



An  
Bord  
Pleanála

## Inspector's Report ABP-309777-21

<b>Development</b>	Demolition of warehouse, construction of 2 apartment blocks, 21 residential units. Modifications of bottle store structure.
<b>Location</b>	The Elphin, 36 Baldoyle Road, Baldoyle, Dublin 13.
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F20A/0715
<b>Applicants</b>	LCD Developments Ltd
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellants</b>	LCD Developments Ltd
<b>Observers</b>	Paul O'Kane C McDaid G Keating A Sleator Ceclia Mullen John & Ann-Marie Lally
<b>Date of Site Inspection</b>	22 July 2021
<b>Inspector</b>	Dolores McCague

## 1.0 Site Location and Description

- 1.1.1. This backland site is located to the rear (east of) of Elphin public house and no.'s 31-34 Baldoyle Road, Sutton, Dublin 13 and adjoining (west and south of) Binn Eadair View. The site is occupied by a part single, part two-storey warehouse unit (856-sq.m.) vacant for some time and now partly demolished.
- 1.1.2. It was not possible to access the site on the date of inspection. The inspection was carried out from outside the site.
- 1.1.3. The site is accessed by a laneway which runs east from the Elphin public house car park on the Baldoyle Road at a point about 80m east of the car park. The frontage with the laneway consists of a block wall, in which a large metal gateway has recently been inserted. A smaller metal pedestrian gate has also been inserted at the eastern end of the frontage. The warehouse buildings are located towards the front of the site and the roof coverings have recently been removed.
- 1.1.4. The site is roughly rectangular shaped, with the longer axis north / south running away from the lane and the east west axis slightly wider at the laneway than at the northern end. It is generally level. The site is bounded on its southern side by a narrow laneway which runs east from the Baldoyle Road to provide vehicular access to the rear of properties on Dublin Road. It also provides pedestrian access to the adjoining Binn Eadair View residential estate. Vehicular access to the Binn Eadair View estate is from the R105 / Dublin Road to the south. Until the recent work took place there was no vehicular access from the lane to the subject site. Previously the block wall extended along the entire boundary with the laneway.
- 1.1.5. Lands to the east and north comprise two-storey terraced housing in Binn Eadair View. Properties on Baldoyle Road to the west, which back onto the site, comprise single-storey commercial units and detached bungalows. To the south of the lane are the rear gardens of large semi-detached houses on the seafront / Dublin Road / R105.
- 1.1.6. Sutton Dart Station lies approx. 550m northeast of the site and can be accessed through the adjoining residential areas, via the laneway. There are bus routes serving the site: H2 along Baldoyle Road, and 6 and H3 along the Dublin Road; with several bus stops within 200m of the site. Sutton Cross, which is identified in the

Fingal Development Plan as a town and district centre, and for which the preparation of an Urban Framework Plan is an objective, is 1.2km to the east. Cycle routes run along the Baldoyle Road and the Dublin Road.

- 1.1.7. The lane varies in width along its length and at its narrowest point, adjoining the Elphin public house, is c4m wide. The original access to the subject site was from the northern side of the Elphin public house, however, that route has been incorporated into the site of the public house and is in use as an outdoor seating area. The junction of the lane with Baldoyle Road (R809) is along the car park associated with the Elphin public house.
- 1.1.8. Ground levels vary from 2.090 at the northern end to 3.170 at the south-eastern corner.
- 1.1.9. The site is given as 0.28ha. It is worth noting that the site of the previous appeal ABP-306913-20 had a stated area of 0.2336ha. The discrepancy appears to be accounted for by the fact that the entire laneway, from the Elphin public house to the eastern end of the site frontage, is included within the red line boundary. A building south of the laneway, opposite Elphin public house, which is identified as a bottle storage shed, and which is to be reduced in length by 2m to improve the width of the laneway, is also included, in its entirety, within the red line boundary.

## **2.0 Proposed Development**

- 2.1.1. The proposed development involves the demolition of the existing warehouse building (856 sq.) and associated southern site boundary wall (1.8m high), the construction of 2 no. 3 storey apartment blocks comprising 10 no. 1-bed residential units and 11 no. 2-bed residential units, providing a total of 21 dual aspect apartments, each with private amenity space (in the form of patio gardens and balconies); upgrades to the access roadway from Baldoyle Road (R809) serving the subject site comprising traffic calming measures and shared vehicular and pedestrian access 6.0m in width (reduced locally to 4.2m adjacent to the Elphin Public House over c.18m). Modifications of the bottle store structure associated with the Elphin Public House to facilitate upgrading works to access roadway. The provision of 10 no. surface car parking spaces, associated boundary treatments,

landscaping, SuDS drainage, bin storage and bicycle parking and all associated site works to facilitate the development.

- 2.1.2. While the statutory description refers to 2 apartment blocks, the site layout plan indicates the provision of 1 building divided into two distinct areas with separate access points and access cores, the southern core accessing 12 units and the northern core accessing 9 units. The overall building has maximum dimensions of c 54.5m north south and 22m east west. At the northern end it extends closer to boundaries, being c2m from the northern boundary at the nearest point and 3m from the eastern boundary. The parapet level facing the laneway is 14.1m, compared to a ridge level of the adjoining property at Binn Eadair View of 12.2m.
- 2.1.3. The finished floor level proposed is 4m, ie up to 2m higher than the existing ground level and above the finished floor level of the surrounding development.
- 2.1.4. Brick, render and metal cladding are indicated as external finishes with the flat roof concealed by a parapet wall. All units have balconies.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. The planning authority decided to refuse permission for the proposed development for five reasons as follows:
  - 1. The existing laneway over which the proposed development is to be accessed comprises an important local pedestrian route. This laneway is considered to be seriously deficient in width along its length and lacks sufficient capacity to safely accommodate the vehicle and pedestrian movements which the proposed development will generate combined with the existing and future pedestrian movements associated with the adjoining public house and Binn Eadair housing estate. Moreover, the applicants have failed to demonstrate that they have sufficient legal interest over the laneway to undertake the necessary upgrade works. The proposed development would therefore be contrary to the proper planning and sustainable development of the area. In the absence of any comprehensive proposals for the upgrade of this lane and the management of vehicle movements

along its length, it is considered that the proposal would constitute ad hoc piecemeal development which would endanger public safety by reason of traffic hazard.

2. The surrounding area is zoned under objective “RS” – to provide for residential development and protect and improve residential amenity under the Fingal Development Plan 2017-2023 and comprises of single and two-storey dwellings. It is considered that the proposed development would give rise to significant negative impact upon visual amenity of the existing residents within the surrounding area, be out of context with the pattern of development within the surrounding area, would be incongruous with the streetscape along the laneway which forms the southern boundary of the subject site and would materially contravene Objective DMS39 and PM44 of the Fingal Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.

3. The proposed apartment building, by virtue of its excessive scale, height and limited setback from the boundaries of the site in addition to the ad-hoc nature of the development proposal would give rise to a significant level of negative impact upon the existing residential amenity of the area and potential residential amenity of the future residents of the proposed development in terms of overlooking and overshadowing and would therefore be contrary to the proper planning and sustainable development of the area.

4 The applicant has not provided for adequate separation distances from the proposed development to the surrounding dwellings in accordance with the requirements of DMS28 of the Fingal Development Plan 2017-2023. The applicant is also providing for a number of mechanisms to overcome issues of overlooking from the proposed development which in turn would compromise the amenity levels of any future potential residents. The use of such mechanisms and the extent to which they are relied upon within the proposed scheme suggest that an apartment development at this location is not appropriate and represents overdevelopment of the subject site, would materially contravene objective DMS28 of the Fingal Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.

5 Insufficient detail has been submitted with respect to surface water drainage and as such in its current form the development would therefore be prejudicial to public health.

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

#### **3.3. Planning Report**

- 3.3.1. The subject site is located off the Baldoyle Road and within 200m of the Dublin Road which are both served with a number of bus routes. In addition, the subject site is located within a c8 minute walk of Sutton Dart Station. It is considered that the subject site is accessible to a high capacity of urban public transport which provides connections to Dublin City Centre. Furthermore, the subject site is located approx. 1.2km to the west of Sutton Cross which provides for a range of services including medical facilities, supermarket and cafes and restaurants. These connections are considered to be sufficient to justify an increase in density above the maximum threshold for the area. However notwithstanding the above, it is noted that both the Sustainable Residential Development in Urban Areas and the Sustainable Urban Housing: Design Standards for New Apartments both make reference to proposed apartment schemes needing to strike a balance between the reasonable protection of the amenities and privacy of adjoining dwellings, the protection of established character and the need to provide residential infill.

A comparison between the site and other 3 storey development in the area should not be drawn as the site is restrictive in nature, is a backland development surrounded by two storey/bungalow dwellings.

The planning officer has significant concern over the impact the proposal will have on the visual amenities of the surrounding dwellings, particularly those located within Binn Eadair View. The building is set at the closest point 2-3m off the boundary shared with the private amenity spaces of Binn Eadair View. A blank façade faces this way.

- Contrary to Objectives DMS39 and PM44 and should be refused.

- Bin storage in the north-eastern corner and along the western boundary. Apt. units 2, 9 and 16 are served with balconies which are located adjacent to the larger bin storage area which is of concern.
- Units 1 and 8 are served by one opening which serves onto a recessed balcony with two deflected windows. The living space of unit 15 is served with a clerestory window and opens from the recessed balcony. The lack of amenity being provided to these units is as a direct result of the design of the building to try and overcome the impact the proposal would have on the surrounding area.
- Distance to boundaries and rear of properties re. overlooking DMS28 minimum of 22m. Distance of balconies to units 2, 9, 16, 3, 10 and 17, and windows serving bedrooms in units 5, 12 and 19 are within 10m of boundaries. Having regard to the orientation relative to the path of the sun, there is a likelihood of significant levels of overshadowing of private amenity space. Refusal is recommended.
- DMS03 any application for developments in excess of 5 residential units are accompanied by a detailed high-quality open space and landscape design plan.

#### 3.4. Other Technical Reports

#### 3.5. Planning & Strategic Infrastructure Department Transportation Planning Section:

- There is a parking deficit of 20 parking spaces with regard to the Development Plan Standards and 11 with regard to what the Transportation Planning Section consider to be the minimum practical parking requirement.
- There is a bicycle parking demand for 42 spaces in accordance with the Planning Guidelines and National policy where reduced car parking has been provided. Bicycle parking should be of a high standard with parking for each unit provided in a separate secure compartment. Stacking of bicycle parking can be provided as long as it is practicably accessible.
- Layout - the parking layout is substandard. There are four parking spaces at the entrance either side of the stop line that are too close to the junction of the access road and the existing lane. Spaces 7-9 at the rear of the site are c.4.8m long and

should be 5m as is the case with the remainder of the parking spaces within the proposed development. The site is too restricted to provide an adequate level of parking for a development of the proposed density without providing either a basement/semi-basement or podium car parking facility. The minimum required footpath width is 2m. The footpath provided is only c.1.2m wide. Bin Collections Access for a bin truck to the proposed development would require the bin truck to either reverse along the lane as far as the development and drive out or vice versa. Neither approach is acceptable to the Transportation Planning Section as the lane provides a pedestrian link to the Binn Eadair residential estate and has a significant demand as a pedestrian route as a consequence. Bins would either need to be brought from the development to the main road or a turning facility for a bin truck would have to be provided on site. The current layout does not facilitate a proper turning facility on site.

- Sightlines - speed limits along the lane would not be anticipated to be high, an ambient speed of 20- 30km/hr would be more realistic. In accordance with the Design Manual for Urban Roads and Streets this would require sightlines of between 14 and 23m. The proposed development has indicated sightlines of 17m to the west of the proposed access and 33m to the east.
- Access - the existing lane at the proposed access point has been widened to c.4.8m. This excludes the grass verge adjoining the paved surface that appears to be associated with the properties fronting onto the R105. There are a number of garages that extend to the edge of the access road either side of the proposed site access. The proposed access would require a minimum of 6m width of paved road surface along the access lane at the proposed access point. This would require a further setback of the existing boundary line and/or the removal of the proposed pedestrian footpath. Given the scale of the proposed development and the associated additional vehicular activity on a lane that currently operates as a significant pedestrian link, it would be more appropriate for the lane to be upgraded to facilitate not only the proposed development, but also the potential back-land development of the existing residential units fronting onto the R105. In this regard a holistic approach would be more appropriate. A similar approach was taken for the mews developments to the rear of Windsor Terrace and The Rise in Malahide.



- Design for Pedestrians - the footpath heading to the west of the ramp should taper towards the edge of the Elphin building to ensure that pedestrians are clearly visible to oncoming traffic coming from the Baldoyle Road direction between the Elphin building and the outbuilding. This would avoid the possibility of pedestrians stepping out blind from the behind the Elphin building into oncoming traffic. The section of the lane providing access adjoining the Elphin building should operate as a shared surface with no delineation between vehicles and pedestrians but with pedestrians having the right of way.
- Conclusion -the current application has not addressed any of the main concerns of the previous application F19A/0636 and has in fact introduced more issues. The layout is worse than the previous application and is effectively a step in the wrong direction. The Transportation Planning Section is of the opinion that given the constraints on the existing lane, the level of existing pedestrian activity and the poor access for services, the proposed development in its current format constitutes a traffic hazard that cannot be fully addressed without significant redesign and/or the comprehensive upgrade of the existing lane.

### 3.5.1. Water Services Department

- Further information required:
  - The applicant is requested to validate the infiltration rate used in the design of the soakaway.
  - 2. Allied to the above, the greenfield runoff rate ( $Q_{bar}$ ) has been calculated based on a soil type 4 (47% impermeability), which does not correspond to an infiltration rate of 0.000015 m/s as used in the soakaway design. Applicant to justify soil type / infiltration vis a vis.
  - 3. The design of the soakaway must comply with BRE Digest 365. The applicant is requested to demonstrate compliance, in particular the area used for exfiltration, which should be 50% of the vertical area only and exclusive of the base of the soakaway.
  - 4. The flat roofs of the proposed development render itself ideal in terms of a green roof system. The applicant is requested to consider the provision of a green roof system, alternatively to justify the rationale for its omission.

- 5. The applicant is requested to demonstrate acceptable overland flow paths during extreme rainfall events, ie > 1:100 year events

### 3.6. Parks and Green Infrastructure Division

- Open Space - The shortfall in the quantum of public open space generated through the development works of 21no. apartments totals 788m<sup>2</sup>. The applicant is required to make up this shortfall by way of a financial contribution in accordance with Section 48 of the Planning & Development Act 2000 in lieu of the public open space provision. This contribution will be applied towards the continued provision & upgrade of local class 1 open space facilities in the Baldoyle-Sutton area namely Balydoyle Racecourse Park. Prior to the commencement of site works the developer shall submit details of a management company, maintenance responsibilities and area of maintenance (drawing to incl. public realm, communal & play areas). No areas within the proposed development are suitable for open space maintenance by the Council.
- Landscape Plan - the submitted Landscape Plan shall be implemented upon practical completion of construction works. Any failures shall be replaced by the developer until such time that the plantings are established.

### 3.7. Prescribed Bodies

IW - conditions

### 3.8. Third Party Observations

- 3.8.1. Third-party submissions have been read and noted issues raised are generally reflected in the observations on this appeal:

Privacy - trees

Sec 4-4 the proposed building is 4m higher than the highest point of the existing derelict building

Apartment 7 according to the plans has an area of 10.5m<sup>2</sup> on the schedule of areas it is stated as 12.2m<sup>2</sup>. \*

The development is c5.36m taller than properties on Baldoyle Rd, 14.1m high replacing a building 10.25m high at the ridge and c 6-7m at the east facing side.

They have not demonstrated sufficient legal interest over the laneway.

## 4.0 Planning History

ABP-306913 PA Reg Ref F19A/0636 for development:

(1) The demolition of the existing warehouse building (856 square metres) and associated 1.8 metres high boundary wall at the front (southern) site boundary, (2) the construction of one number three storey over basement apartment block comprising one number three-bedroom residential unit, 14 number two-bedroom residential units and six number one bedroom residential units giving a total of 21 number apartment units each with own balcony, (3) new vehicular and pedestrian entrance on the front (southern) site boundary off the existing public laneway, (4) provision of 23 number basement car parking spaces and 62 number on-site cycle parking spaces and bin storage located in basement also, (5) communal open space at ground level, (6) communal terrace at second floor level, associated boundary treatment, landscaping, Sustainable Urban Drainage Systems drainage and all other ancillary development works necessary to facilitate the development. All on lands to the rear of 31-34 Baldoyle Road and Elphin Licensed Premises, Baldoyle Road, Sutton, Dublin. (The proposed block generally reflects the design submitted with the previous appeal under ref. ABP-304655-19, access to be provided from the laneway to the south, open space is provided on the eastern and western sides of the residential block).

Refused (06/08/2020), for the following reason:

The existing laneway over which the proposed development is to be accessed comprises an important local pedestrian route. Notwithstanding the revised access arrangements submitted with the appeal, this laneway is seriously deficient in width along its length and lacks sufficient capacity to safely accommodate the vehicular and pedestrian movements which the proposed development will generate along with existing and future pedestrian movements along the lane and associated with the adjoining public house. In the absence of any comprehensive proposals for the upgrade of this lane and

the management of vehicle movements along its length, it is considered that the proposed development would constitute overdevelopment of the site and would endanger public safety by reason of traffic hazard.

ABP-304655-19, PA ref. F19A/0132: permission refused on appeal for development comprising the demolition of existing warehouse building and construction of 24 no. apartment units and associated works for one reason as follows:

The proposed development would endanger public safety by reason of traffic hazard because sightlines at the proposed car park entrance onto the adjoining laneway are deficient for the nature and scale of development proposed. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

The Board direction noted the following point also: the existing laneway over which the proposed development would be accessed comprises a local pedestrian route. This laneway is seriously deficient in width along its length and lacks sufficient capacity to safely accommodate the vehicle and pedestrian movements which the proposed development would generate, along with existing and future pedestrian movements along the lane and those associated with the adjoining public house. In the absence of any comprehensive proposals for the upgrade of this lane and the management of vehicle movements along its length, it is considered that the proposal would constitute over development of the site and would endanger public safety by reason of traffic hazard.

PA ref. F18A/0553: withdrawn application for 8 no. townhouses on the site.

ABP-06F.248478, PA ref. F16A/0444: permission refused on appeal for demolition of warehouse and boundary wall and construction of 6 no. houses. The reason for refusal related to overlooking of adjoining property due to the proposed level and proximity of ground floor accommodation and patio areas to adjoining development, which would detract from its residential amenity.

PA ref. F15A/0559: application for permission for 6 no. houses withdrawn.

PA ref. F12A/0214: permission granted for a new vehicular entrance to serve the existing warehouse from the southern lane exiting onto Baldoyle Road, to replace

existing vehicular entrance accessed from private lane north of 'Elphin' licensed premises. This permission was not implemented.

Planning applications in respect of adjoining sites:

PA ref. F03A/0825 – planning permission refused for a bungalow to the rear of no. 87 Dublin Road with vehicular access from the laneway. The decision referred to deficiencies in the lane which would endanger public safety and the lack of comprehensive and inclusive proposals for widening and improvement of the lane.

PA ref. F98A/0674: permission refused for demolition of existing garage and construction of creche at the rear of no. 96 Dublin Road with access over the laneway. The decision referred to the precedent for other development along the lane and the substandard nature of the access.

PA ref. F14B/0093: permission granted for 2-storey side and rear extension to no. 15 Binn Eadair View. This was not implemented.

ABP-306703-20, PA ref. F19B/0111: permission granted for extension to rear of no. 91 Dublin Road, including second floor dormer windows.

ABP-309700-21 F20A/0683 (invalid appeal against PA decision) construction of a one bedroom single storey dwelling with non habitable floor space in the Attic (total 112 sq.m) to the rear of existing dwelling, with two car parking spaces which will be accessed off lane to rear; (ii) boundary treatment, landscaping, on-site surface water attenuation, and foul and surface water drainage, and all site works, and (2) retention planning permission for new vehicular and pedestrian entrance with 2.4 metre high wall, set back 2.2 metres from lane to rear, all on 0.0285 hectare site to the rear of 94 Dublin Road, Sutton, Dublin 13, D13HD76. Refused for one reason -

The existing laneway over which the proposed development is to be accessed comprises an important local pedestrian route. The laneway is considered to be seriously deficient in width along its length and lacks sufficient capacity to safely accommodate the vehicle and pedestrian movements which the proposed development will generate combined with the existing and future pedestrian movements associated with the adjoining public house and Binn Eadair housing estate. In the absence of any comprehensive proposals for the upgrade of this lane and the management of vehicle movements along its length, it is considered that the proposed development would constitute ad

hoc piecemeal development which would endanger public safety by reason of traffic hazard. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

## **5.0 Policy Context**

### **5.1. Development Plan**

5.1.1. Fingal County Development Plan 2017-2023 is the operative plan. Relevant provisions include:

- The subject lands and adjoining lands to the southwest are zoned LC: to protect, provide for and/or improve local centre facilities. Vision: Provide a mix of local community and commercial facilities for the existing and developing communities of the County. The aim is to ensure local centres contain a range of community, recreational and retail facilities..... at a scale to cater for both existing residential development and zoned undeveloped lands, as appropriate, at locations which minimise the need for use of the private car and encourage pedestrians, cyclists and the use of public transport. The development will strengthen local retail provision in accordance with the County Retail Strategy. Permitted uses in the LC zone include residential.
- Surrounding lands are otherwise zoned RS Residential, for which the objective is to provide for residential development and protect and improve residential amenity. Vision: Ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity.
- With regard to Transitional Zonal Areas, section 11.4 notes in zones abutting residential areas or abutting residential development within predominantly mixed-use zones, particular attention must be paid to the use, scale and density of development proposals in order to protect the amenities of residential property. This is reflected in Objective Z04.
- Chapter 2 notes that Sutton lies within the Consolidation area in the Metropolitan area.

- The development strategy identified in Chapter 4, Urban Fingal, is to strengthen and consolidate the role of the existing centre while promoting the retention and provision of a range of facilities to support existing and new populations.
- Chapter 3 encourages the development of underutilised infill, corner and backland sites in existing residential areas. A balance is needed between the protection of amenities, privacy, the established character of the area and new residential infill. The use of contemporary and innovative design solutions will be considered.
- Objective PM44: Encourage and promote the development of underutilised infill, corner and backland sites in existing residential areas subject to the character of the area and environment being protected.
- Chapter 12 sets out development management standards.
- Objective DNS03 requires the submission of a detailed design statement for all developments of more than 5 dwelling units.
- Objective DMS28: A separation distance of a minimum of 22 metres between directly opposing rear first floor windows shall generally be observed unless alternative provision has been designed to ensure privacy. In residential developments over 3 storeys, minimum separation distances shall be increased in instances where overlooking or overshadowing occurs.
- Objective DMS39 states that new infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/gateways, trees, landscaping, and fencing or railings.
- Objective DMS90 requires balconies, ground floor private open space, roof terraces or winter gardens to be suitably screened so as to provide an adequate level of privacy and shelter for residents. Tables 12.1 - 3 and 12.6 set out Dwelling and Apartment Standards.
- Objective DMS57A requires a minimum 10% of a proposed development site area for use as public open space.

- Objective PM42 notes the requirement for the planning authority to apply the provisions of Guidelines for Planning Authorities ‘Sustainable Urban Housing: Design Standards for New Apartments’. The Council has the discretion to accept a financial contribution in lieu of outstanding open space requirement.
- Objective PM44 p72
- Objective PM44 Encourage and promote the development of underutilised infill, corner and backland sites in existing residential areas subject to the character of the area and environment being protected.
- Z04\*

## **5.2. National Planning Framework**

- 5.2.1. Acknowledging demographic trends, the aim is to see a roughly 50:50 distribution of growth between the Eastern and Midland region, other regions. An emphasis on renewing and developing existing settlements will be required, with a target of at least 40% of all new housing to be delivered within the existing built-up areas of cities, towns and villages on infill and/or brownfield sites.

## **5.3. Eastern & Midland Regional Spatial & Economic Strategy (RSES) 2019-2031**

- 5.3.1. The Dublin region is a global gateway to Ireland and the Dublin-Belfast Corridor is the largest economic agglomeration on the island of Ireland and part of the trans-European transport network. Capacity constraints in housing and infrastructure must be addressed to ensure continued competitiveness as a national economic driver. The key enablers for growth include promoting compact urban growth to realise targets of at least 50% of all new homes, to be within or contiguous to the existing built up area of Dublin city and suburbs and a target of at least 30% for other urban areas. The spatial strategy for Dublin City and Suburbs is to support the consolidation and re-intensification of infill / brownfield sites to provide high density and people intensive uses within the existing built up area.



#### **5.4. Sustainable Residential Development in Urban Areas - Guidelines for Planning Authorities (2009)**

- 5.4.1. The guidelines encourage higher densities on residential zoned lands, particularly on inner suburban and infill sites and along public transport corridors, identifying minimum densities of 50 / ha in such corridors, subject to appropriate design and amenity standards. In the case of large infill sites or brown field sites, public open space should be provided at a minimum rate of 10% of the site area. Section 4.21 encourages a more flexible approach to quantitative open space standards with greater emphasis on the qualitative standards. Close to the facilities of city and town centres or in proximity to public parks or coastal and other natural amenities, a relaxation of standards could be considered. Alternatively, planning authorities may seek a financial contribution in lieu of public open space within the development.

#### **5.5. Sustainable Urban Housing: Design Standards for new Apartments Guidelines for Planning Authorities (March 2018)**

- 5.5.1. Specific Planning Policy Requirement 3 sets Minimum Apartment Floor Areas. The requirement for the majority of apartments in a proposed scheme to exceed the minimum floor area standard for any combination of the relevant 1, 2 or 3 bedroom unit types, by a minimum of 10%, does not apply to any proposal with less than ten residential units. For urban infill schemes on sites of up to 0.25ha, where between 10 to 49 residential units are proposed, it shall generally apply, but in order to allow for flexibility, may be assessed on a case-by-case basis and if considered appropriate, reduced in part or a whole, subject to overall design quality. Section 3.6 notes that two-bedroom apartments to accommodate 3 persons may be considered. This type of unit may be particularly suited to certain social housing schemes. It would not be desirable if this type of unit displaced the current two bedroom four-person apartment. No more than 10% of total units in any private residential development may comprise this category of three-person apartment. Specific Planning Policy Requirement 4 refers to the provision of dual aspect apartments. The guidelines set minimum standards for ceiling heights and number of apartments served by a core. The importance of well-designed communal amenity space is noted.

## **5.6. Urban Development and Building Heights - Guidelines for Planning Authorities**

- 5.6.1. It is Government policy that building heights must be generally increased in appropriate urban locations. There is therefore a presumption in favour of buildings of increased height in town / city cores and in other urban locations with good public transport accessibility. The Guidelines identify broad principles to be considered for buildings taller than prevailing building heights in urban areas and criteria for consideration at the level of the City / town, district / neighbourhood / street and the site / building.

## **5.7. Design Manual for Urban Roads and Streets (DMURS)**

- 5.7.1. The need to balance the needs of 'Place' and 'Movement' in relation to roads and streets informs the document.

Section 4.1.2 promotes the concept of self-regulating streets. Section 4.2.3 notes that designers should seek to promote active street edges to provide passive surveillance of the street and promote pedestrian activity. Increased pedestrian activity has a traffic-calming effect as it causes people to drive more cautiously. Higher levels of privacy are desirable where residential dwellings interface with streets. Section 4.3.4 notes that shared surface streets and junctions are particularly effective at calming traffic. Well-designed schemes in appropriate settings can bring benefits in terms of visual amenity, economic performance and safety. Shared surface streets and junctions are highly desirable where: movement priorities are low and there is a high place value in promoting more livable streets, such as on Local streets within Neighbourhood and Suburbs. pedestrian activities are high and vehicle movements are only required for lower level access or circulatory purposes. The key condition for the design of any shared surface is that drivers, upon entering the street, recognise that they are in a shared space and react by driving very slowly. Shared surface streets can be very intimidating for impaired users, requiring specific design responses. The total carriageway width on streets where a shared surface is provided should not exceed 4.8m.

## **5.8. Natural Heritage Designations**

- 5.8.1. The nearest designated sites are: North Bull Island SPA (site code 004006) & North Dublin Bay SAC (site code 000206), approx. 100m south of the site, and Baldoyle Bay SPA (site code 004016) and SAC (site code 000199), approx. 400m north of the site.

## **5.9. Preliminary Examination Screening for Environmental Impact Assessment**

- 5.9.1. An Environmental Impact Assessment Screening report was not submitted with the application.
- 5.9.2. Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:
- Construction of more than 500 dwelling units,
  - Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. (In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)
- 5.9.3. It is proposed to demolish the existing warehouse building (856 sq.) and associated southern site boundary wall (1.8m high), the construction of 2 no. 3 storey apartment blocks comprising 10 no. 1-bed residential units and 11 no. 2-bed residential units, providing a total of 21 dual aspect apartments, each with private amenity space (in the form of patio gardens and balconies); upgrades to access roadway from Baldoyle Road (R809) serving the subject site comprising traffic calming measures and shared vehicular and pedestrian access 6.0m in width (reduced locally to 4.2m adjacent to the Elphin Public House over c.18m). Modifications of bottle store structure associated with the Elphin Public House to facilitate upgrading works to access roadway. The provision of 10 no. surface car parking spaces, associated boundary treatments, landscaping, SuDS drainage, bin storage and bicycle parking and all associated site works to facilitate the development is proposed.
- 5.9.4. The number of dwellings proposed is well below the threshold of 500 dwelling units noted above. The site has an overall area of 0.28 hectares and is located within an

existing built up area but not in a business district. The site area is therefore well below the applicable threshold of 10 ha. The site is a backland site located to the rear (east of) of Elphin public house and no.'s 31-34 Baldoyle Road, Sutton, Dublin 13 and adjoining (west and south of) Binn Eadair View. The introduction of a residential development will not have an adverse impact in environmental terms on surrounding land uses. It is noted that the site is not designated for the protection of the landscape or of natural or cultural heritage and the proposed development is not likely to have a significant effect on any European Site. The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other housing in the neighbourhood. It would not give rise to a risk of major accidents or risks to human health. The proposed development would use the public water and drainage services of Irish Water and Fingal County Council, upon which its effects would be marginal.

5.9.5. Having regard to: -

- The nature and scale of the proposed development, which is under the mandatory threshold in respect of Class 10 - Infrastructure Projects of the Planning and Development Regulations 2001 (as amended),
- The location of the site on lands that are zoned for LC local centre - to protect, provide for and/or improve local centre facilities, under the provisions of the Fingal Development Plan 2017 – 2023, and the results of the strategic environmental assessment of the Fingal Development Plan 2017 – 2023, undertaken in accordance with the SEA Directive (2001/42/EC),
- The location of the site within the existing built-up urban area, which is served by public infrastructure, and the existing pattern of residential development in the vicinity,
- The location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended) and the mitigation measures proposed to ensure no connectivity to any sensitive location,
- 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

- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),

I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination an environmental impact assessment report for the proposed development was not necessary in this case (See Preliminary Examination EIAR Screening Form).

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. The first party appeal against the decision to refuse permission is made by CWPA Planning and Architecture. The submission includes:

Responding to the Planning Reports:

- The planning report neglects to identify the site as brownfield, which is a major oversight considering the significance the development of brownfield sites has in national and regional planning policy, where it must have priority regarding residential development.
- Brownfield status is different in that such sites have existing buildings and have demonstrated ongoing or existing usage in terms of pedestrian and vehicular movement in and out of the site. The existing development on Baldoyle Road is commercial. The matter of the 2-3m distance off the boundary with Binn Eadair View has been addressed in the revised drawings submitted as part of the planning appeal.
- Residential amenity - As they did not have the opportunity to address the matter of overshadowing by way of a request for additional information, design revisions are submitted. Citing the Design Guidelines for New Apartments (2008):

(6.5) The provision of reasonable levels of natural light in new apartment developments is an important planning consideration as it contributes to the liveability and amenity enjoyed by residents. In assessing development

proposals, planning authorities must however weigh up the overall quality of the design and layout of the scheme and the measures proposed to maximise daylight provision with the location of the site and the need to ensure an appropriate scale of urban residential development.

(6.6) Planning authorities should have regard to quantitative performance approaches to daylight provision outlined in guides like the BRE guide 'Site Layout Planning for Daylight and Sunlight' (2nd edition) or BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting' when undertaken by development proposers which offer the capability to satisfy minimum standards of daylight provision.

(6.7) Where an applicant cannot fully meet all of the requirements of the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, which planning authorities should apply their discretion in accepting taking account of its assessment of specific. This may arise due to a design constraints associated with the site or location and the balancing of that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and or an effective urban design and streetscape solution.

- Transportation – The matter of the parking spaces 7, 8 and 9 being shorter than standard is a scaling error on behalf of the planning officer and has been addressed by a labelled drawing.

The issue of the footpath width being substandard at 1.2m width has also been addressed on drawings.

In the revised document Sustainable Urban Housing: Design Standards for new Apartments Guidelines for Planning Authorities (March 2018), parking standards are addressed in section 4.18 – 4.24. The proximity of the site to multimodal transport choices, including a major transport corridor within 400m, car parking should be minimised, substantially reduced or wholly eliminated. Their preference is to reduce car parking, to assuage the concerns in relation to traffic movement associated with the subject site. They acknowledge that a requirement may exist to facilitate parking for mobility

impaired vehicle users and visitors. An alternative parking plan is proposed to reduce provision to 6 cars with 3 spaces for mobility impaired users and 3 spaces to visitors, one of which would have a charging point for an Electric Vehicle. They are willing to retain the 10 spaces as proposed but in the interests of limiting vehicle movements a further reduction would be welcome.

- They confirm their agreement to upgrading the lane as proposed, including those consented to by the Elphin Public House, and shown in the engineer's drawings. It would be unreasonable to expect them to carry out works on other third party lands.

- They note that:

Development plan parking standards are maximums or norms and make no allowance for the proximity to public transport and are not consistent with the apartment guidelines.

Parking layout issues can be readily addressed and are minor in nature. The quantum of trips is low as is the potential for conflicting trips.

The site access junction will function as a turning head for refuse vehicles, allowing vehicles to enter and exit the laneway in forward gear.

Sightlines are confirmed as appropriate by the planning authority, and anticipated vehicle operating speeds confirmed as being expected to be low.

An increased taper length as suggested can be provided, along with the removal of the pedestrian designated road markings in this area, as demonstrated in revised accompanying drawings.

Further to pre-planning discussions to minimise the length of shuttle by liaising with property owners along the laneway, the design has been amended and a more comprehensive laneway upgrade, than under F16A/0444, is proposed.

The proposals include:

Extension of the paved area to 6m width at the access point and along the full site frontage c45m, from the current 4.1m width.

Delineation of 1.2m pedestrian zone along the site frontage, adjacent to the Elphin Public House extending to Baldoyle Road over c90m.

Restricted width section reduced from 28m to 18m.

Reduction in peak hour two-way traffic to a maximum of 2 vehicles in each direction through the reduction in on-site parking provision.

Provision of traffic calming in accordance with previously approved scheme, F16A/0444.

Provision of mews court shared roadway, 6m in width reduced locally to 4.2m over 18m.

Provision of refuse and emergency vehicle access.

Enhanced visibility to/from Baldoyle Road.

Removal of the step at the blocked-up plant room access at Elphin House. Safety bollards can be provided along the laneway as required.

Widening the laneway due to the setting back of the bottle store in the area of the overhead plant (overhead plant previously within narrow section of laneway). Comfortable clearance will now be provided at this location as a result.

Existing lighting columns can be set back as required in agreement with the relevant utility providers.

- Public open space & communal open space – the open space is not being taken in charge. There will be no public open space, this can be addressed by condition. Re. the attenuation area, the area will not be taken in charge.
- Water services – the infiltration rate will be validated as requested, through the completion of on-site percolation testing, once current level 5 Covid 19 restrictions are lifted. The design is based on percolation tests carried out on adjacent sites, which was the basis of previous accepted on-site design. The requirement for infiltration can be further reduced through rainwater harvesting or green roof provision. The omission of the basement in comparison to the previous application also increases the options/site area available for on-site percolation.



- Standard rainfall/hydrological parameters were utilised. The incorrect reference to soil type 4 is moot, in the context of the design, where there is no outflow from the site, but on-site percolation.
- Soakaway design follows BRE Digest 365.
- Roof finishes are intended to act as source for on-site rainwater harvesting, rather than a green roof, given excess runoff is directed to percolation. An element of green roof can be added if required.
- Overland flow paths from the subject site exist to the existing public laneway, with the buildings on site set c1m, above the entry road level and flows to this location provided.
- Re. Planning Officer's conclusion – there is currently associated car parking for approximately 20 vehicles on the subject site. The applicant was contacted by Fingal Co Co recently regarding the possibility of it being added to the derelict sites register. Until the proposed works to the lane are completed, there is no potential for any of the properties further into the lane to avail of mews development; recent decision F20A/06783 is cited.
- Opposing windows generally throughout the scheme were indicated to have a separation distance of 22m, however there were some examples raised by the planning officer, that did not comply. They have enclosed revised floor plans which indicate revisions, which ensure all opposing windows are 22m apart. Regarding concern that the building was within 2 to 3 m of the eastern boundary for a short length, they have reduced the width of these apartments to ensure this distance is not increased to more than 5 metres. They request the Board to consider these amendments which they are willing to incorporate.
- Planning histories are cited – F12A/0214 and Transport Section report accepting access; F16A/0444 and ABP ref. PL06F.248478, which included 12 no. car spaces, although refusing development, for other reasons, the inspector's report refers positively to access via the laneway. A Board decision elsewhere (301905) is also referenced, regarding DMURS shared surface arrangements in low traffic environments which should not exceed

4.7m in width. Further widening of the laneway to 6m is excessive and would create conflicts between traffic and pedestrians.

- Regarding third parties questioning their right to use the access, they confirm that they have the legal right, and attach a letter and map from their solicitors to that effect.
- They refer to policy support for development of brownfield sites. They state that the site currently includes a hardstanding area for 25 vehicles and a former factory. There would be no planning restriction that would preclude the use of the factory or availing of the car parking.
- They refer to previous decisions in 2012 - F12A/0214, 2016 - PL06F.248478 and 2019 - 30913-20 (F19A/0636). They are prepared to include the basement parking in F19A/0636, but consider it unnecessary considering the S28 guidelines and proximity to public transport.
- Attached to the submission are:
  - Contextual map.
  - Transportation Planning Report on F12A/0214.
  - Solicitor's letter and maps re right of way.
  - Consultant Engineer's report re sightlines and access in 2019.
  - Revised drawings: 20059-PL-10A Proposed Ground Floor Plan, 20059-PL-03A Proposed Site Plan, 20059-PL-20A Proposed Building Elevations.

## **6.2. Planning Authority Response**

6.2.1. The planning authority have responded to the grounds of appeal, including:

- In the context of surrounding two-storey development, increased heights are not considered acceptable at this location.
- A right of way over the laneway has not been satisfactorily demonstrated.
- There is a reasonable level of pedestrian activity along this lane, as observed on a number of site inspections.

- The previous application had also provided for a new pedestrian footpath along the frontage of the site. While this application has now incorporated a bottle store structure the applicant has still not alleviated the issues with the previous 2 applications on the site.
- The number of vehicle movements along this lane would significantly increase as a result of 21 new units. A comprehensive approach to the future functionality of the existing lane needs to be undertaken as there is potential for significant back-land development of the residential units along the R105 which could potentially add to the number of vehicle movements as well as pedestrian activity.
- The planning authority remains of the view that the proposed amended scheme is not an appropriate level of development for the subject site. It would result in a visually dominant and overbearing building for occupants of the adjacent lands to the east and north, would overshadow these properties and impact unacceptably on the residential amenities, streetscape and existing character of the area including the properties to the south. The proposal would materially contravene the zoning objective for the area.
- In the event of a decision to grant permission, a condition requiring the payment of a S.48 financial contribution should be attached and a bond/cash security for roads/ footpaths/ public lighting/open spaces/underground services. A bond is the Council's sole mechanism of ensuring that the roads/footpath/ public lighting / open space/ underground services are to standard.

### **6.3. Observations**

6.3.1. Observations on the grounds of appeal have been received from 6 parties (Paul O'Kane, C McDaid, G Keating, A Sleator, Cecilia Mullen & John & Ann-Marie Lally), issues raised include:

- The laneway is deficient in width, creating a traffic hazard particularly for pedestrians, and is below standard for a shared surface.
- Access to the lane is restricted by rush-hour congestion on Baldoyle Road.
- The lane is in private ownership, with only public pedestrian access currently.

- The developers do not have consent for vehicular access to the site or removal of boundary wall to the lane.
- The scale of development exceeds the capacity of the lane.
- There would be overlooking of adjoining residential properties along Dublin Rd.
- The development would not provide sufficient amenity.
- The development would reduce amenity of houses in vicinity contrary to DMS90.
- The thrust of the appellant's argument is that it is a brownfield site, but the nature and extent must be appropriate.
- Height is inappropriate.
- Increase in separation distance proposed from Binn Eadair View may have consequences for negative impact on residential standards/amenity.
- Re. proposed changes to laneway, observer questions the propriety of such significant changes.
- No auto-tracking and corner radii to determine if safe manoeuvres can be made. The reference to third party consents puts into question if these changes will be implemented.
- There is no commentary on how the design has been adapted in specific areas.
- Matters related to daylight, sunlight and overshadowing – reports are absent.
- Proposed reduction in car-parking will only move the problem elsewhere.
- Construction work practices would need to be strictly controlled.
- The laneway would not be a suitable access for construction.
- Impact on sunlight.
- The right of way agreement with the landlord of the Elphin pub only extends marginally beyond the pub. It does not give the developer the right to access the remainder of the laneway fronting the site.

- A brownfield site on the basis that 'brownfield sites have existing buildings that have demonstrated an ongoing or existing usage in terms of pedestrian and vehicular movements in and out of the site'. The entrance was off Baldoyle Rd, now a beer garden. The entrance permitted under F12A/0214 was not actioned and has lapsed. There has been no access to the site for about a decade. An unpermitted entrance was broken into the site in March 2021. Mature trees were removed during bird nesting season.
- Laneway is narrower than stated: 3.95m reducing to 3.1m. (2.95m when doors are open).
- The developer has no permission to use the lane or install ramps.
- The lane is actually 3.95m wide and almost 19m long at this pinch point reducing to 3.1m when the pub doors are open; not as stated in the appeal.
- The wall south of the site is the boundary wall of the residents of Dublin Rd. and alteration is preserved.
- Binn Eadar is already plagued with commuters, using Sutton dart station, parking in front of their homes.
- It is not a credible position to take that the previous use for factory and factory parking could be re-instated since the previous access is gone.
- South facing balconies and windows from 3 stories would be able to see directly into the back gardens and private rear rooms of houses on Dublin Road.
- There is no commentary offered on how the design has been adapted in specific areas. Further, matters related to daylight, sunlight and overshadowing are technical exercises having regard to the BRE 'Site layout planning for daylight and sunlight: a guide to good practice.' The absence of reports on daylight reception in the proposed units, overshadowing of private and public/communal spaces are absent. These should have been an integral part of the design. There are clear competing priorities in terms of achieving guidance on setbacks and privacy standards with respect to existing adjoining properties which means that it is not possible to appropriately balance these and achieve a high-quality design.

- This is not a net residential estate where DMURS principles are being applied.
- Reducing the number of parking spaces will result in residents parking in surrounding areas. Exacerbating the parking problems at the Elphin.
- Observer's property, land registry map supplied, includes the laneway and the boundary to the site is the common boundary. No alteration to the common boundary should be carried out without agreement.
- The right of way shown in blue in the applicant's appeal does not extend to the proposed entrance.
- The statement in the grounds that the use and car-parking could be re-instated without planning permission is not a credible position.
- Size and scale are excessive and southward facing apartments will be able to see into the back gardens and private rear rooms of the houses on Dublin Road.
- An holistic approach to upgrading the laneway, in conjunction with the laneway owners, would be better.
- Observer requests that conditions including hours of work are emphasised. Comments regarding work recently carried out, are made.
- A public notice was displayed on laneway but not on the Baldoyle public road as previously; validity questioned.

## **7.0 Assessment**

- 7.1.1. The issues which arise in relation to this appeal are: appropriate assessment, material contravention, land use and development principle, access and transportation, drainage and flooding, design layout and character of the area, adjoining residential amenity; and the following assessment is dealt with under these headings.

### **7.2. Appropriate Assessment**

- 7.2.1. Having regard to the nature and scale of the proposed development, I am satisfied that 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.

### **7.3. Material Contravention**

- 7.3.1. Reason nos. 2 and 4 of the planning authority's decision to refuse permission state that the development would materially contravene objectives DMS39, PM44 and DNS28 of the development plan. Specifically, the reasons state that the proposed development would give rise to significant negative impact on visual amenity of existing residents within the surrounding area, be out of context with the pattern of development within the surrounding area, be incongruous with the streetscape along the laneway which forms the southern boundary of the subject site and provide inadequate separation distances from surrounding dwellings.
- 7.3.2. Section 37 of the Planning and Development Act 2000 as amended states at subsection 2:
- (a) Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.
  - (b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that—
    - (i) the proposed development is of strategic or national importance,
    - (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or
    - (iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or

(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

(c) Where the Board grants a permission in accordance with paragraph (b), the Board shall, in addition to the requirements of section 34(10), indicate in its decision the main reasons and considerations for contravening materially the development plan.

7.3.3. The relevant provisions of the development plan cited earlier in this report, are:

Objective PM44: re. infill, corner and backland sites in existing residential areas.

Objective DMS28: re. separation distances.

Objective DMS39 re. infill development and character of the area

7.3.4. Regarding objective PM44 - this objective encourages backland development subject to the character of the area and environment being protected. The surrounding area is characterised by single and two-storey houses, with larger houses fronting Dublin Road to the south. In my opinion the character of the area and environment would not be damaged by the proposed development.

7.3.5. Regarding objective DMS39 - this objective requires new infill development to respect the height and massing of existing residential units. The surrounding pattern of development is single and two-storey housing, with higher development in the wider area. The proposed development is three-storeys with a flat roof, which is not of exceptional height or of excessive massing, and is not unacceptable in principle at this location.

7.3.6. Regarding objective DMS28 - a separation distance of a minimum of 22 metres between directly opposing rear first floor windows is generally required, unless alternative provision has been designed to ensure privacy. In the subject development alternative provision has been designed to ensure privacy.

7.3.7. The proposal is for residential development in an area where the zoning allows for such use. In relation to the use of the term 'material contravention' I note for the Board's consideration that each of the issues raised are matters of judgement, and, as outlined above, I consider that notwithstanding the use of the term material contravention, the proposed development does not materially contravene the



development plan, such that subsection 2 of Section 37 of the Planning and Development Act 2000 as amended, does not apply.

#### **7.4. Land use and development principle**

- 7.4.1. The subject lands are zoned (LC) for local centre use, while lands in the surrounding area are otherwise zoned for residential use (RS). The objective of the LC zone is to provide for or improve local centre facilities, although residential use is permissible in principle. This objective extends to the west / southwest of the site and includes the surface car park serving the adjoining public house. Entirely residential use on such lands would not meet the objectives of the plan. There are commercial uses on adjoining LC lands fronting Baldoyle Road. I consider the site to be appropriate for residential development, particularly given its proximity to public transport corridors and the surrounding pattern of development.
- 7.4.2. Submissions on the case have raised issues with regard to the right of the developers to access the appeal site over the adjoining laneway. The first party appeal was accompanied by details of such a right of way. Such matters are not within the remit of the Board and the provisions of S.34(13) of the Act are relevant in this regard.

#### **7.5. Access and Transportation**

- 7.5.1. Reason no. 1 of the decision to refuse refers to endangerment of public safety by reason of traffic hazard due to the access to this narrow laneway.
- 7.5.2. Access to the site is proposed over the existing laneway to the south. This is not the original vehicular access to the site, which lay to the north of the Elphin Bar and Restaurant and is now part of that establishment. A revised entrance to the site from the southern lane was permitted under ref. F12A/0214 to serve the existing warehouse buildings, however that permission was not implemented and has since lapsed.
- 7.5.3. The lane is currently used as a vehicular access to the rear of properties on Dublin Road and as a pedestrian route connecting adjoining residential areas, local services and public transport links. There are no footpaths along its length or in the vicinity of the Elphin pub and car park, and surface condition also varies. The lane is very

narrow at points, particularly at its western end. Over a distance of approx. 25m, the laneway is approx. 4m wide, however, this width is further reduced at points to approx. 3.8m by lampposts and projecting plant associated with the adjoining pub. Entrances to the pub premises open directly onto the lane, where the width is approx. 4.2m. Opposite the appeal site, structures to the south of the laneway are set back so that the available width increases to approx. 6.3m for a section of the lane. The carriageway surface does not extend to these structures and part of this increased width appears to fall within the curtilage of properties on Dublin Road. Further to the east, the width reduces again to approx. 3.8m. Precise ownership boundaries along the lane are not clear and this has been raised in third party submissions. At its western end, leading to the junction with the Baldoyle Road, the lane is bounded on its southern side by surface car parking serving the public house for approx. 19m.

- 7.5.4. The development proposes setting back the end of the building known as the bottle store in order to improve the width at the western end; the surface carparking will be reconfigured 'as required' (drawing no. P010). It also proposes removing an existing step to a doorway to the Elphin pub, and two 3.7m wide round top ramps are to be provided. A footpath is proposed along the laneway as far as the eastern end of the site. The overall recommendation of the Transportation Section is to refuse permission due to the constraints on the existing lane, the level of existing pedestrian activity and the poor access for services, such that they consider that the proposed development in its current format constitutes a traffic hazard that cannot be fully addressed without significant redesign and/or the comprehensive upgrade of the existing lane.
- 7.5.5. The Transportation Section report also details improvements which should be made to the development as proposed: that the footpath heading to the west of the ramp should taper towards the edge of the Elphin building to ensure that pedestrians are clearly visible to oncoming traffic coming from the Baldoyle Road direction between the Elphin building and the outbuilding, this would avoid the possibility of pedestrians stepping out blind from the behind the Elphin building into oncoming traffic; and the section of the lane providing access adjoining the Elphin building should operate as a shared surface with no delineation between vehicles and pedestrians but with pedestrians having the right of way.

- 7.5.6. The development proposes 10 no. car parking spaces at ground level. This is below the standard of 30 spaces, set out in the development plan. In what could be considered a highly accessible area, such provision would be acceptable. The Sustainable Urban Housing: Design Standards for new Apartments Guidelines for Planning Authorities (March 2018) envisages minimising provision in certain areas. In my opinion the proposed provision at this location, proximate to public transport services, local services and cycle routes is acceptable, and any greater provision would increase traffic on this substandard access laneway.
- 7.5.7. The Transportation Section states that the parking layout is substandard. There are four parking spaces at the entrance either side of the stop line that are too close to the junction of the access road and the existing lane; and spaces 7-9 at the rear of the site are c.4.8m long and should be 5m, as is the case with the remainder of the parking spaces within the proposed development. The applicant response is that this is a misreading of the drawing and 5m length is proposed. I am satisfied that spaces 8-10 can be increased to 5m long. Having regard to the limited usage of the proposed internal access road and the limited usage and very limited speed of traffic on the laneway, I do not consider the proximity of spaces 1-4 to the junction unduly problematic.
- 7.5.8. An unspecified number of bicycle parking spaces are to be provided, 42 are required per development plan standards and per the Sustainable Urban Housing: Design Standards for new Apartments Guidelines for Planning Authorities (March 2018) (at a rate of 1 cycle storage space per bedroom (32 bedrooms) and visitor cycle parking at a standard of 1 space per 2 residential units). These spaces should be indicated on the site layout.
- 7.5.9. I note that the Board has previously concluded that, in the absence of comprehensive proposals for the management of traffic along the lane, the scale of development proposed would not be acceptable in terms of traffic and pedestrian safety. I note the Transportation Section's recommendation that it would be more appropriate for the lane to be upgraded to facilitate not only the proposed development, but also the potential back-land development of the existing residential units fronting onto the R105, and that in this regard an holistic approach would be more appropriate. While a proposal for the comprehensive development of this

laneway would be desirable, I consider that the current proposal is the best currently available, and while the planning authority could use its powers to achieve an upgrade of the type suggested, such an upgrade, which would require works to third party lands, is outside the control of the applicant.

- 7.5.10. Having regard to the now more limited use of the access route, in comparison to previous proposals, and to the greater dependence on other transport modes, available in close proximity to the site, I consider that the revised access arrangements are satisfactory, taking account of the scale of development proposed and the existing function of this laneway. I consider that the proposed development is acceptable in terms of access and transportation and that issues related to access and transportation should not be reasons to refuse permission.

## **7.6. Drainage and Flooding**

- 7.6.1. It is proposed to connect to mains foul drainage and water services in this area which will require works along the laneway to connect to such services on Baldoyle Road. Connections are by gravity and no foul pumping is required. No objection has been raised to this aspect of the development from Irish Water or internal planning authority reports.
- 7.6.2. It is proposed to discharge surface water run-off to ground within the site and a large soakaway is proposed within communal open space. No design calculations have been provided.
- 7.6.3. I note that the previous inspector in his report on an appeal on this site in 2020, Ref, ABP-306913-20, stated that he would consider that site specific infiltration test results should be submitted in order to ensure a satisfactory standard of design for this urban infill site. No such results were submitted with the subject application.
- 7.6.4. In the subject appeal it is stated that the infiltration rate will be validated as requested, through the completion of on-site percolation testing, once current level 5 Covid 19 restrictions are lifted; and that the design is based on percolation tests carried out on adjacent sites, which was the basis of previous accepted on-site design.
- 7.6.5. The Board may consider that this information is required prior to decision, rather than prior to commencement.

- 7.6.6. The proposed finished floor level of 4m AOD complies with previous planning authority requirements in relation to flood risk. I note that the site is not located within an area identified as being at risk of coastal or fluvial flooding for the low, medium or high probability scenarios.

## **7.7. Design, Layout and Character of the Area**

- 7.7.1. Impact on the character of the area is included in reason No. 1 of the decision.
- 7.7.2. The quality of the housing provision is described in the planning officer's report and is acceptable, with the exception of concerns regarding clerestory windows and windows to recessed balconies. It should be noted that domestic windows do not face opposing nearby walls in any of the units, that all units are dual aspect, none are deep in plan, the proposed development is low rise; and therefore it can be taken, without the need for measurement (not provided) that all units meet the recommendations of Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice (B.R.209, 2011) and B.S. 8206 Lighting for Buildings, Part 2 2008: Code of Practice for Daylighting or other updated relevant documents, as required by DMS30.
- 7.7.3. I note the use of clerestory windows in northern and eastern elevations of units 2, 9 and 16 but these windows serve rooms which also have conventional windows in other elevations. Windows facing onto recessed balconies are large and provide for both light and outlook; many of the rooms thus provided, also have other windows.
- 7.7.4. Should the Board be minded to grant permission, I am satisfied that any further concern regarding this issue could be dealt with by condition, and having regard to the dual aspect design of the development, any shortfall in indoor daylight could be remedied such as by increasing window size, without impacting on the privacy of adjoining properties.
- 7.7.5. The site is a Central and/or Accessible Urban Location as defined in the apartment design guidelines and would be regarded as a suitable location for higher density development. The proposed residential densities (per previous site area of 0.2336ha) equate to approx. 90 units per hectare, which is significantly in excess of the minimum guideline density for such location. Having regard to the location of the

site, national and regional policy guidance and subject to the protection of adjoining amenities however, such densities would be regarded as acceptable in principle.

- 7.7.6. I concur with the previous inspector's assessment that three-storey development on the site is acceptable in principle. The proposed development will be visible to the rear of existing housing, including from Baldoyle Road and Binn Eadair view. This does not imply negative impacts on streetscape, however, and the development is not considered to give rise to significant negative impacts on views from surrounding streets and public spaces within this established suburban area. I also concur with the previous inspector's assessment that impacts on the streetscape of the laneway will not be negative, particularly having regard to the nature of existing structures on the site.
- 7.7.7. Apartment floor areas generally meet or exceed the standards set out in the Apartment Design Guidelines.
- 7.7.8. The plans indicate the provision of communal landscaped open space plus additional landscaped areas, which exceeds the minimum standards for such development. The location of soakaways within the space would not compromise or reduce the usable space open space. Detailed landscaping proposals have been provided.
- 7.7.9. Having regard to the nature of the scheme, there is no public open space provision, however the development plan provides for the payment of a contribution in lieu of the 788m<sup>2</sup> public open space required. I note also the proximity of the site to the seafront and the significant amenity which this provides for residents of the area.
- 7.7.10. Bin storage facilities are provided at various locations within the development. The proposed location at the north eastern corner of the site is close to the front of No. 92 Binn Eadair View estate, adjoining to the north, and close to overhead balconies within the subject development. A more appropriate location would be at the north western corner of the site, north of the proposed bicycle storage area.
- 7.7.11. In my opinion the proposed development is designed to an acceptable standard. The proposed development will not impact negatively on the character of the area.

## **7.8. Adjoining Residential Amenity**

- 7.8.1. Overlooking is included in reason Nos. 3 and 4 of the decision.

- 7.8.2. Overshadowing is included in reason No. 3 of the decision.
- 7.8.3. This backland site is bounded by residential properties to the north, east and west, with residential properties at a somewhat greater remove to the south on Dublin Road. The predominant building form in the area is two-storey, however, properties to the west on Baldoyle Road comprise single-storey detached houses and commercial units. There are examples of three storey development in the wider surrounding area.
- 7.8.4. The site is close to the rear and side of properties at Binn Eadair View estate which is to the north and east. The design of the development, with high level windows and deflected windows ensures that overlooking will not occur. Screening of balconies can similarly protect adjoining properties from overlooking. High level windows are not the primary windows for any of the rooms thus served and use of such windows is therefore acceptable in terms of the residential amenity of future occupants.
- 7.8.5. The access road runs to the west of the proposed apartment block and this provides greater separation distance between the building and the site boundary and hence the existing development to the west. There will be a change to the aspect of the houses on Baldoyle Road, however, having regard to the separation distance, I do not consider that the proposed development would unduly impact on their residential amenity.
- 7.8.6. While many of the houses on Dublin Road have been extended, they still retain long rear gardens of greater than 40m length. Having regard to separation from the rear of elevation of Dublin Road properties and intervening structures and vegetation, I do not consider that undue impacts on the amenities of these properties in terms of overlooking will arise from the proposed three storey development.
- 7.8.7. I consider that overlooking should not be a reason to refuse permission.
- 7.8.8. Having regard to the proposed height and separation distances from the rear of existing adjoining residential properties to the west and south detrimental shadowing is unlikely to occur in these locations. In relation to the Binn Eadair View estate, which is to the north and east, the information available does not enable such an assessment to be made.

- 7.8.9. The proposed development is to be sited c3m from the eastern boundary at the northern end of the site at ground to first floor level (nearest point) and c5m at second floor, and c2m from the northern boundary. The height to parapet level is given as 14.1m. Comparable dimensions of the development previously proposed (previous application / appeal ref. ABP-306913) were 10.4m to the eastern boundary at the northern end of the site and 7.1m to the northern boundary, with parapet levels of 13.6m towards the rear of the site and 13.75 – 13.8m at the front. The proposed development is therefore higher and closer to the northern boundary and the eastern boundary at the northern end of the site than that previously proposed.
- 7.8.10. In the previous application (ABP-306913, PA Reg Ref F19A/0636) a report titled Daylight Analysis and Overshadowing, which was prepared by Heffernan 3D, detailed shadowing impact at 4 times during the day (10am, 12, 2pm and 4 pm) and on 4 days per year (21March, June, September and December) and assessed whether following the proposed development, the extent of private open space availing of sunshine for 2 hours on the 21 March would be 50% of the total area or failing this not less than 0.8 times its existing level.
- 7.8.11. In the assessment the proposed development did not unduly impact on the adjoining private open space. A similar exercise was carried out for the previous application (ABP-304655-19, PA ref. F19A/0132), with similar results.
- 7.8.12. No such report or analysis has been provided with the current application. As previously noted the subject development is likely to have a greater shadowing impact.
- 7.8.13. It is noted that the grounds of appeal states that the applicant did not have the opportunity to address the matter of overshadowing by way of a request for additional information, and has submitted with the grounds of appeal proposed design revisions. However no shadow analysis has been provided.
- 7.8.14. In my opinion, since the Board does not have information on shadow impact, it is not in a position to determine that the proposed development does not unduly impact on adjoining residential properties, by reason of overshadowing, and this is a reason to refuse permission.



## 8.0 Recommendation

- 8.1.1. In the light of the above assessment I recommend that planning permission be refused for the following reasons and considerations.

## 9.0 Recommendation

Having regard to the height of the proposed development and its proximity to adjoining residential properties, and in the absence of analysis to demonstrate the extent of shadow impact, the Board cannot be satisfied that the proposed development would not unduly impact on the amenities of adjoining residential property and the proposed development would accordingly be contrary to the proper planning and sustainable development of the area.

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Planning Inspector

27 August 2021

## Appendices

Appendix 1: Photographs

Appendix 2: Fingal County Development Plan 2017-2023, extract