



An
Bord
Pleanála

Inspector's Report

ABP-309422-21

Development

Retention of gate installed at entrance, gates & additional railings installed, gates installed at the most easterly pedestrian entrances, installation of railings atop the low wall. The site is located within the former attendant grounds of Mount Argus Church (Protected Structure Ref. No. 4260)

Location

Kimmage Road Lower & Mount Argus Road, Mount Argus, Harold's Cross, Dublin 6W.

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

3739/20

Applicant(s)

Patrizia Mount Argus

Type of Application

Retention Permission

Planning Authority Decision

Split Decision

Type of Appeal

First Party

Appellant(s)

Patrizia Mount Argus

Observer(s)

Harold's Cross Village Community
Council

Date of Site Inspection

30th of September 2021

Inspector

Adrian Ormsby

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1.0 Site Location and Description

- 1.1. The site is c.3.5 km to the south west of Dublin City Centre. The site is a recently completed apartment development known as the Mount Argus Mill Apartments with eight blocks ranging from 3-5 stories in height designed around paved streets and paths providing non-vehicular linkages throughout the site.
- 1.2. The site is located within the former attendant grounds of Mount Argus Church which is c. 50m to the north west. The site is bounded by Kimmage Road Lower to the southeast, and an access road to Mount Argus Church and Monastery along its north west. The site appears to provide connect a number of residential areas to the north of the site directly to the Kimmage Road Lower and vice versa. There are bus stops located just to the northeast of the site and opposite the site on the Kimmage Road Lower.
- 1.3. The site has been developed alongside the River Poddle which runs through the site along the south western part of the lands adjoining the Lower Kimmage Road. Towards the south eastern corner of the site the Poddle flows into an underground culvert with the area above providing open space for the development.
- 1.4. To the north east of the site there is a building that is identified outside of the application site and is a 'Scout Hall' building. This building is located between area A and Area B of the development to be retained. The building directly fronts the access road to Mount Argus Church. This is a stone finish building directly accessing the public path.
- 1.5. Mount Argus Church is identified in the Dublin City Development Plan as a Protected Structure with a Ref. No. 4260.
- 1.6. The site has a stated site area of 1.64 ha.

2.0 Proposed Development

- 2.1. This is an application for retention permission. The development proposes to retain the following-

- Area A: gate installed at the entrance immediately west of the Scout Hall off Mount Argus Road;
- Area B: gates and additional railings installed at the vehicular entrance adjacent the ESB substation at the north east corner of the site off Mount Argus Road;
- Area C:
 - gates installed at the most easterly pedestrian entrances either side of the ramped vehicle access off Kimmage Road Lower.
 - Installation of railings installed atop the low wall at the south east boundary of the site on Kimmage Road Lower;
- Area D: Bollards at each end of the pedestrian bridge at the south west of the overall site;
- Area E: Bollards installed outside concierge office and railings along the edge of the bin store area at the rear of the Scout Hall.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Split Decision as follows-

- Grant Retention permission for the following-
 - Area D: Bollards at each end of the pedestrian bridge at the south west of the overall site;
 - Area E: Bollards installed outside concierge office and railings along the edge of the bin store area at the rear of the Scout Hall.
 - One condition was attached requiring the development to be retained in accordance with the details submitted.
- Refuse Retention permission for the following-

- Area A: gate installed at the entrance immediately west of the Scout Hall off Mount Argus Road;
- Area B: gates and additional railings installed at the vehicular entrance adjacent the ESB substation at the north east corner of the site off Mount Argus Road;
- Area C:
 - gates installed at the most easterly pedestrian entrances either side of the ramped vehicle access off Kimmage Road Lower.
 - Installation of railings installed atop the low wall at the south east boundary of the site on Kimmage Road Lower.
- Permission for the above was refused for two reasons-
 1. The proposed development, through the retention of gates and railings would result in the creation of a gated residential development which would hinder pedestrian and cycling permeability, diminish the successful integration of the permitted residential development within the existing street network, be inconsistent with the design principles of the permitted development and would be harmful to the character of the streetscape and local area visually. Consequently, the proposed development for retention would be contrary to the Dublin City Development Plan 2016-22 and to the proper planning and sustainable development of the area.
 2. Having regard to the nature of the development, which comprises the retention of gates and railings along the River Poddle, it has not been demonstrated that access for maintenance of the proposed culvert screen has been provided. Consequently, the proposed development would not be acceptable with regard to flood risk, contrary to the Dublin City Development Plan 2016-2022 and to the proper planning and sustainable development of the area.

4.0 Planning Authority Reports

4.1. Planning Reports

The report of the Planning Officer (19-01-21) reflects the decision of the Planning Authority. The following is noted from the report-

- The planning history for the site indicates that the scheme has always been predicated on a high degree of permeability.
- The Design Statement submitted with the application (2966/10) approved on appeal (29S.237974) states that the applicant has 'endeavoured to maximise permeability through the development for pedestrians/cyclists only'.
- This is reflected in the design whereby the blocks address new and existing streets, ground floor units are accessed directly from the street and public spaces are overlooked.
- Areas A&B- The gates on Mount Argus Road would remove access for non-passholders outside of daylight hours. Given the generous width of the service access it is considered to be an attractive and valuable access point for pedestrians. This is particularly the case for cyclists who will find this a more convenient entrance than that located adjacent to the Scout's Hall, due to its narrower width and ramp.
- The access issue raised by the applicant could likely be resolved through the addition of removable bollards on this entrance, whilst maintaining permeability for pedestrians and cyclists.
- Area E- the bin store area remains openly accessible, and the railing design maintains views through and is consistent with the permitted railings along Mount Argus Road. No objection is raised to the bollards outside the concierge office in order to control vehicular access.
- Area C- The gates and railings proposed for retention on the Kimmage Road Lower frontage reduce the permeability of the site, diminish the integration of the development within the wider area and appear austere, defensive and exclusionary within the streetscape, harmful to visual amenity.

- It is not considered that the provision of public access during ‘daylight hours’ would be adequate to achieve the objectives of the Development Plan with regard to improved permeability.
- Area D- no objection is raised to the retention of bollards on the pedestrian bridge as these would maintain pedestrian and cycle access, while controlling vehicular access.
- The design and layout of the development has been designed to create new streets which knit into the existing network of routes together with apartment blocks which allow for passive surveillance of publicly accessible areas.
- It is considered that the hard measures proposed are not necessary or appropriate in this regard.
- With the exception of the bollards and railings to the bin store area, it is considered that the proposed development for retention would be detrimental to the permeability of the site and wider area and to the integration of the new development within the wider area, both visually and in terms of its layout.
- A flood risk assessment has not been submitted with the application and no details of access for future maintenance of the culvert screen have been provided. The proposed development is therefore contrary to Policy SI11 and Policy SI16 of the City Development Plan 2016-2022.

4.2. Other Technical Reports

- Drainage Division-
 - Permission should be **refused** on the grounds that flood risk issues have not been fully addressed at this development and the recently installed railing and gates adjacent to Poddle culvert headwall (Area C) will seriously injure the ability to access and maintain the proposed culvert screen which is to be installed at this location. The installation is contrary to the plans agreed for the screen design and maintenance of same. The flood risk assessment for this site relies on unimpeded access to the proposed culvert screen and the residual risks as a result of the installed railing and gates are unacceptable.

4.3. Prescribed Bodies

- None

4.4. Third Party Observations

Twenty three third party submissions were received on the file and can be summarised as follows-

- A number of submissions support the application for reasons such as-
 - prevention of anti-social behaviour,
 - security,
 - privacy and
 - safety measures,
- A number submissions object to the development for reasons including-
 - Misleading use of the term protected structure
 - The works are unauthorised
 - The development creates a gated and socially isolated complex
 - Restricts permeability and access to the Poddle
 - Anti-social behaviour is a Garda matter and such claims are disingenuous
 - The original design was based on the principle of providing a legible, permeable and secure development
 - The proposal provided linkages from Mount Argus Road/Church Park Avenue and Church Park Court to the north and Kimmage Road Lower/ Westfield Road and Kenilworth Rod to the south.
 - Reference is made to the design statement submitted with 2966/10 which states, '*the public areas ne streets and public landscaped spaces will be accessible to all*' and the proposed links will '*connect the already existing adjacent communities across the site*'

5.0 Planning History

Relevant permissions on this Site-

- 2800/18 Revision of site boundaries to the north east along the boundary with No. 72 Mount Argus Road and to the north west of the site as permitted under Reg. Ref. 2870/17 and to omit from the development the approved crèche/community building, **Split Decision** 11/08/18-
 - **Grant** permission subject to conditions
 - **Refuse** permission to amend the boundaries identified as north west of the site and to omit from the development the approved crèche / community building (Block J) to be replaced with fencing and landscaping
 1. The proposed development by reason of its loss of a community centre that was intended to provide onsite crèche facilities would be contrary to the Circular PL 11/2016 Ensuring Delivery of Build-To-Rent Housing Projects as set out by the Department of Housing, Planning Community and Local Government. The loss of the crèche on site would negatively impact on the creation of the Guidelines aim to a “building community” by promoting interaction between residents and shared amenities. Therefore, it would negatively impact the residential amenities of the overall scheme as originally approved. The proposed development would therefore contravene the objectives of the Development Plan and be contrary to the proper planning and sustainable development of the area
- 4041/17 Reconfiguration of 23 no. units to provide for 40 no. units within Blocks A,B,C,D,E,G & H. This is proposed for a Private Rental Scheme and will provide for an overall increase in 17 no. apartments. **Grant** 05/03/18
- 4017/17 Conversion of 1 no. 2 bed apartment to provide for a concierge and residents amenity facilities in lieu of the granted community building in Block J which comprised c.203sqm. This will result in an overall decrease

from 180 no. to 179 no. residential units and a reduction of 23 no, car parking spaces from 259 no. spaces to 236 no. spaces. **Grant** 19/01/18

- 2870/17- the construction to completion of the development granted under planning Reg. Ref. PL29S.237974, comprising 180 no. residential units, Crèche and community building **Grant** Permission, 06/11/17
- 4275/15, 29S.246314 The relocation of the ESB MV sub-station to the north eastern boundary along Mount Argus Road, **Grant**, 21/06/16
- 2966/10, 29S.237974 184 apartments, **Grant**, 01/04/2011
 - Condition 5- Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for works and services.

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

- Condition 12- Prior to occupation or first use of any of the proposed development, the planning authority shall confirm in writing that all traffic management and access arrangements, including car parking, basement design/lighting, surface finishes and bicycle provision relating to the proposed development has been completed to their satisfaction.

Reason: In the interest of traffic safety and convenience.

- Condition 17- Details of all boundary treatments including their exact location, height and finish, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

Having reviewed the application on DCC's planning portal I note a number of compliance submissions were received in relation to conditions including 17 (the most recent dated 13/12/19). I have not been able to determine if this proposal was accepted by the Planning Authority. There does not appear to be a submission for condition 12 on the planning portal.

- 5472/08, 29S.234534 211 apartments, **refused** 15/01/2010 for four reasons summarised as follows-
 - The overall height, scale, massing and form of the proposed buildings would have a negative impact on the established pattern of development in the area
 - the need for all communal and private open spaces to receive adequate sunlight,
 - By reason of its massing and proximity, building 3 would have an unacceptable overbearing impact on the Scout Hall and No. 72, Mount Argus Road. Building No. 2, by reason of its scale, would have a detrimental impact on the Scout Hall.
 - contravene a development plan objective to protect, maintain, improve and enhance watercourses including access thereto as it includes increased culverting of the River Poddle and its realignment between Building 5 and the roadside boundary

The Planning Authority's Report notes two Enforcement Notices issued on the site as follows-

- E0752/20 – Section 154 Notice served 15/10/20 in relation to non-compliance with Condition 1 of PRR2800/18.
- E0412/20 - Section 154 Notice served 28/07/20 in relation to the creation of wall and railings to North West Boundary of the site at Lot 1, Mount Argus.

The Board is advised in section 21 of the application form the applicants have not indicated any statutory notices apply to the site. DCC have validated the application.

6.0 Policy Context

6.1. Ministerial Guidelines

6.1.1. Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (including the associated Urban Design Manual (UDM)) (2009)

- Section 3.14 details a number of design principles that should influence the layout and design of streets in residential areas including-
 - *Connectivity and permeability: Convenient access needs to be provided between and within areas, particularly to larger community and commercial facilities and to places of work. Routes within the area should be accessible for everyone and as direct as possible, and for this reason “gated estates” should be discouraged. The design process should consider what levels of permeability are appropriate for different street users, with permeability for pedestrians and cyclists taking precedence over permeability for vehicles. River or canal paths for walkers and cyclists can provide attractive connections within and between areas;*
- The Urban Design Manual (UDM) provides 12 criteria that *have been drawn up to encapsulate the range of design considerations for residential development. They are, in essence, a distillation of current policy and guidance and tried and tested principles of good urban design.*
- Section 2 of the UDM deals with ‘Connections’ and in particular ‘*Balancing Potential Conflict- Pedestrian Connections and Security*’. The following is noted-
 - *‘It is sometimes perceived that the urban design objective of making well-connected, highly permeable places conflicts with the objectives of security and safety. One view is that pedestrian connections replicate the grain of traditional, tried-and-tested cities and towns and that poorly connected developments create ‘gated’ enclaves and contribute to social exclusion. There is a contrary view that pedestrian connections encourage antisocial behaviour, providing opportunities for loitering, places for muggers to hide, escape routes for criminals or access for burglars. Alleys which are not overlooked, or otherwise passively supervised, do provide opportunities for criminal or anti-social activities. However, pedestrian connections should not be avoided purely for reasons of crime prevention. If they are well designed and managed*

they should not in themselves encourage crime, but safety and crime prevention must be properly considered when designing these places:'

- *If connections are under-used they may become unsafe. Will there be sufficient activity to justify a connection?*
 - *They should be overlooked by active accommodation to give passive supervision. They should not be flanked by inactive frontages, e.g. back garden walls, which might encourage graffiti, vandalism or other crime. Passing vehicle traffic will also provide some passive supervision.*
 - *There should be good visibility from other areas to minimise opportunities for hiding. For example, wider spaces, such as pocket parks, may be preferable to alley-ways.*
 - *....*
 - *Providing mixed uses will also promote safety by encouraging street activity at different times of day.*
- Section 3 of the UDM deals with Inclusivity. The following is noted-
 - *Developments should not try to deal with perceived social problems by turning their backs on adjoining neighbourhoods. There have been many recent instances of new housing developments being gated to prevent public access to within. These are widely seen as being detrimental to the creation of long-term sustainable communities. As well as the more recent phenomenon of physical barriers, new housing estates have for some time now attempted to create their own prestigious context by employing a number of devices which put up psychological barriers between new and old.*
 - Section 7 of the UDM deals with Layout. The following is noted-
 - *Creating a permeable network of direct routes will help to increase the sustainability of the development since longer than necessary pedestrian and cycle routes will discourage use (leading to more car journeys) and will also serve to minimise the length of car journeys.*

- ... a no-through road operating as a vehicular cul-de-sac permits a well connected and highly permeable layout for pedestrians and cyclists, but controls vehicle movement within the site.

6.1.2. Sustainable Urban Housing: Design Standards for New Apartments - Guidelines for Planning Authorities (DHLGH 2020); The following Sections dealing with ‘Security Considerations’ are relevant-

- 3.40- Apartment design should provide occupants and their visitors with a sense of safety and security, by maximising natural surveillance of streets, open spaces, play areas and any surface bicycle or car parking. Accordingly, blocks and buildings should overlook the public realm. Entrance points should be clearly indicated, well lit, and overlooked by adjoining dwellings. Particular attention should be given to the security of ground floor apartments and access to internal and external communal areas.
- 3.41- Where ground floor apartments are to be located adjoining the back of a public footpath or some other public area, consideration should be given to the provision of a ‘privacy strip’ of approximately 1.5m in depth. This should be influenced by the design, scale and orientation of the building and on the nature of the street or public area and if provided, subject to appropriate landscape design and boundary treatment.

6.1.3. The Planning System and Flood Risk Management Guidelines for Planning Authorities (DEHLG November 2009). The following section is considered relevant-

- 5.28- Assessment of minor proposals in areas of flood risk
Applications for minor development.....are unlikely to raise significant flooding issues, unless they obstruct important flow paths, introduce a significant additional number of people into flood risk areas or entail the storage of hazardous substances..... , a commensurate assessment of the risks of flooding should accompany such applications to demonstrate that they would not have adverse impacts or impede access to a watercourse, floodplain or flood protection and management facilities. These proposals

should follow best practice in the management of health and safety for users and residents of the proposal.

6.2. Dublin City Development Plan 2016-2022

- 6.2.1. The appeal site has a zoning objective 'Z1 - Sustainable Residential Neighbourhoods' within the Dublin City Development Plan 2016-2022, with a stated objective *'to protect, provide and improve residential amenities'*.
- 6.2.2. Relevant planning policies and objectives for residential development are set out under Section 5 (Quality Housing) and Section 16 (Development Standards) within Volume 1 of the Development Plan..
- 6.2.3. The following policies are considered of particular relevance:
- SC3: *'To develop a sustainable network of safe, clean, attractive pedestrian routes, lanes and cycleways in order to make the city more coherent and navigable'*.
 - SC19: *'To promote the development of a network of active, attractive and safe streets and public spaces which are memorable, and include, where appropriate, seating, and which encourage walking as the preferred means of movement between buildings and activities in the city. In the case of pedestrian movement within major developments, the creation of a public street is preferable to an enclosed arcade or other passageway.'*
 - QH10: *'To support the creation of a permeable, connected and well-linked city and discourage gated residential developments as they exclude and divide established communities.'*
 - MT11: *'To continue to promote improved permeability for both cyclists and pedestrians in existing urban areas in line with the National Transport Authority's document 'Permeability – a best practice guide.....''*
 - MT12: *'To improve the pedestrian environment and promote the development of a network of pedestrian routes which link residential areas with recreational, educational and employment destinations to create a pedestrian environment that is safe and accessible to all.'*

- SI11: *'To put in place adequate measures to protect the integrity of the existing Flood Defence Infrastructure in Dublin City Council's ownership and identified in the Strategic Flood Risk Assessment and to ensure that the new developments do not have the effect of reducing the effectiveness or integrity of any existing or new flood defence infrastructure and that flood defence infrastructure has regard also to nature conservation, open space and amenity issues'.*
- SI16: *'To minimise the flood risk in Dublin City from all other sources of flooding, including fluvial, reservoirs and dams and the piped water system'.*

6.2.4. Chapter 16 sets out Development Standards and the following is of particular relevance-

- 16.2.1 Design Principles- *'All development proposals should contribute to the creation of attractive, active, functional and publicly accessible streets and spaces (between buildings), promoting connectivity, walking and resisting the gating of streets. Gated developments will be discouraged as they prevent permeability'.*

Development must incorporate design measures for:

1. *Maintaining a clear distinction between public and private spaces*
2. *Promoting safety, visibility and facilitating the natural surveillance of adjoining routes and spaces.'*

6.2.5. The Development Plan Mapping appears to show the Zone of Archaeological Constraint for Recorded Monument '018-04304' applying to the application site. I note the National Monuments Service identify DU018-043003 as a 'weir' and there Historic Viewer Application¹ locates this c. 260m west of the site. Its zone of notification does not encroach upon the application site. Notwithstanding this, much of the site appears to be located within a Zone of Archaeological Interest as per the Development Plan.

6.2.6. Volume 7 provides the Development Plan's Strategic Flood Risk Assessment (SFRA).

¹ <https://maps.archaeology.ie/HistoricEnvironment/>

- Appendix 1 details ‘Existing Flood Defence Infrastructure’ and in relation to the River Poddle states-

‘The River Poddle is largely culverted in the city area north of the Grand Canal. Existing embankments and walls are significant flood defences; these require some extra defences in Mount Argus, St. Martin’s drive, Poddle Park and Ravensdale Park as well as storage in South Dublin County Council to provide estimated flood protection to the 100-year flood level.’

- Appendix 3 sets out Justification Test Tables and Site 15. ‘Poddle: Grand Canal to Sundrive Road’ identifies the southern boundary of the site within Flood Zone A and B. In relation to Storm Water this section states-
 - *All storm (surface) water in this area needs to be carefully managed and provision made for significant rainfall events during high river flows. Should development be permitted, best practice with regard to storm (surface) water management should be implemented across the development area, to limit storm (surface) water runoff to current values. Separation of storm (surface) water and foul sewage flows should be carried out where possible.*
 - *All Developments shall have regard to the Pluvial Flood Maps in their Site Specific Flood Risk Assessment.....*
- In relation to Development Options this section states
 - *‘No new development should be allowed in these areas unless they are defended except for extensions and small infill provided the number of people at flood risk is not increased.....Some development may require to await future flood defence works on the Poddle River’*

6.3. Natural Heritage Designations

- The site is located c. 5.5 km west of the South Dublin Bay SAC (000210) and the South Dublin Bay and River Tolka Estuary SPA (004024).
- The site is located c. 1km south of the Grand Canal pNHA.

7.0 The Appeal

7.1. Grounds of Appeal

One first party appeal was received from Tony Bamford Planning on behalf of the applicants. The grounds of appeal can be summarised as follows-

- The appeal relates to the refusal of retention permission and the items considered as Area A, B and C.
- The wider case for the application is made in the original cover letter submitted with the application and enclosed at Appendix 2 of the appeal.
- The Council have given very little weight to the large number of submissions in support of the application from residents of the apartments. These submission raise concerns of anti-social behaviour which occurs on a regular basis. This is put down to relatively poor design that can be resolved by allowing the gates and railing at the north east and south east of the project to be retained.
- A Garda report is attached outlining one reported incident of anti-social behaviour.
- It is incongruous that DCC would accept the justification for bollards at the pedestrian bridge to the south west of the site but would not give weight to the anti-social behaviour concerns of residents.
- It was originally proposed to open gates during daylight hours. It is now proposed to close the gates between the hours of 11 pm and 6 am. This will allow people outside the 'estate' ample opportunity to access services on the Kimmage Road Lower including bus services. There is little need for anyone outside the 'estate' to access the subject property between 11 pm and 6 am.
- These hours apply to the east of the site only. 24 hours unrestricted access remains to the west of the site.
- The gates at Area A will have controlled access for pass holders and will be closed between 11 pm and 6 am.

- The gates to Area B will be closed from 11 pm to 6 am. This is a vehicular entrance used for servicing.
- Area C is located on the southern side of the site along the Kimmage Road Lower. The railings have been installed first and foremost for safety reasons and to address poor design in the area. The railing to the vehicular ramp prevent falls over the retaining wall. The railing atop the low wall along the road provide security to the opens space e.g. children playing could enter the road while retrieving a wayward ball.
- The Planning Authority's comments in relation to the gates and railing exaggerate the position. The railings are simple and in keeping with railings permitted as part of the wider development. They do not prevent visual connectivity between the street and the development They facilitate such connectivity.
- The low wall never allowed convenient, physical access in the first instance and a parent with a pram could not have scaled it.
- The council have not considered safety of people and children. The low wall would not prevent children accessing the road. The design itself is a significant risk to human life.
- The gates in area C provide controlled access for pass holders. They will be closed between 11 pm and 6 am.
- It is considered this compromise position is adequate to achieve the objectives of the Development Plan and be in accordance with the planning permission. It facilities access to local shops, bus stops and use of the entire public realm.
- There is no condition or commitment by any applicant on the site to install gates or to provide unfettered access 24 hours a day to the public.
- The site remains open in any event to the general public along the route to the west of the site.
- The Board is requested to overturn the reason for refusal and grant permission for development at Areas A,B and C subject to condition that the

gates must remain open between the hours of 6 am and 11pm Monday to Sunday inclusive.

- In relation to the second refusal reason it is not entirely clear what the Council's concerns are. The Building Surveyors of the property (Hollis Global) note the plan for the culvert is to install a rubbish grating to collect rubbish in the river.
- It is believed access could be hampered/obstructed by the presence of the new gate to the left hand side of the vehicular ramp to the basement. If maintenance or cleaning were to be carried out on the Culvert screen (when it is installed) the works are probably going to be undertaken during daytime hours. 24 hour manned security can provide access at any other time. This can be agreed with DCC.
- 24/7 access is still available from the river bank along lower Kimmage Road, and the north bank can be accessed unimpeded by crossing the ungated bridge as shown in a diagram in the appeal document.

7.2. Planning Authority Response

A response to the grounds of appeal has been received from the Planning Authority on the 11/03/21. It can be summarised as follows-

- In relation to the bollards the Planners Report clearly states that, as they would maintain pedestrian and cycle access, while controlling vehicular access, no objection is raised to their retention. This reasoning is entirely consistent in seeking to maintain pedestrian and cycling permeability throughout the site.
- The appellant submits that railings to Kimmage Road Lower are required for safety. The Council notes the presence of a low wall, wide footpath and parking which provides protection from the Kimmage Road Lower. Consideration of alternative, less defensive means of increasing safety have not been put forward in the application or appeal.
- The appellant now suggests opening the gates from 6am to 11 pm daily. The presence of the railings and gates creates the impression that the site is not

for public access. They therefore impede permeability, prevent the full integration of the new development within the streetscape and network of streets locally, prevent access to public open space within the site and runs contrary to the design principles and character of the scheme as conceived.

- Contrary to the appeal statement, the submitted Garda report does not suggest additional security is required, CCTV was obtained and a person was arrested. The appeal does not demonstrate the presence of an anti-social behaviour/security problem which would justify the measures proposed.
- New railing along either side of the vehicular access ramp off Kimmage Road Lower are not mentioned in the application description and are indicated as 'existing in the plans and were not considered as part of the application for retention.

The Planning Authority Report is accompanied by a report from DCC Drainage Planning and Development Control Division in relation to the second refusal reason. It is summarised as follows-

- The retention application for Area C refers to gates either side of the vehicular entrance and railings to the south east, new railings have also been installed either side of the vehicular ramp and wooden railings installed to the west of the vehicular entrance, for which the planning status is unknown but are also a cause for concern.
- The development of this site included the realignment of a section of the River Poddle that traverses the site, in order to facilitate the building works. As part of these realignment works the existing headwall and trash screen at the Poddle culvert entrance were demolished and a new headwall was constructed further downstream where the river re-enters the culvert.
- A replacement trash screen was never installed, as per Dublin City Council requirements, and access has now been restricted in this area compromising the ability for emergency flood event response and general maintenance.
- There is a history of flooding in this area and the planning conditions attached to the original planning permission recognised this. The conditions relating to the management of surface water have been re-applied by Dublin City

Council (DCC) and An Bord Pleanála (ABP) in subsequent planning applications. The "parent" permissions ABP PL 298.237974, Condition 5 states:

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

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

- The report refers to DCC's notification of decision to grant under 2966/10 where DCC's Condition 14 required the developer to ensure an appropriate flood risk impact assessment is kept up to date as the detailed design for the proposed development advances and full details relating to any proposed realignment of the River Poddle must be submitted for the written agreement of the Drainage Division prior to construction.
- The western portion of the site (which includes this Area C) is located within Flood Zone A/B of the Dublin City Development Plan 2016-2022 Strategic Flood Risk Assessment (SFRA) and the SFRA highlights that overland flow route and culvert blockages are the main flood risks in this area.
- Protracted discussions with the previous owners of the site resulted in final agreement last year for the design and installation of the missing trash screen.
- Section 4.1.1 of the Site Specific Flood Risk Assessment² notes that "The river Poddle culvert requires a trash screen to be installed at the upstream opening to prevent large debris from entering and causing blockages within the culvert". The proposed screen was designed in accordance with the CIRIA C786 "Culvert, Screen and Outfall Manual", which is considered best practice. One of the principles of good screen design noted in this Manual is that "it must be easily accessible at all times, be easy, safe and quick to clear debris" in order to be effective in reducing flood risk. The rationale and design of the

² I have examined Dublin City Council online planning register and the planning history of the site since ABP PL 298.237974. I have not been able to identify or source the Site Specific Flood Risk Assessment referenced here.

proposed screen are also based on ease of access and adjacent parking to facilitate the maintenance of the screen in a safe manner (also referenced in the Outline Risk Assessment and Method Statement). The gates and railings at Area C will hinder such easy access and are contrary to the Site Specific Flood Risk Assessment and the aforementioned conditions of the planning permission.

- The SSFRA also notes the role the boundary wall along Kimmage Road Lower serves in addressing flood risk. The intention was that the culvert screen, when installed, would be taken in charge by DCC, however DCC would not be in a position to consider taking in charge any infrastructure until such time as the planning conditions have been complied with.
- Effective flood management and maintenance of the culvert and proposed screen requires safe, easy and unrestricted 24 hour access. Responses to flood events are time sensitive. Regular maintenance also requires safe and easy access to an adjacent set-down area for debris removed from the river. This had been acknowledged in the design and risk assessment for the proposed screen but has been negated by the installed gates and railings along and around the river and proposed screen location.
- Flood risk has not been addressed nor considered by the applicant in carrying out the works at Area C. Indeed the applicant seems to be unaware of the requirement for the assessment of flood risk and for retaining responsibility to mitigate against any flood risks for adjoining areas that may remain, due to the absence of the trash screen and the installation of gates and railings at Area C.
- Intense rainfall and flooding do not happen to a timetable and restricting access in this manner is unacceptable. Due to the relatively narrow cross section of the Poddle and the significant catchment area upstream, flash flooding has occurred in this area in past years and it continues to be a flood risk area, for which the trash screen at this development is a significant component to minimising that risk.
- The river Poddle is the only watercourse in that area to which all storm water runoff in the area discharges and the area is one of known flood occurrence.

- Developers must have due regard for flood risk to their sites and also to adjacent areas. In this case retention of the works in Area C (both applied for and not applied for) have not had due regard for said flood risk (coupled with the missing trash screen) and therefore the application for retention of gates and railings at this location cannot be recommended by this Division.

7.3. Observations

One observation was received from Sheridan Woods on behalf of the Harold's Cross Village Community Council. The issues raised can be summarised as follows-

- The grounds of appeal are refuted and it is requested that ABP uphold the DCC's refusal.
- The observations submitted to DCC in support of the application are a small representation of the residents of the scheme comprising 14 in a scheme of 192 apartments and 480 bedspaces. There are no specific details on any particular incident, location, date or time of issues at the scheme. The observations do not suggest the anti-social behaviour referred to justifies physical barriers and an overly defensive appearance.
- The submitted Garda report does not include a time, the bike was not stored in the secure underground area or at a designated cycle park at the security office. The theft is not out of line with prevailing crime rates on public streets. This incident does not justify barriers and limited public access.
- There is extensive CCTV and professional security on site. The burglar was identified and apprehended. There is no log submitted of other incidents from onsite security.
- The approved plan shows open access through the site with 3 no. access points on the northwest side and 3 points on the south east boundary which link the site to the existing street network. The design statement for 266/10 states the applicant has endeavoured to maximise permeability through the development for pedestrian/cyclist only. This is reflected in the design of buildings whereby blocks address streets, ground floor units are accessed directly from the street and public spaces are overlooked. The level of

overlooking of the eastern access route is readily apparent as shown in a submitted image.

- The gates and railing create an overly defensive appearance which is counter to the original design objective and negatively impacts on the integration of the scheme to the existing street network.
- To permit limited opening hours will seriously negatively impact on the quality of the development and represents a retrograde step in the overall design. There are also concerns the hours could fluctuate or change.
- The treatment to the Lower Kimmage Road is disproportionately in front of a block allocated to social housing.
- The open spaces have been designed with a hierarchy of use envisaged. The space adjoining public roads are to provide an open view and to facilitate integration to the wider community. The open character and successful integration of the scheme to the existing network is lost with railings.
- The applicants concerns of risk to life is exaggerated and does not justify retention of the railings.
- The unauthorised installation of the railings and gates at this location will pose a risk on the basis that they impede access to the proposed culvert screen. Any modifications would require flood risk assessment.
- The suggestion that access can be arranged with the management company does not facilitate unimpeded access.

8.0 **Assessment**

8.1. **Introduction**

8.1.1. I have examined the application details and other documentation on file, including the submissions received in relation to the appeal. I have inspected the site and have had regard to relevant local/regional/national policies and guidance. I consider that the main issues for this appeal are as follows-

- Zoning

- The Parent Permission and Permeability
- The Development to be Retained
- Access to the Culvert and Flood Risk
- Appropriate Assessment

8.1.2. The Planning Authority have issued a split decision on the development to be retained. I note neither the applicant nor observers have raised any concerns over the development permitted by the council.

8.2. Zoning

8.2.1. The subject site is located within an area with a zoning objective 'Z1 - Sustainable Residential Neighbourhoods' within the Dublin City Development Plan 2016-2022, with a stated objective '*to protect, provide and improve residential amenities*'. The development to be retained is generally consistent with the zoning objective.

8.3. The Parent Permission and Permeability

8.3.1. The appeal appears to relate to works that have been carried out to certain areas of the site that do not comply with the parent planning permission as subsequently amended. The applicants contend the subject works are necessary security measures to restrict access to the site (to non-residents and their guests) at certain times in order to address anti-social behaviour and to protect users of the site from the risk of the road along Kimmage Road Lower.

8.3.2. The Planning Authority and observers contend that the development was originally designed and permitted to facilitate pedestrian and cycling permeability for all. The development to be retained would be detrimental to the permitted permeability and as a consequence to the sites integration with the wider area.

8.3.3. I have reviewed the Planning History of the site and in particular 2966/10 which was appealed and granted by ABP under PL29S.237974. The 'Design Statement/Architects Rationale' submitted with that application provides a number of important indications to the overall design rationale for the permitted scheme. These include-

‘This proposed development site is currently not accessible to the public. As with the scheme originally proposed, we have endeavoured to maximise permeability the development for pedestrians and cyclists. Two new routes through the site have been created for pedestrian/cycles only. A pedestrian cross street links both routes.....’

‘These new routes provide a positive gain to the community generally improving links to all local facilities in the neighbourhood. Access to the existing bus route running on Kimmage Road Lower is also improved.....’

‘The public areas, new streets and public landscaped areas will be accessible to all. The proposed links at this strategic location will encourage activity and vibrancy and will indeed connect the already existing adjacent communities across the site.’

‘This landscaped area when coupled with their other public landscaped areas at the North East and northwestern corners will provide a network of green spaces throughout this scheme fully accessible to the public’

‘A sense of permeability, clearly defined public and private realm and visual interest throughout the scheme is provided for in the design.....’

‘The links and permeability in the design have been provided with the greater good in mind and the new public open spaces designed by BSM will be of benefit to all....’

- 8.3.4. I note the DCC Planning Report for 2966/10 (dated 04-08-10) details the following in its ‘Assessment’ section-

The layout of the residential buildings 1, 2 & 5³ create a pedestrianised residential street/ bouvelard approximately 70 metres in length, 15-17 metres in width linking Kimmage Road Lower and Mount Argus Road; the layout of buildings 4, 7 & 8 create a public access also linking Kimmage Road Lower and Mount Argus Road, in the central section of the site the enclosed and u-shaped blocks are dissected by a public walkway, linking the pedestrianised street and a public open space in the north east site corner.

³ Buildings number 1-8 in 2966/10 generally equate to blocks A-H in the subject application.

Following a request for Additional Information DCC granted permission.

8.3.5. A number of drawings submitted with the application 2966/10 at Additional Information stage identify site proposals. These include-

- Public open space to be taken in charge- Drawing No.1 Rev 01- Arrows appear to be indicative of permeability proposals
- Public/Private Open Space and Recreation Areas Drawing No. 307 Rev 03- the 'public and private open space plan' on this drawings identifies proposed 'public pathways' and 'controlled access from public pathway to(p) private open space / buildings'. It is clear from this drawing that controlled access was intended to private open space / buildings and would not restrict access to the areas of public pathways.
- Boundary Access Diagram Drawing No. PL21- clearly identifies the 'public realm'

8.3.6. DCC decided to grant permission for the development. I note condition 3 of their permission required details of the boundary walls, plinth walls and railings to be submitted for written approval.

8.3.7. DCC's grant of permission 2966/10 was appealed to ABP under reference number 29S.237974. I note while describing the proposed development the Inspector's Report states-

'By way of additional informationSix additional incidental parking spaces were proposed to the north-east of the scout hall with access from Mount Argus Road. This would form part of a public space area which would link Mount Argus Road with Kimmage Road Lower. A second public open space would be created in the south-western corner between the community/crèche buildings and Building No. 5 whilst a third public open space would be provided in the south-eastern section alongside the open section of the River Poddle.

While discussing the 'Layout' of the proposed development the Planning Inspector's report states-

'In essence the scheme provides for two public pedestrian routes the first of which at the northern end connects Mount Argus Road and environs with

Kimmage Road Lower whilst the second runs diagonally from beside the grotto (opposite the church) past Buildings 2 and 5⁴ to the Kimmage Road Lower.’.....

In the Inspectors Report’s ‘Conclusion and Recommendation’ the following is stated-

‘The proposed scheme would open up a large attractive site to the public effectively extending the public open space area and enabling the River Poddle to be an important amenity feature. In addition pedestrian routes through the site will be created and the view of Mount Argus highlighted.’

8.3.8. ABP decided to grant permission. Condition 12 of this permission stated-

‘Prior to occupation or first use of any of the proposed development, the planning authority shall confirm in writing that all traffic management and access arrangements, including car parking, basement design/lighting, surface finishes and bicycle provision relating to the proposed development has been completed to their satisfaction.’

Condition 17 stated-

‘Details of all boundary treatments including their exact location, height and finish, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.’

8.3.9. It is clear that the development on site is currently under occupation. I have not been able to identify any confirmation on DCC’s online portal that the applicants have submitted ‘access arrangements’ in accordance with condition 12 or that such arrangements have been agreed.

8.3.10. I note there appears to be three submissions submitted in related to condition 17. The latter of these is stamp dated the 03/12/19. The submitted drawings clearly state and show ‘open access’ at the areas of the subject appeal. I note the drawing does state ‘access gate to scout hall’. I have not been able to confirm if these proposal were accepted by DCC. However it is clear the current development on site is not in accordance with these compliance drawings. I also note DCC have initiated enforcement proceedings as referenced in the Planning History section above.

⁴ Block B and E in the proposed development

8.3.11. Noting the sections quoted above from the original 'Design Statement/Architects Rationale' submitted with the parent application, the document also clearly states the core principles set out in the DoEHLG's Urban Design Manual Best Practice Guidelines have been adhered to. The statement then lists the twelve principles of the Manual.

8.3.12. The Urban Design Manual (UDM) is an accompanying document to the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas 2009 (SRDUA). Section 3.14 of the Guidelines discusses design principles that should influence the layout and design of streets in residential areas. Connectivity and Permeability is highlighted and 'gated estates' is clearly discouraged. Core Principle 3- Inclusivity as set out on page 31 of the UDM details-

'There have been many recent instances of new housing developments being gated to prevent public access to within. These are widely seen as being detrimental to the creation of long-term sustainable communities. As well as the more recent phenomenon of physical barriers, new housing estates have for some time now attempted to create their own prestigious context by employing a number of devices which put up psychological barriers between new and old.'

8.3.13. Having considered all of the above, having visited and walked through the site from all points of access (gated and not gated), I consider that the parent permission for this site was designed having regard to the principles set out in section 3.14 of the SRDUA Guidelines- Connectivity and permeability, and the 12 criteria identified in the UDM and in particular 'Connections', 'Inclusivity' and 'Layout'.

8.3.14. I note the appellants contention that there is no condition or no commitment by any applicant on the site to not install gates or to provide unfettered access 24 hours a day to the public.

8.3.15. Condition 1 of 29S.237974 required the development to

'be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 24th day of September, 2010, except as may otherwise be required in order to comply with the following conditions.'

Having reviewed the drawings submitted on the 24th day of September, 2010 (i.e. the Additional Information drawings), I am satisfied that no 'gates' or 'controlled access' to the access road to Mount Argus Church or Kimmage Road Lower were proposed. I note 'public pathways' and 'public realm' through the site were clearly proposed and identified. 'Controlled access' from the 'public pathway' appears to have only been proposed to private open space / buildings. It is clear from these drawing that 'controlled access' would not restrict access to the areas of 'public pathways' which then link to the surrounding areas and roads. The drawings do not propose 'gates' or 'controlled access' to the proposed linkages outside of the site and in my opinion there was no consideration or specific condition required in this regard.

- 8.3.16. Notwithstanding this, I note condition 12 of the permission granted by ABP under 29S.237974 clearly required all 'access arrangements' to be completed to the Planning Authority's satisfaction and for this to be confirmed in writing. I understand all 'access arrangements' to include pedestrian and cyclist access and the condition does not limit this to vehicular access. I also note condition 17 required agreement of boundary treatments prior to commencement of development. Gates and railing are clearly boundary treatments.
- 8.3.17. Having satisfied myself of the design rationale and principles that influenced the permitted parent permission as well as given due consideration to the conditions imposed on the parent permission and development by An Bord Pleanala, I now intend to consider the impact of the development to be retained on the overall parent permission as amended.

8.4. The Development to be Retained

- 8.4.1. The application involves retention of bollards, gates and railings over five areas identified as Areas A to E. DCC have permitted the retention of certain works in Areas D and E. These include bollards located at either end of the pedestrian bridge to the south west of the site, bollards installed outside the concierge office to the north east of the site and railings along the edge of the bin store area also to the north east of the site.

- 8.4.2. The Bollards to Area D are identified on the drawings as relatively simple structures with a height of 0.94m. They are located centrally at either end of the bridge with the clear intention of restricting vehicular traffic through the site. Pedestrian and cycling movements are maintained. I am satisfied the retention of these features does not restrict connectivity, permeability and inclusivity as per the SRDUA 2009 Guidelines.
- 8.4.3. I note the drawings for Area D also identify 'Railings around the Basement Grill'. These appear to be the railings at the ground level of the southern corner of Block B. I note these works have not been provided for within the development description and as such do not appear to form part of this application. I therefore do not intend to give these railings any further consideration.
- 8.4.4. The applicants propose to retain railings along the edge of the bin store area to the north east of the site i.e. Area E. The railings do not restrict access to the area and do not have a negative visual impact on this area given that the area is located within the overall development. I have reviewed the recent applications on the site including 2800/18 and 4041/17. I note in 2800/18 this area has been identified as a 'bin collection area'. In 4041/17 and all preceding applications including the parent permission 2966/10 (29S.237974), this area appears to have been permitted as 'open space'. I have not been able to identify or establish if the change of use of this area for a bin collection area has been permitted.
- 8.4.5. Notwithstanding this, DCC have granted 2800/18 with the area identified as a 'bin collection area' and the subject application proposes retaining railings atop of a low wall surrounding this area. In this context I have no objection to the retention of the railings in Area E. However, the Board are advised this should not be considered as confirmation that the use of this area complies with the parent permission or other subsequent permissions.
- 8.4.6. The works to be retained in Area A include a pedestrian gate that connects the footpath on the access road to Mount Argus Church into the application site. The gate is shown as 1.45m wide and 1.62m high with piers either side. I note there is railing either side of the piers but these do not appear to form part of the application so I will not give these further consideration.
- 8.4.7. At the time of my inspection the gate was shut. Having reviewed the application in advance of my visit, my expectation was that the gate would be open. By pushing on

the gate I was able to open it and access the site unrestricted. However the shut gate gave me an undoubted impression and feeling that the site was not open for access by members of the public to access the Lower Kimmage Road from this point. I note the applicants revised proposal for access to be restricted from 11pm to 6am. Notwithstanding this proposal, the nature of a physical gate such as the one proposed for retention restricts the perception of connectivity, permeability and inclusivity of the overall development at this point. To control access during the times proposed would compound the perception of a gated development. I also consider the gate has a negative impact on the visual amenity of the area given that it provides a visible defensive style structure where open unrestricted access was intended.

8.4.8. The works to be retained in Area B include gates and additional railing installed at the vehicular entrance at the north east corner of the side off the access road to Mount Argus Church. The drawings show the gates to be 4.44m wide and 1.7m high. The railing are located either side of the gate and are 5.85m wide and 3.2m wide with a height of c. 1.8m. The entrance kerb is dished to the public road and the access route leads to the area of bin storage (as described in this application) and a car parking area opposite. The vehicular access route ends at the steel bollards proposed in Area E and to the front of a concierge office for the overall complex. I noted the presence of signage at this point directing two routes- the main pedestrian route from north east to south west between Blocks G and D and between Blocks D, C and H directly towards the Kimmage Road Lower. This route includes a narrow pedestrian path that I consider subtle than the alternative main pedestrian route but clearly more direct to Kimmage Road Lower.

8.4.9. At the time of my inspection the vehicular gates were open. However if the gates were shut they and the adjoining railings would provide a physical barrier restricting entry by members of the public for permeability purposes and to access the Lower Kimmage Road from this point. Even if the gates could be opened by hand, the perception would be that the site was not open to the public. I note the applicants revised proposal for access to be restricted from 11pm to 6am. Notwithstanding this proposal, the nature of a physical gate and railings such as the ones proposed for retention clearly restricts the principles of connectivity, permeability and inclusivity of the overall development at this point and are contrary to those set out in the SRDUA

Guidelines and UDM. I also consider the size and nature of these gates and railing have a negative impact on the visual amenity of the area given that it provides a visible defensive style structure where open unrestricted access was intended to an area of open space.

- 8.4.10. The works to be retained in Area C include gates and additional railing installed along c.65m of the south eastern boundary of the site on the Kimmage Road Lower. The railing stretched atop of a low boundary wall that fronts the public path to the road. The railings and wall stop to provide a gate that connects the narrow pedestrian path from Area B and between Blocks D, C and H directly to the Kimmage Road Lower. This gate is shown as 1.17m wide and c. 1.9m high. South west of this gate the wall and railings continue to the vehicular access ramp to underground car parking within the site.
- 8.4.11. The drawings show a further short section of railing and a 1.17m wide gate to the south west side of the vehicular access ramp. The drawings clearly differentiate between 'New Railing' and two areas of 'New Railing and Gate'. I also note reference to areas identified as 'Existing Railing' and 'Existing Wall' along the vehicular access ramp, a short area perpendicular to the railing and gate at the south western corner of Area C and the 'Existing Wall' adjoining but south west of Area E. Having reviewed the development description I am satisfied these features do not form part of the subject application and accordingly I do not give them consideration for the purpose of this assessment.
- 8.4.12. I also note similar railing to that being retained exists further south west of Area C. This is recessed from the low wall bounding the path and is located behind a further wood and mesh style fencing. Both this fencing and the railing appear to be installed along the non-culverted section of the River Poddle. It is clear from the development description and submitted drawings that this railing and wooden & mesh fencing does not form part of this application and accordingly I do not give them consideration for the purpose of this appeal.
- 8.4.13. At the time of my inspection both pedestrian gates to Area C were shut. Similar to Area A and having reviewed the application in advance of my visit, my expectation was that these gates would be open. By pushing on the gates I was able to open them and access the site unrestricted. However the shut gates gave me an

undoubted impression and feeling that the site was not open for access by members of the public to access the site from the Lower Kimmage Road. I note the applicants revised proposal for access to be restricted from 11pm to 6am. Notwithstanding this proposal, the nature of these physical gates restricts the perception of connectivity, permeability and inclusivity of the development at this point. To control access during the times proposed would compound the perception of a gated development.

- 8.4.14. Having walked along all the sites southern boundary, I note the south western section of the site bounds the public path by only a low level wall. This provides a clearly open, visually amenable and permeable feel along the River Poddle with open access to the site provided over the pedestrian bridge. However when arriving at Area C, and notwithstanding the ability to open the gates, it was clear to me that the site became visually closed off due to the presence of railings atop the lower wall along the public path. The site at this point is visually less amenable and physically more defensive where the perception is that the public are not facilitated to connect through the site to the access road to Mount Argus Church and surrounding areas. I note section 3.14 of the SRDUA guidelines details that routes 'should be accessible for everyone and as direct as possible, and for this reason "gated estates" should be discouraged. The retention of the railing and gates to Area C would be contrary to the design principles of connectivity and permeability as set out in the Guidelines.
- 8.4.15. I note the applicants concerns in relation to safety of the area inside the site bounded by the low wall. In this regard levels of the open space at this location do appear to align with the low wall before dropping to the public path. I share some of the applicant's safety concerns in this regard. However such safety considerations should not in my view be at the expense of the original design principles of the development or the provision of social integration. I would agree with the Planning Authority that visually and physically less defensive methods of increasing safety at this point could be proposed but have not been done through the application or the appeal.
- 8.4.16. I acknowledge concerns raised in relation to crime and anti-social behaviour. However, I am not convinced these issues are off a such a scale to justify the erection of gates, railing and control of access. I note the location of the concierge office fronting Area A, B and E, the stated provision of 24 hour manned security, cctv, the provision of dual aspect apartments fronting pedestrian routes and Area C,

significant passive surveillance and door access to blocks from pedestrian routes off the public realm. In my opinion the site benefits from a number of design measures that can contribute to prevent crime and anti-social behaviour. Gates and railing have not justified in this context.

8.4.17. In conclusion, the development to be retained in Areas D and E are considered minor developments that do not restrict cycling and pedestrian permeability through the site. They also have a minor and non detrimental impact on the visual amenity of the area. The gates and railing to be retained in Areas A, B and C, with or without controlled hours of access, contribute to the creation and perception of a gated development that is contrary to the intended design principles of the overall development, the 2009 SRDUA Guidelines and associated Urban Design Manual, has a negative impact upon the integration of the development into the surrounding areas and detracts from the visual amenity of the area.

8.5. Access to the Culvert and Flood Risk

- 8.5.1. The Planning Authority's second refusal reason considers that the nature of the gates and railings along the River Poddle could restrict access to a proposed culvert screen along the Poddle for the purpose of maintenance. As a result the development would not be acceptable with regard to flood risk.
- 8.5.2. The applicants consider the second reason to be unclear and surmise that access could be hampered/obstructed by the presence of the new gate to the left hand side of the vehicular ramp to the basement. They contend that maintenance or cleaning works are probably going to be undertaken during daytime hours and 24 hour security can provide access at any other time. 24/7 access is available from the river bank along lower Kimmage Road, and the north bank can be accessed unimpeded by crossing the ungated bridge as shown in a diagram in the appeal document.
- 8.5.3. DCC's Drainage Division have submitted a detailed response to the appeal in which they discuss the works proposed to be retained in Area C and specifically identify other works either side of the vehicular ramp and wooden railings installed west of the vehicular entrance. They state the planning status of these is unknown and are a cause of concern.

8.5.4. This response refers to Condition 5 of the parent permission 29.237974 to which ABP required-

“Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for works and services”

I note the response also refers to condition 14 of DCC’s notification of decision to grant permission 2966/10. Notwithstanding the specific requirements of this in relation to flood risk this condition is not a condition of the final grant issued by ABP.

8.5.5. Based on the content of the response to the appeal it would appear that the applicants have not complied with Condition 5 of the parent permission 29.237974. Having reviewed DCC’s online portal I note a compliance submission for this condition has been submitted and DCC appear to have accepted surface water proposals. I note this does not state the proposals satisfy condition 5. This agreement appears to have been made by the Senior Executive Engineer of the Environment and Transportation Department of DCC.

8.5.6. The response to the appeal is from the Senior Engineer of the Drainage Planning & Development Control Section of the Environment & Transportation Department and without referring to the submitted compliance the response suggests that applicants have not carried out development in accordance with agreed proposals most notably the installation of a thrash screen to the mouth of the culvert.

8.5.7. Having considered the above it appears to me that there are significant matters of alleged unauthorised development at hand. However not all of the information has been provided or on file to give due consideration to same. In particular I have not been able to identify the Site Specific Flood Risk Assessment referenced in the response to the appeal.

8.5.8. Having considered the contents of the application, the appeal and DCC’s response to the appeal I am satisfied that very little of the subject application impacts upon access to the culvert for maintenance. In this regard the only item proposed for retention restricting access would appear to be the pedestrian gate and small section of railing atop of a low wall along the south western side of the vehicular ramp off the Lower Kimmage Road.

- 8.5.9. I accept there are other railings identified on the drawings as 'existing rail' perpendicular to the subject railings. Having inspected the site there is also significant railing and wooden fencing along the river wall and river banks immediately adjoining and south west of the area just inside the vehicular access ramp. None of these railings/structures are proposed for retention as part of this application. Notwithstanding this I am satisfied that access to the river and culvert is currently restricted.
- 8.5.10. I note the culverted section of the River Poddle appears to commence at the point of the vehicular access ramp. At the time of my site inspection a thrash screen had not been installed to cover the area where the Poddle accesses the culvert. However two stepped trellis style cover style screens have been installed next to the vehicular access ramp and above the area where the river accesses the culvert. A ladder between the stepped covers has been installed. These works are not identified on the drawings. They appear to have been installed to allow for maintenance of a yet to be installed thrash screen along the mouth of the culvert. Easy access to these cover screens is clearly restricted by the railings and fencing that do not form part of this application but a small part of which is located in Area C.
- 8.5.11. However, it is clear to me that access to the stepped cover screens with installed ladder is intended from the area immediately south west of the vehicular access ramp. The application and appeal propose a pedestrian gate with controlled access at identified times and railing to this area from the public path along Kimmage Road Lower. This gate and railing clearly restrict ease of access to the mouth of the culvert thereby hindering ease of maintenance. The site is located within Flood Zone A and B and I am satisfied the development to be retained i.e. the identified gate and railing, would restrict access for maintenance purposes. In this regard I share the concerns of the Planning Authority and consider the development to be retained, in association with other railing and fencing that does not form part of this application which may be unauthorised, all have the potential to increase the risk of flooding of the site and/ or of property in the vicinity.
- 8.5.12. I accept the development to be retained could be considered 'minor' in the context of the overall development on the site. I note Section 5.28 of the 2009 Flooding Guidelines deals with minor proposals in areas of flood risk and details that minor developments are unlikely to raise significant flooding issues. However it also details

in certain circumstances a commensurate assessment of the risks of flooding should accompany applications to demonstrate that they would not have adverse impacts or impede access to a watercourse, floodplain or flood protection and management facilities. Based on the information submitted with the application and the appeal including the *'extract of plan provided by Hollis for the appellant'* and the routes identified within that plan, I am satisfied part of the development to be retained impedes access for flood maintenance purposes along the Poddle. Accordingly permission for retention of this gate and railing in Area C should be refused.

8.6. **Appropriate Assessment**

- 8.6.1. Having regard to the nature and scale of the proposed development and the distance from the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect, individually, or in combination with other plans or projects, on a European site.

9.0 **Recommendation**

- 9.1. It is recommended that a **split decision** be issued.

10.0 **Reasons and Considerations**

10.1. **Grant Retention Permission -**

for the retention of the following elements only, in accordance with the condition attached-

- Area D: Bollards at each end of the pedestrian bridge at the south west of the overall site;
- Area E: Bollards installed outside concierge office and railings along the edge of the bin store area at the rear of the Scout Hall.

Having regard to the nature and scale of the development to be retained , it is considered that, subject to compliance with the condition set out below, the development would be acceptable and would not restrict pedestrian and cyclist permeability and would contribute to connectivity through the site and inclusivity of

the site to surrounding areas. The proposal to be retained would not detract from the visual amenities of the area and would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be retained in accordance with the plans and particulars lodged with the application on the 13th day of November 2020.

Reason: In the interest of clarity.

10.2. Refuse Retention Permission-

Retention Permission for-

- Area A: gate installed at the entrance immediately west of the Scout Hall off Mount Argus Road;
- Area B: gates and additional railings installed at the vehicular entrance adjacent the ESB substation at the north east corner of the site off Mount Argus Road;
- Area C:
 - gates installed at the most easterly pedestrian entrances either side of the ramped vehicle access off Kimmage Road Lower.
 - Installation of railings installed atop the low wall at the south east boundary of the site on Kimmage Road Lower;

is refused for the following reasons-

1. Having regard to the development as permitted under 2966/10 and 29S.237974 (noting subsequent permitted amendments), the provisions of sections 3.14 of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns & Villages) issued by the Department of the Environment, Heritage and Local Government in May 2009, the provisions of the Guidelines accompanying Urban Design Manual Companion Document with particular regard to the following design considerations- 'Connections', 'Inclusivity' and 'Layout', it is considered that

the development to be retained is contrary to the intended design principles for the original development, contributes to the creation of and perception of a gated development that is detrimental to the social integration of the development as a whole into its surrounding neighbourhoods, negatively impact upon the visual amenities of the area, is contrary to the Ministerial Guidelines and is contrary to the proper planning and sustainable development of the area.

2. Having regard to the location of the site through which the River Poddle flows overground and in a culvert, which is in an area identified as Flood Zone A and B, and on the basis of the submissions made in connection with the planning application and appeal, the Board considers that the development to be retained in association with other similar and adjoining development within the application site boundary that does not form part of the application and appears to be unauthorised (i.e. other railings and wooden & mesh fencing), restricts access to the culvert for the purpose of maintenance and management of flood risk. Therefore the development to be retained is contrary to the Planning System and Flood Risk Management Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in November 2009, has the potential to increase risk of flooding of the site and/or of property in the vicinity, is prejudicial to public health, public safety and is contrary to the proper planning and sustainable development of the area.

Adrian Ormsby
Planning Inspector

13th of October 2021