, and in stages (five steps over two days);
- Bat specialist to be present during demolition works, check buildings, known roosts, roof spaces, cavities;
- Prior to demolition, bat specialist resurvey 24 Foster's Avenue and 28 Foster's Avenue;
- Tree felling undertaken in specified spring (February) or autumn (September, October, November) months; and
- Prior to felling of Category 2 PRB tree, bat specialist will undertake endoscope inspection to ensure no bats are present.

7.5.25. At SFI response stage, the Bat Assessment was supplemented with additional mitigation measures including:

- Prior to demolition works, bat specialist to meet/ advise project manager and workers on bat related items;
- Monitoring measures during demolition works (bat box inspections, night-time static surveillance units in 26 Foster's Avenue and western boundary, dusk and dawn surveys, and endoscope inspections of crevices, small spaces) and reporting to planning authority;
- Course of action is bat encountered (works temporarily cease, bat specialist removes bat (unless already flown away), secures in bat captivity box, releases to a bat box prior to dusk); and
- Monitoring measures after demolition works (inspection of alternative roosting site within one year of erection, register bat box scheme with Bat Conservation Ireland, and annual inspection for at least two years).

7.5.26. At SFI response stage, Derogation Licence No.: DER/BAT 2020-93 authorised by the NPWS was submitted, with attached terms and conditions including:

- Licence relates solely to activities relating to the demolition of 24, 26, and 28 Foster's Avenue;

- Mitigation measures in the Bat Assessment (specifically pgs 43-46, which I have summarised in the subsection above) together with any changes or clarification agreed with the NPWS are to be carried out;
- No work to begin before 1st October 2020 and to be completed by 1st October 2022; and
- Works to be supervised by the applicant's bat specialist.

7.5.27. In respect of the adequacy of the Bat Assessment, I note the applicant's appeal response to the criticisms and stated shortcomings. The response outlines the manner in which the trees to be felled have been assessed as PBR trees, the reasons for the classification of impacts, the relevance of the Irish context (i.e. Irish bats, Irish trees), decisions based on the bat specialist's knowledge, and the selection of the mitigation measures (i.e. recommendation for use of bat boxes has been designed relative to the roost status and suitability for the recorded bat species, and are located in area where the survey work established in use by bats).

7.5.28. I consider that the grounds of appeal focus on aspects of the Assessment's methodology such as inappropriate mitigation measures (the stated requirement for prior-2 years monitoring in the Guidelines in fact relates to maternity roosts or rare bats), theoretical scenarios such as the potential for a bat to return to use an unidentified roost in 24 or 28 Foster's Avenue, and legal arguments regarding the Habitats Directive as transposed by the 2011 Regulations. The appellants have not provided any alternative information from a bat specialist or an ecologist to counter the applicant's Bat Assessment. I have reviewed the specialist information available in the appeal case, and I consider the Assessment undertaken by the applicant's bat specialist to be comprehensive (as is summarised in the previous subsections), the time and quantum of survey work and design-team consultation to be thorough, the methodology used to be acceptable, the best practice, guidance and reference texts relied upon to be applicable to the Irish context, and the mitigation measures (roost replacement like for like) and monitoring proposals thereafter to be appropriate to protect the bat individuals that have been identified in the site. Having regard to the foregoing, I am satisfied with the adequacy of the applicant's Bat Assessment.

7.5.29. Additionally, I note the positions of other experts with authority on the matter. The Ecological (Biodiversity) Appraisal (authored by a different ecologist) finds that the

removal of the buildings will not result in the loss of important bat roosting sites (i.e. there are no maternity roosts), that the trees to be removed serve as a potential commuting/ foraging habitat for bats, resulting in a minor negative impact at local level. The planning authority's Biodiversity Officer, and the NPWS as evidenced by the authorising of Derogation Licence No.: DER/BAT 2020-93, were satisfied with the extent of the surveys, impacts identified, mitigation and monitoring measures proposed, and conclusions reached. In my opinion, the proposal, supported by ecological assessments (the Ecological (Biodiversity) Appraisal and the Bat Assessment) is in accordance with 2022 CDP policy in Section 12.7.2 whereby a precautionary approach has been taken to the demolition and site clearance works based on best expert knowledge and incorporating a number of protective measures for the local bat populations.

Bats: Derogation Licence

- 7.5.30. In respect of the status of the derogation licence, the justification for and validity of the licence is strongly contested, with appellants challenging it through the appeal process and referring to EU case law. The applicant indicates that the NPWS was provided with all information on both demolition and construction works, the licence is valid, was not challenged at the time of authorisation, and the Board can have regard to same in determining the appeal. The applicant states that the derogation is not detrimental to the maintenance of the populations of bat species as firstly, there is provision of alternative roosting measures, secondly, there are timing constraints on the demolition works, and lastly, there will be bat specialist supervision and survey requirements during the demolition works.
- 7.5.31. I make two observations on the grounds of appeal relating to the status of the derogation licence. Firstly, it is the NPWS on behalf of the Minister that has responsibility for authorising derogation licences and is precluded from unless satisfied that certain conditions pertain. Secondly, the derogation licence process is subject to the 2011 Regulations, is a separate process to the planning consent process, and as submitted by the applicant, a grant of permission does not obviate the need to obtain a derogation licence.
- 7.5.32. I highlight to the Board that once the appeal was made, as part of the referral process for the appeal case, the Minister (through the NPWS) was consulted as a

prescribed body and no response had been received at the time of assessment. While I note 2022 CDP policy in Section 12.7.1 states that it is preferable for a derogation licence to have been applied for and/ or obtained prior to submission of any planning application, and that the applicant applied to the NPWS for a derogation licence on foot of the FI request from the planning authority, it is not a mandatory requirement for a planning consent. Therefore, I accept that Derogation Licence No.: DER/BAT 2020-93 is valid in so far as it has been authorised by the NPWS and that the Board can have regard to same in so far as the licence is relevant for the appeal case.

7.5.33. While I am satisfied that Derogation Licence No.: DER/BAT 2020-93 is valid, it is time limited (all works must be completed by 1st October 2022) and the works are seasonally restricted (at the time of assessment, the remaining time within which works can be undertaken is September 2022). Therefore, it may prove necessary for the applicant to apply for changes to the licence or for another licence in respect of the demolition works and, as this process is separate to the planning process, it should not be unduly restricted by planning conditions. As such, in the event of a grant of permission, a condition should be attached that the demolition works are undertaken in accordance with the terms and conditions of Derogation Licence No.: DER/BAT 2020-93 or any changes to the licence, or the terms of another derogation licence as may be authorised by the NPWS, a copy of which shall be provided to the planning authority.

Bats: SHD Application

7.5.34. In respect of the bat related refusal reason of the SHD application, I have reviewed the SHD application documentation and the Board's decision. In assessing the SHD application, the Inspector indicates that it was unclear from the Bat Survey whether the interior of the building (26 Foster's Avenue) was examined for potential bat roosts, and accordingly the Survey was found to be deficient. The Inspector considered light spillage from the proposed apartments and the public lighting scheme to be incompatible with the stated mitigation measures, and concurred with the planning authority which had recommended refusal of the SHD application for reasons including the adverse impact on bats.

7.5.35. I consider there to be some notable differences between the SHD application and the current proposal, in respect of the nature of the proposed developments and the information provided by the applicants. As the current proposal is for demolition works with tree removal limited to the site's northern boundary, there is a reduction in impact from the more extensive tree and hedgerow removal, and the impact from the light pollution of the apartments and public lighting does not arise. The Bat Survey (while prepared by the same bat specialist) for the SHD application was based on survey work undertaken over two days in 2018. In the current proposal, the Bat Assessment is based on more extensive survey data over three years, with clarity on the nature of the roost investigations, and with more detailed mitigation and monitoring measures proposed. The current proposal includes the Landscape and Arboricultural Statement (with Condition Tree Assessment and accompanying plans) and the Ecology (Biodiversity) Appraisal, which indicate the extent of design team consultation and cross-referencing between specialists. I also note that the planning authority granted permission for the current proposal, having objected to the SHD application.

7.5.36. Of the stated inconsistencies on bat and tree information between the current proposal and that of the SHD application, I note that the SHD application comprised documentation with different baseline survey data. The Bat Survey was based on survey work undertaken over two days in 2018, and the Arboricultural Assessment and plans were prepared by different consultants and indicated extensive tree felling and hedgerow removal throughout the site. I am required to have regard to the content and adequacy of the documentation submitted with the current appeal case, which as outlined in the respective subsections above, I find to be accurate and sufficient. I consider that the nature of the current proposal (demolition works only with limited tree removal) and the voracity of the supporting documentation provided by the applicant to have addressed and overcome the bat related refusal reason cited in the SHD application.

Bats: EIA Requirement

7.5.37. In respect of the project requiring an EIA due to the destruction of bat roosts constituting a significant effect on the environment, I have had regard to the applicant's Bat Assessment, Ecological (Biodiversity) Appraisal, and EIA Screening Statement, and I have undertaken a Screening Determination for EIA in Section 5.3

of this report. The presence of four bat species (out of the nine species of Irish bats) has been identified at the site. Of these, three species are described as common, one as widespread, with no rare species being present. The bat activity comprises commuting (to habitats in UCD), foraging, and roosting. Three bat roosts (two night time and one day time) for three individual bats were recorded in 26 Foster's Avenue during surveys in 2018 and 2019. No roosts were identified in the bat survey in 2020. Over the three year survey period, no maternity roosts were recorded, no roosts were recorded in 24 or 28 Foster's Avenue, and no roosts were recorded in any trees.

7.5.38. In qualitative terms, I note that the bat activity is classified as a low-medium level. The site is used principally for commuting bats and is classified as being of low importance for foraging. The proposed tree removal is described as having no adverse impact as it will not reduce the commuting capacity for the local bat populations. The destruction of the bat roosts is classified as having a minor negative impact on those three species, the site is classified as not being an important roosting location due to its occasional roosting use and there being no maternity roosts. I consider that a comprehensive range of mitigation measures are proposed to address the impact of the bat roosts destruction including the erection of alternative roosting sites (four bat boxes on poles/ trees), resurveying of all buildings and the single PRB tree prior to demolition and felling (thereby ensuring the most up-to-date information for the site, updating the survey results undertaken in 2020), seasonal restrictions for undertaking the works, daytime undertaking of works, and all works are under the supervision of the bat specialist. Having regard to the above, while the proposal does involve the destruction of bat roosts, I do not consider this to constitute a significant effect on the environment.

Bats: Summary

7.5.39. In summary, I consider the Bat Assessment for the proposal to be sufficiently comprehensive allowing impacts to be identified and mitigation measures to be proposed accordingly. Derogation Licence No.: DER/BAT 2020-93, as authorised by the NPWS (the competent authority for same), is valid and the Board can have regard to same in so far as the licence is relevant in the determination of the appeal case. I am satisfied that the previous refusal reason for the SHD application has been addressed and overcome in the current proposal, and that the destruction of

bat roosts does not constitute a significant effect on the environment requiring an EIAR to be prepared for and an EIA to be undertaken of the proposal.

Biodiversity and Ecological Assessment: Summary

- 7.5.40. In summary, I am satisfied that the proposal complies with the requirements of 2022 CDP 12.9.6 New Developments: Environmental Impacts in respect of addressing applicable impacts arising from stormwater, sediment and water pollution control, and construction management (i.e. demolition phase) including waste, environmental, and traffic management plans. As such, should the Board be minded to grant permission, appropriate and necessary conditions for finalising plans managing same would suffice.

7.6. Appropriate Assessment

Compliance with Article 6(3) of the EU Habitats Directive

- 7.6.1. The requirements of Article 6(3) of the EU Habitats Directive as relate to screening the need for appropriate assessment of a project under section 177U, part XAB of the Planning and Development Act 2000, as amended, are considered fully in this section.

Background on the Application

- 7.6.2. The applicant has submitted an information for Screening Report for Appropriate Assessment (SRAA). The SRAA is supported by other relevant reports submitted with the application including the: Ecological (Biodiversity) Appraisal (same author), Landscape and Arboricultural Statement (same author), Bat Assessment, Structural Inspection of Existing Buildings, ODP, and DWMP, and the DMP and EIA Screening Statement with the applicant's appeal response.
- 7.6.3. The applicant's SRAA provides a description of the proposed development, the nature and features of the site, indicates the dates of on-site surveys (20th January, 19th May, and 3rd September 2020), and identifies 18 European Sites that fall within the precautionary 15km radius from the proposed development.
- 7.6.4. There are no mapped watercourses present on or in the immediate vicinity of the site. There are two mapped watercourses identified in proximity to the site, Elm Park Stream (1.1km to the north) and Priory Stream (1.1km to the southeast). These streams flow into Dublin Bay but are not connected to the site. A third watercourse,

Trimleston Stream, is a locally known unmapped watercourse. The ecological and engineering investigations undertaken at the site (desk top surveys, review of EPA, OPW and IW sources, site excavations, cctv surveys and trial pits), did not locate the presence of this or any watercourse. The investigations locate Trimleston Stream to the northeast of the site and indicate that groundwater underlying the site does not appear to discharge towards the stream. That being, there is no evidence of a direct connection from the site to the watercourses in the vicinity of the proposal.

7.6.5. Of the 18 European sites identified within a 15km radius, only the coastal European sites associated with Dublin Bay are identified as having theoretical indirect hydrological connections to the appeal site. The connections are a potential surface water pathway via the local surface water drainage network and/ or a potential groundwater pathway in the event of a discharge or contamination from the site entering the groundwater.

7.6.6. Despite the presence of these theoretical indirect pathways, the risk of contamination of watercourses or groundwater is determined as being extremely low. This is due to the following reasons:

- The nature of the site (no significant increase from the current volume of rainwater draining to ground, existing surface water system allows suspended solids to be settled out for removal, no indication of any watercourse in or under the site, groundwater from the site does not appear to be discharging towards Trimleston Stream which is located to the northeast of the site);
- The characteristics of the proposal (the new temporary drainage system for site development works will throttle runoff and allow suspended solids to be settled out for removal, no underground excavation works so existing surface water and wastewater infrastructure will remain with current drainage pathways intact, and the demolition works are short in duration with no possibility of long-term impacts arising); and
- The absence of any known direct or indirect pathway to the European sites via surface water or groundwater (no indication of Trimleston Stream or any other watercourse in or under the site, groundwater from the site does not appear to be discharging towards Trimleston Stream which is located to the northeast of the site, there is certainty of no direct pathways to the two closest

European sites (South Dublin Bay and River Tolka Estuary SPA and South Dublin Bay SAC) to the east of the site).

7.6.7. The potential for any other direct, indirect, or secondary impacts on any European site is determined as not being possible. Overall, the SRAA concludes that *'In view of best scientific knowledge...the proposed development...individually or in combination with another plan or project, is not likely to have a significant effect on any European sites'*.

7.6.8. Having reviewed the SRAA and the other relevant reports, including from the planning authority's reports, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

Screening for Appropriate Assessment

7.6.9. The first test of Article 6(3) is to establish if the project could result in likely significant effects to a European site. This is considered Stage 1 of the appropriate assessment process, that being, screening. The screening stage is intended to be a preliminary examination. If the possibility of significant effects cannot be excluded on the basis of objective information, without extensive investigation or the application of mitigation, a plan or project should be considered to have a likely significant effect and appropriate assessment carried out.

Test of Likely Significant Effects

7.6.10. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).

7.6.11. The project is examined in relation to any possible interaction with European sites designated SACs and/ or SPAs to assess whether it may give rise to significant effects on any European Site.

Brief Description of Development

7.6.12. The project is located at Foster's Avenue in Mount Merrion, County Dublin. The site comprises three vacant properties, the industrial buildings of the former Glenville Industrial Estate (26 Foster's Avenue), with two detached residential properties adjacent to the east (24 Foster's Avenue) and west (28 Foster's Avenue). The site

contains a number of mature trees and hedgerows associated with the residential properties, boundaries and/ or screening for the industrial buildings.

7.6.13. The proposed development comprises the following the key elements:

- demolition of existing buildings within the site (total floorspace of c.3,657sqm);
- demolition works are down to but not including the lower/ ground floor slab level for the buildings;
- no underground excavations with existing subsurface services infrastructure remaining intact;
- removal of the front boundary wall and its replacement with timber hoarding;
- removal of 21 trees (of a total of 83 trees) with the protection/ stabilising of the remaining trees and hedgerows;
- recorded removal of waste material, including asbestos containing material, and wastewater for off-site disposal at an appropriate/ licenced facility; and
- demolition and site clearance works are to be undertaken over an estimated 12 week period, which is seasonally restricted due to the presence of protected bat species.

7.6.14. The site is described as not being under any wildlife or conservation designation.

The surveys recorded no rare or protected plant species, no protected animal species such as badger, and no habitats of significant biodiversity value. The presence of protected bat species is noted from the surveys, with the use of 26 Foster's Avenue being described as for shelter and occasional roosting, though with no significant roost recorded at the site. Except for the occasional bat roosting activity, and the value of the site for commuting and foraging bats, the site is determined to have no key ecological receptors and no evidence of habitats or species with links to European sites.

7.6.15. Taking account of the characteristics of the proposed development in terms of the site's features, location and scale of works, the following are considered for examination in terms of implications for likely significant effects on European sites:

- Development (i.e. demolition and site clearance works) related surface water and/ or groundwater pollution.

Submissions and Observations

- 7.6.16. The planning authority decision incorporates internal reports from the Biodiversity Officer, Water Services Section, and Environment Section which express no objection to the proposal, recommending conditions to address items. The planner's reports indicate screening for appropriate assessment was undertaken which concludes the proposed development would not significantly impact on a Natura 2000 site. No submissions are on the appeal case from prescribed bodies. While the adverse impact on the natural environment, bat populations, and loss of trees are raised by appellants and observers, the appropriate assessment of the proposed development was not raised specifically as an issue.

European Sites

- 7.6.17. The site is not located in or immediately adjacent to a European site. There is no watercourse or other such ecological feature that could serve as a direct hydrological and/ or ecological pathway between the proposed development and any European site.
- 7.6.18. As outlined above, the SRAA identifies 18 European sites within a precautionary 15km radius from the appeal site. These include (listed in closest proximity): South Dublin Bay and River Tolka Estuary SPA (site code 004024) c.1.3km to the east; South Dublin Bay SAC (site code 000210) c.1.4km to the east; North Dublin Bay SAC (site code 000206) c.6.3km to the northeast; North Bull Island SPA (site code 004006) c.6.3km to the northeast; Rockabill to Dalkey Island SAC (site code 003000) c.8.1km to the east; Dalkey Islands SPA (site code 004172) c.8.2km to the southeast; Wicklow Mountains SAC (site code 002122) c.8.6km to the south; Wicklow Mountains SPA (site code 004040) c.8.8km to the south; Knocksink Wood SAC (site code 000725) c.10.0km to the southeast; Howth Head SAC (site code 000202) c.10.7km to the northeast; Ballyman Glen SAC (site code 000713) c.10.9km to the south; Glenasmole Valley SAC (site code 001209) c.11.5km to the southwest; Baldoyle Bay SAC (site code 000199) c.11.9km to the northeast; Baldoyle Bay SPA (site code 004016) c.11.9km to the northeast; Howth Head Coast SPA (site code 004113) c.12.5km to the northeast; Bray Head SAC (site code 000714) c.14.3km to the southeast; Ireland's Eye SPA (site code 004117) c.14.5km to the northeast; and Ireland's Eye SAC (site code 002193) c.14.8km to the northeast.

7.6.19. I have reviewed the information provided in the SRAA, which includes a table containing details of each of the 18 European sites and conclusions of potential impacts based on the principle of source-pathway-receptor. I highlight that the SRAA clearly states that the reason the 18 European sites have been included in the table is *'for completeness'* and that *'only the offshore sites are linked in any way to the proposed development site. None of the other listed sites, and no sites further afield, are remotely linked to the proposed development site, by virtue of distance, lack of a pathway and the reasons for their designation'*. The basis for this conclusion is apparent as seven of the European sites are found to simply have no pathway link to the proposal and therefore there will be no potential for significant effect, no loss of habitat or species, fragmentation, or disturbance to the qualifying interests of these sites as a result of the proposed development. I concur with the SRAA in this respect and conclude that as these have no hydrological or ecological connection to or with the project there is no possibility of any effect on the sites' conservation objectives.

7.6.20. Therefore, I am satisfied that the European sites to be screened are those 11 coastal sites in Dublin Bay with potential hydrological (surface water and/ or groundwater) pathways to the proposal. These are South Dublin Bay and River Tolka Estuary SPA (site code 004024); South Dublin Bay SAC (site code 000210); North Dublin Bay SAC (site code 000206); North Bull Island SPA (site code 004006); Rockabill to Dalkey Island SAC (site code 003000); Dalkey Islands SPA (site code 004172); Howth Head SAC (site code 000202); Baldoyle Bay SAC (site code 000199); Baldoyle Bay SPA (site code 004016); Howth Head Coast SPA (site code 004113); and Bray Head SAC (site code 000714).

Identification of Likely Effects

7.6.21. As outlined above, the appeal site does not have any habitats that are associated with species or habitats for which SACs or SPAs are designated. Therefore, it is due to development (i.e. demolition and site clearance works) related surface water and/ or groundwater pollution that implications for likely significant effects on European sites may arise.

7.6.22. I have identified 11 European sites for consideration in this screening examination. A summary of these European sites including their conservation objectives and

qualifying interests, the distance from the proposal, whether there is a connection (source-pathway-receptor), and the possibility of likely significant effects on their conservation objectives are presented in Table 1 below.

- 7.6.23. During the site development phase (i.e. the demolition works), it is anticipated that there will be no significant effects to the SPAs and/ or SACs in Dublin Bay in respect of surface water and/ or groundwater pollution. This is due to the nature of the project (no change in the volume of rainwater draining to ground, no underground excavation works, maintenance of existing subsurface infrastructure, installation of a new temporary surface water drainage system from which settled sediments will be removed and disposed of, no effect on water quality levels, short duration of works), the absence of any known pathway (there is no watercourse at the site, as such a pollution incident at the proposal would be diluted by the time of entering the respective European site, would be further diluted by mix of surface and seawater, and further diluted again by entering the receiving waters which are classified as unpolluted by the EPA), and/ or notable separation distances involved (a pollution incident at the proposal would be imperceptible at the respective European site). The change in quantum and quality of surface water and groundwater discharging from the site is therefore considered to be negligible and unlikely to have significant effects on the European sites and their conservation objectives. Importantly, the installation of the temporary surface water drainage system is a standard water management measure and has not been proposed to avoid or reduce an effect to any European site.
- 7.6.24. Except for the theoretical indirect hydrological connections outlined above, there is no pathway for loss or disturbance of species or habitats associated with the qualifying interests of these European sites. The application site is too far from the protected bird roosting areas of Dublin Bay and the site itself does not contain any habitats suitable for roosting or foraging birds associated with SPAs in Dublin Bay. The project is not likely to affect amenity use at the European sites due to the location of the development and the separation distances involved. While the project will result in additional noise, vibration, and air particles (asbestos and dust), due to the significant separation distances to the European sites these are not likely significant environmental effects.

7.6.25. In respect of potential for in-combination impacts, from a review of the planning register, I note that developments permitted in the vicinity of the site, including in the UCD campus, have been subject to surface water drainage and wastewater treatment requirements through planning conditions. I also note that the Dún Laoghaire Rathdown County Development Plan 2022-2028 has been prepared for which a Natura Impact Report has been undertaken which required surface water and groundwater protection measures to be incorporated into CDP policy/ objectives. In any event, as it is considered that no likely significant effects will arise from the proposed development, therefore, by association, significant effects will not arise as a result of any in-combination effects with these individual planning applications or plans.

7.6.26. There is a concurrent appeal case at the site, ABP 309931-21, which is under consideration. As is discussed in Section 7.2 of this report above, I consider the current appeal and the concurrent appeal to be mutually exclusive projects, and the concurrent appeal is subject of a separate AA screening determination.

Mitigation Measures

7.6.27. No measures designed or intended to avoid or reduce any potentially harmful effects of the project on a European site have been relied upon in this screening.

Screening Determination

7.6.28. The project was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out screening for appropriate assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on the European sites listed in Table 1 in view of the sites’ conservation objectives and qualifying interests, and that a Stage 2 appropriate assessment, and submission of a Natura Impact Statement, is not therefore required.

Table 1: Summary of Screening Matrix

European Site Code/ Conservation Objective	Qualifying Interests/ Special Conservation Interests	Distance from Site/ Connection (source, pathway, receptor)	Likely Significant Effect	Screening Conclusion
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<p><u>South Dublin Bay and River Tolka Estuary SPA (site code 004024)</u> To maintain the favourable conservation condition of the species and wetland habitat for which the SPA has been selected.</p>	<p>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>) [A144] 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]</p>	<p>c.1.3km Theoretical hydrological connections between the project (source) via the local surface water drainage network (surface water pathway) and/ or a pollution incident entering the groundwater at the site (groundwater pathway) to Dublin Bay and the European site (receptor).</p>	<p>None arising due to the nature of the project, the absence of any known pathways to the European site via surface water or groundwater, the notable separation distances between the project and the European site, and/ or the reasons for their designation (i.e. the nature of the conservation objective(s) and qualifying interest(s)).</p>	<p>Screened out for need for AA</p>
<p><u>South Dublin Bay SAC (site code 000210)</u> To maintain the favourable conservation condition of the Annex I habitat for which the SAC has been selected.</p>	<p>Mudflats and sandflats not covered by seawater at low tide [1140] (Additional habitats on NPWS website) Annual vegetation of drift lines [1210] Salicornia and other annuals colonising mud and sand [1310] Embryonic shifting dunes [2110]</p>	<p>c.1.4km Theoretical hydrological connections between the project (source) via the local surface water drainage network (surface water pathway) and/ or a pollution incident entering the groundwater at the site (groundwater pathway) to Dublin Bay and the European site (receptor).</p>	<p>None arising due to the nature of the project, the absence of any known pathways to the European site via surface water or groundwater, the notable separation distances between the project and the European site, and/ or the reasons for their designation (i.e. the nature of the conservation objective(s) and</p>	<p>Screened out for need for AA</p>

			qualifying interest(s)).	
<p><u>North Dublin Bay SAC (site code 000206)</u></p> <p>To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.</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 (Glauco-Puccinellietalia maritimae) [1330]</p> <p>Mediterranean salt meadows (Juncetalia maritimi) [1410]</p> <p>Embryonic shifting dunes [2110]</p> <p>Shifting dunes along the shoreline with Ammophila arenaria (white dunes) [2120]</p> <p>Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</p> <p>Humid dune slacks [2190]</p> <p>Petalophyllum ralfsii (Petalwort) [1395]</p>	<p>c.6.3km</p> <p>Theoretical hydrological connections between the project (source) via the local surface water drainage network (surface water pathway) and/ or a pollution incident entering the groundwater at the site (groundwater pathway) to Dublin Bay and the European site (receptor).</p>	<p>None arising due to the nature of the project, the absence of any known pathways to the European site via surface water or groundwater, the notable separation distances between the project and the European site, and/ or the reasons for their designation (i.e. the nature of the conservation objective(s) and qualifying interest(s)).</p>	<p>Screened out for need for AA</p>
<p><u>North Bull Island SPA (side code 004006)</u></p> <p>To maintain the favourable conservation condition will contribute of the species and wetland habitat for which the SPA has been selected.</p>	<p>Light-bellied Brent Goose (Branta bernicla hrota) [A046]</p> <p>Shelduck (Tadorna tadorna) [A048]</p> <p>Teal (Anas crecca) [A052]</p> <p>Pintail (Anas acuta) [A054]</p> <p>Shoveler (Anas clypeata) [A056]</p> <p>Oystercatcher (Haematopus ostralegus) [A130]</p> <p>Golden Plover (Pluvialis apricaria) [A140]</p> <p>Grey Plover (Pluvialis squatarola) [A141]</p> <p>Knot (Calidris canutus) [A143]</p>	<p>c.6.3km</p> <p>Theoretical hydrological connections between the project (source) via the local surface water drainage network (surface water pathway) and/ or a pollution incident entering the groundwater at the site (groundwater pathway) to Dublin Bay and the European site (receptor).</p>	<p>None arising due to the nature of the project, the absence of any known pathways to the European site via surface water or groundwater, the notable separation distances between the project and the European site, and/ or the reasons for their designation (i.e. the nature of the conservation objective(s) and qualifying interest(s)).</p>	<p>Screened out for need for AA</p>

	<p>Sanderling (<i>Calidris alba</i>) [A144] Dunlin (<i>Calidris alpina</i>) [A149] Black-tailed Godwit (<i>Limosa limosa</i>) [A156] Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157] Curlew (<i>Numenius arquata</i>) [A160] Redshank (<i>Tringa totanus</i>) [A162] Turnstone (<i>Arenaria interpres</i>) [A169] Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179] Wetland and Waterbirds [A999]</p>			
<p><u>Rockabill to Dalkey Island SAC (site code 003000)</u> To maintain the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.</p>	<p>Reefs [1170] Harbour porpoise (<i>Phocoena phocoena</i>) [1351]</p>	<p>c.8.1km Theoretical hydrological connections between the project (source) via the local surface water drainage network (surface water pathway) and/ or a pollution incident entering the groundwater at the site (groundwater pathway) to Dublin Bay and the European site (receptor).</p>	<p>None arising due to the nature of the project, the absence of any known pathways to the European site via surface water or groundwater, the notable separation distances between the project and the European site, and/ or the reasons for their designation (i.e. the nature of the conservation objective(s) and qualifying interest(s)).</p>	<p>Screened out for need for AA</p>
<p><u>Dalkey Islands SPA (site code 004172)</u> To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.</p>	<p>Roseate Tern (<i>Sterna dougallii</i>) [A192] Common Tern (<i>Sterna hirundo</i>) [A192] Arctic Tern (<i>Sterna paradisaea</i>) [A192]</p>	<p>c.8.2km Theoretical hydrological connections between the project (source) via the local surface water drainage network (surface water pathway) and/ or a pollution incident</p>	<p>None arising due to the nature of the project, the absence of any known pathways to the European site via surface water or groundwater, the notable separation distances between the project and the</p>	<p>Screened out for need for AA</p>

		entering the groundwater at the site (groundwater pathway) to Dublin Bay and the European site (receptor).	European site, and/ or the reasons for their designation (i.e. the nature of the conservation objective(s) and qualifying interest(s)).	
<p><u>Howth Head SAC (site code 000202)</u> To maintain the favourable conservation condition of the Annex I habitats for which the SAC has been selected.</p>	<p>Vegetated sea cliffs of the Atlantic and Baltic coasts [1230] European dry heaths [4030]</p>	<p>c.10.7km Theoretical hydrological connections between the project (source) via the local surface water drainage network (surface water pathway) and/ or a pollution incident entering the groundwater at the site (groundwater pathway) to Dublin Bay and the European site (receptor).</p>	<p>None arising due to the nature of the project, the absence of any known pathways to the European site via surface water or groundwater, the notable separation distances between the project and the European site, and/ or the reasons for their designation (i.e. the nature of the conservation objective(s) and qualifying interest(s)).</p>	<p>Screened out for need for AA</p>
<p><u>Baldoyle Bay SAC (site code 000199)</u> To maintain the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.</p>	<p>Mudflats and sandflats not covered by seawater at low tide [1140] Salicornia and other annuals colonizing mud and sand [1310] Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) [1330] Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p>	<p>c.11.9km Theoretical hydrological connections between the project (source) via the local surface water drainage network (surface water pathway) and/ or a pollution incident entering the groundwater at the site (groundwater pathway) to Dublin Bay and the European site (receptor).</p>	<p>None arising due to the nature of the project, the absence of any known pathways to the European site via surface water or groundwater, the notable separation distances between the project and the European site, and/ or the reasons for their designation (i.e. the nature of the conservation objective(s) and qualifying interest(s)).</p>	<p>Screened out for need for AA</p>

<p><u>Baldoyle Bay SPA (site code 004016)</u> To maintain the favourable conservation condition will contribute of the species and wetland habitat for which the SPA has been selected.</p>	<p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046] Shelduck (<i>Tadorna tadorna</i>) [A048] Ringed Plover (<i>Charadrius hiaticula</i>) [A137] Golden Plover (<i>Pluvialis apricaria</i>) [A140] Grey Plover (<i>Pluvialis squatarola</i>) [A141] Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157] Wetlands [A999]</p>	<p>c.11.9km Theoretical hydrological connections between the project (source) via the local surface water drainage network (surface water pathway) and/ or a pollution incident entering the groundwater at the site (groundwater pathway) to Dublin Bay and the European site (receptor).</p>	<p>None arising due to the nature of the project, the absence of any known pathways to the European site via surface water or groundwater, the notable separation distances between the project and the European site, and/ or the reasons for their designation (i.e. the nature of the conservation objective(s) and qualifying interest(s)).</p>	<p>Screened out for need for AA</p>
<p><u>Howth Head Coast SPA (site code 004113)</u> To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.</p>	<p>Kittiwake (<i>Rissa tridactyla</i>) [A188]</p>	<p>c.12.5km Theoretical hydrological connections between the project (source) via the local surface water drainage network (surface water pathway) and/ or a pollution incident entering the groundwater at the site (groundwater pathway) to Dublin Bay and the European site (receptor).</p>	<p>None arising due to the nature of the project, the absence of any known pathways to the European site via surface water or groundwater, the notable separation distances between the project and the European site, and/ or the reasons for their designation (i.e. the nature of the conservation objective(s) and qualifying interest(s)).</p>	<p>Screened out for need for AA</p>
<p><u>Bray Head SAC (site code 000714)</u> To maintain or restore the favourable conservation condition of the Annex I habitats for which the SAC has been selected.</p>	<p>Vegetated sea cliffs of the Atlantic and Baltic coasts [1230] European dry heaths [4030]</p>	<p>c.14.3km Theoretical hydrological connections between the project (source) via the local surface water drainage network (surface water pathway)</p>	<p>None arising due to the nature of the project, the absence of any known pathways to the European site via surface water or groundwater, the notable separation distances</p>	<p>Screened out for need for AA</p>

		and/ or a pollution incident entering the groundwater at the site (groundwater pathway) to Dublin Bay and the European site (receptor).	between the project and the European site, and/ or the reasons for their designation (i.e. the nature of the conservation objective(s) and qualifying interest(s)).	
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8.0 Recommendation

8.1. I recommend that permission be granted for the following reasons and considerations, and subject to the conditions set out below.

9.0 Reasons and Considerations

9.1. Having regard to the provisions of the Dún Laoghaire Rathdown County Development Plan 2022-2028, in respect of architectural heritage and green infrastructure, to the 'A' Zoning Objective of the site, and to the nature and scale of the development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of property in the vicinity, would not cause serious pollution in respect of air, water, noise, vibration or disposal of waste, would not be prejudicial to public health, would not cause serious injury to biodiversity and the natural environment, and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 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 significant further information plans and particulars submitted to the planning authority on the 9 th day of October 2020, and by the further plans and particulars received by An Bord Pleanála on the 22 nd day of December 2020 except as may otherwise be required in order to comply with the
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	<p>following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The implementation of this permission is mutually exclusive with that of ABP 309931-21 (PA Ref. D20A/0670).</p> <p>Reason: In the interests of clarity and orderly development.</p>
3.	<p>i) The mitigation measures and monitoring commitments outlined in the Ecological (Biodiversity) Appraisal, Bat Assessment, Landscape and Arboricultural Statement, Demolition Management Plan, and other plans and particulars submitted with the application and appeal, shall be carried out in full, except where otherwise required by conditions attached to this permission.</p> <p>ii) Prior to commencement of development, the developer shall:</p> <ul style="list-style-type: none"> a) submit a schedule of mitigation measures, monitoring commitments and details of a time schedule for implementation of same to the planning authority for its written agreement, b) engage the services of an appropriately qualified consultant with ecological and construction expertise as an environmental manager to ensure that the mitigation measures and monitoring commitments identified in the named reports and other plans and particulars are implemented and undertaken in full, and c) inform the planning authority in writing of the appointment and name of the consultant. <p>iii) Documentary evidence of the satisfactory completion of the mitigation measures and monitoring commitments shall be submitted to the planning authority for its written agreement.</p> <p>Reason: In the interests of wildlife and environmental protection.</p>

4.	<p>Prior to the commencement of development, the developer shall:</p> <ul style="list-style-type: none"> i) engage the services of a qualified arborist as an arboricultural consultant for the entire period of works, ii) inform the planning authority in writing of the appointment and name of the consultant, iii) submit to the planning authority for its written agreement, a revised Landscape and Arboricultural Statement with an updated Appendix 1: Condition Tree Assessment prepared by the arboricultural consultant, iv) ensure the implementation of all recommendations in respect of tree removal, retention, protection, pruning, and other measures included in the relevant tree plans and particulars, v) ensure all such tree felling, surgery and remedial works are undertaken in accordance with the applicable BS standards, supervised by, and to the satisfaction of the arboricultural consultant, vi) ensure that the arboricultural consultant: <ul style="list-style-type: none"> a) undertakes a post-demolition tree survey with an assessment of the condition of the retained trees, b) authorises a completion certificate when permitted demolition works are completed in line with the recommendations of the relevant tree plans and particulars, and c) submits the completion certificate to the planning authority for its written agreement. <p>Reason: In the interests of arboricultural and environmental protection.</p>
5.	<p>The demolition of 24, 26, and 28 Foster's Avenue shall be undertaken in accordance with the terms and conditions of National Parks and Wildlife Service (NPWS) Derogation Licence No.: DER/BAT 2020-93, which may, as necessary, defer to/ be superseded by any changes or clarifications agreed with the NPWS in the event of an amended and/ or new derogation licence issued by the NPWS in respect of the demolition works.</p>

	<p>In the event of any such amendments to the derogation licence pertaining to the demolition works, the developer shall submit a revised/ updated Bat Assessment and Demolition Management Plan incorporating the amended/ new terms and conditions to the planning authority for its written agreement.</p> <p>Reason: In the interests of clarity and wildlife protection.</p>
6.	<p>The proposed development shall be managed in accordance with a Demolition Management Plan, which shall be submitted to and agreed in writing with the planning authority prior to commencement of development. This Plan, which shall be in line with the preliminary Demolition Management Plan submitted to An Bord Pleanála on the 22nd day of December 2020, shall provide details of intended practices for the development, including:</p> <ul style="list-style-type: none"> a) Appointment of a site liaison officer to ensure that the provisions of the Demolition Management Plan are implemented in full; b) Location(s) for site offices, staff facilities, and site compound. Such location(s) shall be within (an) area(s) that do(es) not cause or require further tree felling than that which is hereby permitted; c) Location(s) for area(s) for the storage of demolition refuse; d) Details of site security fencing and hoarding(s); e) Details of on-site parking facilities for site workers during the course of the demolition works; f) Details of the timing and routing of demolition traffic to and from the site and associated directional signage, to include proposals to facilitate the delivery of machinery to the site; g) Measures to obviate queuing of demolition related traffic on the adjoining road network; h) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;

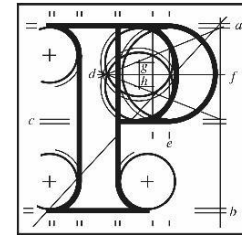
	<ul style="list-style-type: none"> i) Alternative arrangements necessary for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of the demolition works; j) Details of appropriate mitigation measures for noise, vibration, and air pollutants (asbestos and dust) associated with the demolition works, and monitoring of same; k) Off-site disposal of all demolition waste, including details of the removal and disposal of asbestos containing material; l) Measures for the eradication and disposal of invasive species from the site; and m) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains, public roads, and/ or adjacent properties. <p>A record of daily checks that the works are being undertaken in accordance with the Demolition Management Plan shall be kept for inspection by the planning authority.</p> <p>Reason: In the interest of amenities, public health, and safety.</p>
7.	<p>Drainage arrangements, including disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health and surface water management.</p>
8.	<p>Demolition waste shall be managed in accordance with a Demolition Waste Management Plan, which shall be submitted to and agreed in writing with, the planning authority prior to commencement of development. This Plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during demolition and site clearance phases, and details of the methods and locations to be employed for the prevention, minimisation,</p>

	<p>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.</p> <p>Reason: In the interest of sustainable waste management.</p>
9.	<p>Demolition and site clearance works shall be carried out 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 agreement has been received from the planning authority.</p> <p>Reason: In order to safeguard the amenities of properties in the vicinity.</p>
10.	<p>The developer shall maintain the timber hoarding erected along the northern (front) site boundary free from damage, advertisements, any other commercial signage, and to the satisfaction of the planning authority.</p> <p>Reason: To protect the visual amenities of the area.</p>

Phillippa Joyce
Senior Planning Inspector

9th June 2022

Appendix A: Environmental Impact Assessment Screening Determination Form



**An
Bord
Pleanála**

A. CASE DETAILS		
An Bord Pleanála Case Reference		ABP 308770-20
Development Summary		Demolition of buildings and associated site clearance works
	Yes/ No/ N/A	Comment (if relevant)
1. Has an AA screening report or NIS been submitted?	Yes	An AA screening report has been submitted with the application.
2. Is an IED/ IPC or Waste Licence (or review of licence) required from the EPA? If YES has the EPA commented on the need for an EIAR?	No	
3. Have any other relevant assessments of the effects on the environment which have a significant bearing on the project been carried out pursuant to other relevant Directives – for example SEA.	Yes	An Ecological (Biodiversity) Appraisal and a Bat Assessment, which consider the Habitats Directive (92/43/EEC) and the Birds Directive 2009/147/EC), have been submitted with the application. SEA was undertaken by the planning authority in respect of the Dún Laoghaire Rathdown County Development Plan 2022-2028.

B. EXAMINATION	Response: Yes/ No/ Uncertain	Where relevant, briefly describe the characteristics of impacts (i.e. the nature and extent) and any Mitigation Measures proposed to avoid or prevent a significant effect (having regard to the probability, magnitude (including population size affected), complexity, duration, frequency, intensity, and reversibility of impact)	Is this likely to result in significant effects on the environment? Yes/ No/ Uncertain
1. Characteristics of proposed development (including demolition, construction, operation, or decommissioning)			
1.1 Is the project significantly different in character or scale to the existing surrounding or environment?	No	Project comprises the demolition of vacant buildings (two dwellings and industrial structures) with site clearance works (tree removal, front boundary wall removal, hoarding construction). Project differs from the surrounding residential area, but the difference is not considered to be significant in terms of character (removal of existing vacant buildings, removal of 21 trees (25% of tree cover)), or scale (decrease in physical scale due to removal of structures, altered visual impact due to removal of boundary and tree cover).	No
1.2 Will construction, operation, decommissioning, or demolition works cause physical changes to the locality (topography, land use, waterbodies)?	Yes	Project will cause physical changes to the appearance of the site (buildings cleared) and its boundaries (front wall and tree cover removal, hoarding replacement), but these are not considered to be significant. Demolition of the buildings is to ground/ lower ground floor slab level. Tree felling is of tree cover within the northern part of the site (front boundary). No underground excavation works are proposed so no change in site topography/ ground levels. Existing land use is residential with a vacant industrial use, and no change in land use proposed. No watercourses are within or under the site, so there are no changes to groundwater conditions. Accordingly, this is not considered likely to result in a significant effect on the environment.	No
1.3 Will construction or operation of the project use natural resources such as land, soil, water, materials/ minerals, or energy, especially resources which are non-renewable or in short supply?	No	Project uses standard demolition methods (save for asbestos containing material, see below) with no significant use of natural resources during the demolition process.	No

		Estimated total amount of demolition waste produced is c.662 tonnes, of which c.18% is to be reused on site, c.61% recycled/ recovered, and c.21% will be disposed of offsite.	
1.4 Will the project involve the use, storage, transport, handling, or production of substance which would be harmful to human health or the environment?	Yes	<p>Project produces waste through the demolition of structures within the site. Demolition waste includes 63 tonnes of asbestos containing material (c.10% of total demolition waste). Project involves the removal, transport, and disposal of the asbestos material.</p> <p>Mitigation measures/ provisions are contained in the DMP/ DWMP. This is a hazardous waste material which will be removed by a specialist contractor and disposed of offsite in accordance with health and safety, and waste legislation, thereby protecting human health and the environment. Measures also include air monitoring within the site, and the requirement for an authorised site completion certificate.</p> <p>Accordingly, this is not considered likely to result in a significant effect on the environment.</p>	No
1.5 Will the project produce solid waste, release pollutants or any hazardous/ toxic/ noxious substances?	Yes	<p>Project produces waste through the demolition of structures within the site including asbestos containing material. Mitigation measures/ provisions are contained in the DMP/ DWMP to address potential impacts, as outlined above.</p> <p>Project does not produce or release any other pollutant or hazardous material.</p> <p>Accordingly, this is not considered likely to result in a significant effect on the environment.</p>	No
1.6 Will the project lead to risks of contamination of land or water from releases of pollutants onto the ground or into surface waters, groundwater, coastal waters or the sea?	No	<p>Project involves no underground excavation works, with subsurface infrastructure remaining intact and protected.</p> <p>Project involves no discharge of pollutants to ground or surface water environments.</p> <p>Project includes for wastewater removal and disposal offsite, and a temporary surface water drainage system from which settled sediments</p>	No

		will be removed from the water run-off for disposal off-site. The system also ensures water run-off drains to ground within the site and will not flow onto the public road and adjacent properties.	
1.7 Will the project cause noise and vibration or release of light, heat, energy, or electromagnetic radiation?	Yes	<p>Project causes noise and vibration impacts during the demolition and site clearance works.</p> <p>Mitigation measures/ provisions are contained in the DMP/ DWMP. Noise and vibration levels to be to specified BS standards, monitoring to be undertaken by a noise and vibration specialist, levels to be set accordingly, use of good site management practices for noise reduction at source, the appointment of a site liaison officer as a residents' contact point, and specification of working hours. The works are short term in duration, over an estimated 12-week period and impacts arising will be temporary, localised, and addressed by the mitigation measures.</p> <p>Accordingly, this is not considered likely to result in a significant effect on the environment.</p>	No
1.8 Will there be any risks to human health, for example due to water contamination or air pollution?	Yes	<p>Project involves no discharge of pollutants to ground or surface water environments.</p> <p>Project produces waste including asbestos containing material which is a hazardous material with risk to human health.</p> <p>Mitigation measures/ provisions are contained in the DMP/ DWMP. The asbestos containing material will be removed by a specialist contractor and disposed of offsite in accordance with health and safety, and waste legislation. Measures to further protect human health include air monitoring within the site, and the requirement for an authorised site completion certificate.</p> <p>Project causes dust impacts during the demolition and site clearance works.</p> <p>Mitigation measures/ provisions are contained in the DMP/ DWMP. Dust monitoring to undertaken by main contractor, use of good site management practices for dust prevention and minimisation at source,</p>	No

		and road cleaning. The works are short term in duration, estimated over a 12-week period and impacts arising will be temporary, localised, addressed by the mitigation measures. Accordingly, this is not considered likely to result in a significant effect on the environment.	
1.9 Will there be any risk of major accidents that could affect human health or the environment?	No	No risk of major accidents given nature of project.	No
1.10 Will the project affect the social environment (population, employment)	No	Project causes no change in population. Project increases localised temporary employment activity at the site during demolition works but this is not considered to be significant in effect.	No
1.11 Is the project part of a wider large scale change that could result in cumulative effects on the environment?	No	Project is not part of a wider large scale change in the area, as the site is an infill site within an established built-up location. Development works are noted in the wider UCD campus. However, the works associated with the project are short term in duration, over an estimated 12-week period and impacts arising will be temporary, localised, addressed by the mitigation measures, and are not considered likely to result in significant effects on the environment in and of themselves, or in cumulation with development works in the wider UCD campus. No cumulative significant effects on the area are reasonably anticipated.	No
2. Location of proposed development			
2.1 Is the proposed development located on, in, adjoining or have the potential to impact on any of the following: a) European site (SAC/ SPA/ pSAC/ pSPA) b) NHA/ pNHA c) Designated Nature Reserve d) Designated refuge for flora or fauna e) Place, site or feature of ecological interest, the preservation/ conservation/ protection of which is an	No	Project not located in, on, or adjoining any European site, any designated or proposed Natural Heritage Area, or any other listed area of ecological interest or protection. There are no pathways by or through which surface water, groundwater, waste, or other pollutant could reach these receptors. The AA screening report presents information on potential impacts of the project on European sites, allowing the Board to undertake a	No

objective of a development plan/ LAP/ draft plan or variation of a plan		screening determination. It is concluded that the project would not be likely to give rise to significant effects on identified European Sites, and that a Stage 2 appropriate assessment, and submission of a Natura Impact Statement, is not required.	
2.2 Could any protected, important, or sensitive species of flora or fauna which use areas on or around the site, for example: for breeding, nesting, foraging, resting, over-wintering, or migration, be significantly affected by the project?	Yes	<p>Project comprises the demolition of buildings, including 26 Foster's Avenue in which three bat roosts have been recorded, and the felling of one PBR tree, causing a minor negative impact on the common pipistrelle, soprano pipistrelle, and brown long eared bat species. The felling of trees, in terms of foraging and commuting habitats, causes no impact on any bat species due to the small number of trees being removed.</p> <p>Mitigation measures are contained in the Bat Assessment and Ecological (Biodiversity) Appraisal. Alternative roosting sites will be erected (four bat boxes on poles/ trees), resurveying of all buildings and the single PRB tree prior to demolition and felling being undertaken, seasonal restrictions for undertaking the works, daytime undertaking of works, and all works carried out under the supervision of the bat specialist.</p> <p>Accordingly, this is not considered likely to result in a significant effect on the environment.</p>	No
2.3 Are there any other features of landscape, historic, archaeological, or cultural importance that could be affected?	No	<p>No landscape designations pertain to the site.</p> <p>No archaeological features recorded at the site.</p> <p>No architectural heritage designations (protected structures, architectural conservation area) pertain to the site.</p>	No
2.4 Are there any areas on/ around the location which contain important, high quality or scarce resources which could be affected by the project, for example: forestry, agriculture, water/ coastal, fisheries, minerals?	No	No such resources on or close to the site.	No
2.5 Are there any water resources including surface waters, for example: rivers, lakes/ ponds, coastal or	No	No watercourses are within or under the site. Site is not located within flood plain.	No

<p>groundwaters which could be affected by the project, particularly in terms of their volume and flood risk?</p>		<p>Trimlestown Stream (unmapped) is located to the northeast of the site and the groundwater underlying the site does not appear to discharge towards the stream.</p> <p>There are no direct connections to watercourses in the area. The site (connected by theoretical indirect hydrological connections) is at significant distance to coastal waters.</p> <p>Project involves no underground excavation works, and no discharge of pollutants to ground or surface water environments.</p> <p>Wastewater and settled sediments from the temporary surface water drainage system will be removed and disposed off-site. The system also ensures water run-off drains to ground within the site and will not flow onto the public road and adjacent properties.</p>	
<p>2.6 Is the location susceptible to subsidence, landslides or erosion?</p>	<p>No</p>	<p>No evidence identified of these risks.</p>	<p>No</p>
<p>2.7 Are there any key transport routes (eg National Primary Roads) on or around the location which are susceptible to congestion or which cause environmental problems, which could be affected by the project?</p>	<p>No</p>	<p>Site served by a local urban road network and is c.250m from the regional Stillorgan Road dual carriageway and Quality Bus Corridor. There are sustainable transport options available to workers. Project will result in a marginal increase in traffic activity (HGVs, workers) as demolition material will be primarily removed from site (estimated two HGV outbound trips per hour).</p> <p>The works are short term in duration, estimated over a 12-week period and impacts arising will be temporary, localised, and managed under the traffic management plan.</p> <p>Project not anticipated to contribute to congestion.</p>	<p>No</p>
<p>2.8 Are there existing sensitive land uses or community facilities (such as hospitals, schools etc) which could be significantly affected by the project?</p>	<p>Yes</p>	<p>Site adjoins residential development. There are no sensitive community facilities in proximity.</p> <p>Project produces waste (including asbestos containing material), and causes noise and vibration, and dust impacts during the demolition and site clearance works.</p>	<p>No</p>

		<p>Mitigation measures/ provisions are contained in the DMP/ DWMP, and outlined above. Waste removal and disposal in accordance with applicable legislation, and noise, vibration, and air pollutants (dust and asbestos) surveyed and monitored, use of good site management practices, and specialist consultant involvement. The works are short term in duration, estimated over a 12-week period and impacts arising will be temporary, localised, and addressed by the mitigation measures.</p> <p>Accordingly, this is not considered likely to result in a significant effect on the environment.</p>	
3. Any other factors that should be considered which could lead to environmental impacts			
3.1 Cumulative Effects: Could this project together with existing and/ or approved development result in cumulative effects during the construction/ operation phase?	No	<p>Development works are noted in the wider UCD campus. No developments have been identified in the vicinity which would give rise to significant cumulative environmental effects. No cumulative significant effects on the area are reasonably anticipated.</p> <p>There is a concurrent appeal case at the site, ABP 309931-21. The current appeal and the concurrent appeal are mutually exclusive projects, and therefore with no cumulative effects arising with the current appeal. The concurrent appeal is subject of a separate EIA Screening Determination.</p>	No
3.2 Transboundary Effects: Is the project likely to lead to transboundary effects?	No	No transboundary considerations effects arising.	No
3.3 Are there any other relevant considerations?	No	No	No
C.CONCLUSION			
No real likelihood of significant effects on the environment.	X	EIAR Not Required	
Real likelihood of significant effects on the environment.		EIAR Required	

D. MAIN REASONS AND CONSIDERATIONS

Having regard to:

- (a) The nature and scale of the proposed development, which is significantly under the thresholds in respect of Class 10(b)(i), Class 10(b)(iv), Class 14, and Class 15 of the Planning and Development Regulations 2001, as amended,
- (b) The location of the site on lands that are zoned for residential use under the provisions of the Dún Laoghaire Rathdown County Development Plan 2022-2028 and the results of the strategic environmental assessment of this Plan undertaken in accordance with the SEA Directive (2001/42/EC),
- (c) The location of the site in an established residential area served by public infrastructure and the existing pattern of development in the vicinity,
- (d) The location of the site outside of any sensitive location specified in article 109(4)(a) of the Planning and Development Regulations 2001, as amended and the absence of any relevant connectivity to any sensitive location,
- (e) The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003), and
- (f) The criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as amended,

it is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an environmental impact assessment report is not therefore required.

Inspector _____ **Phillippa Joyce**

Date _____