



An
Bord
Pleanála

Inspector's Report

ABP-309931-21

Development

Demolition of existing buildings on site and construction of 72 no. apartments, communal amenity building, communal open space areas, parking spaces, vehicular, pedestrian and servicing access from Foster's Avenue, utilities, and all associated site works

Location

24, 26, 28, Fosters Avenue, Mount Merrion, Blackrock, Co Dublin

Planning Authority

Dún Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

D20A/0670

Applicant(s)

Strand Court Limited

Type of Application

Permission

Planning Authority Decision

Grant Permission with Conditions

Type of Appeal

First Party vs Conditions

Third Party vs Decision

Appellant(s)

First Party: Strand Court Limited

Third Party:

1. Colm and Dominique Carey
2. Jean Cooper
3. David Montgomery and Elizabeth Browne
4. Alex and Dolores Wadkin
5. Declan Hayes and Elma Anna O'Reilly
6. Desmond and Elizabeth O'Reilly
7. Conal and Nuala Hooper
8. Noel and Niamh Sheridan
9. Robert Hussey
10. Elizabeth and Joseph Connolly
11. Cormac and Dianne Commins
12. Nico Petris
13. Francis J Moran (on behalf of the Mount Merrion Residents Association)

Observer(s)

None

Date of Site Inspection

28th January 2022

Inspector

Phillippa Joyce

1.0 Site Location and Description

- 1.1. The appeal site is located at Foster's Avenue (R112) in Mount Merrion, County Dublin. The site is located to the south (opposite) of the Nova entrance to the wider UCD campus, c.250m southwest of the junction with the Stillorgan Road (R138) dual carriageway and Quality Bus Corridor (QBC), and c.650m due north of Mount Merrion village.
- 1.2. The site is rectangular in configuration and indicated as measuring c.0.6547 ha in area. The majority of the site comprises the industrial buildings of the former Glenville Industrial Estate (26 Foster's Avenue), with two residential properties adjacent to the east and west (24 Foster's Avenue 'Glenville' (a two storey over basement detached dwelling) and 28 Foster's Avenue 'Sunnyside' (a detached dormer bungalow) respectively). The structures within the site have been vacant for a number of years with disrepair, littering and vandalism of the buildings evident.
- 1.3. The site is located in an established residential area characterised by detached residences of varying building height, on relatively large plots and/ or with long rear gardens. Adjacent to the west is 30 Foster's Avenue, a detached dormer bungalow, the garage of which is attached to that of 28 Foster's Avenue, to the east are detached dormer bungalows 22 Foster's Avenue, 1 and 2 The Foster's, and to the south are detached dormer bungalows/ two storey dwellings, 21-29 St. Thomas Road (five properties, uneven numbers).
- 1.4. The northern boundary of the site extends for c.81m along Foster's Avenue and comprises a rendered stonewall, mature vegetation, public footpath and grass verge (consent from Dún Laoghaire Rathdown County Council to include the path and verge within the site accompanies the application documentation). The remaining site boundaries comprise stonewalls (including a retaining wall along the southern boundary), wooden/ palisade fencing, and/ or mature vegetation (treelines/ hedgerows) with the adjacent residential properties. The site contains a notable number of mature trees and vegetation associated with the residential properties and/ or screening for the industrial buildings. The presence of four bat species has been confirmed in the site, with bat activity including commuting, foraging, and roosting (roosts are identified in the industrial structures of 26 Foster's Avenue).

1.5. The topography of the area is notable as the site is positioned at a lower level than lands further to the west along Foster's Avenue and further to the south along North Avenue. From St. Thomas Road, ground levels fall from c.34m OD by 5.5m to c.28.5m OD at the site's southern boundary (ground level at the adjacent southern properties/ level at top of the site's retaining wall) and continue to fall by a further 2.5m to 26m OD at the site's northern boundary on Foster's Avenue.

2.0 Proposed Development

2.1. The proposed development comprises the demolition of the existing buildings within the site and the construction of a residential scheme. The demolition works include the removal of the industrial structures, the two dwellings including the garage structure at 28 Foster's Avenue (attached to that of 30 Foster's Avenue), the hardstanding areas, and the front boundary wall along Foster's Avenue, the removal and/ or diversion of existing foul water, water supply, and surface water drainage infrastructure, and the felling of 63 trees (83 trees identified in total) and three hedgerows.

2.2. The floor areas of the buildings to be demolished are indicated as follows: 24 Foster's Avenue 362 sqm, 26 Foster's Avenue 3,135 sqm, and 28 Fosters Avenue 160 sqm, yielding a total of 3,657 sqm. The total quantum of demolition waste arising is estimated as c.662 tonnes, which includes 63 tonnes of asbestos containing material identified to be disposed of under licence off-site.

2.3. The residential scheme comprises 72 apartments (as initially proposed), a communal amenity building, landscaped open space, tree/ timber and steel post boundaries, replacement brick wall with railings along Foster's Avenue, three vehicular/ pedestrian accesses, surface level set-down car spaces and bicycle spaces, basement level (with car, motorcycle, and bicycle spaces, and services), utilities, and all other site development works.

2.4. The apartments are arranged in three blocks, referred to in the documentation as Blocks A, B, and C. Block A is positioned in the northeastern corner of the site, Block B in the northwestern corner, and Block C sited in the southern portion of the site. The blocks range between one and four storeys in building height, all over a

basement level. The communal amenity building (Block D), a single storey structure, is positioned at a mid-point in the site proximate to the eastern site boundary.

- 2.5. With regard to access, the proposed development includes a new boundary wall along Foster's Avenue that features three pedestrian/ vehicular entrances. The main vehicular access, in the northeastern corner of the site, leads directly to the basement level via an internal road and ramp to the east of Block A. The two other entrances (with removable bollards) are positioned in the centre and in the northwestern corner of the site frontage accessing onto Foster's Avenue. These entrances connect into a 'U' shaped path (part gravel/ part permeable paving) which encloses Block B. The path is principally intended for pedestrian use though is sufficiently wide to serve as an alternative vehicular access route for emergency vehicles. Standard sized footpaths enclose Blocks A and C, providing pedestrian access within the remainder of the scheme.
- 2.6. With regard to site services, the proposed development includes new connections into existing public surface water drainage, wastewater drainage, and watermains infrastructure located in the footpath along Foster's Avenue. For surface water, the proposal involves the removal of existing private infrastructure from the site, and the creation of a sustainable drainage system (SuDs). The SuDs includes filter drains, permeable paving (paths and grasscrete), green roofs on each building, an attenuation tank, and a petrol interceptor (for basement run-off). Collected surface water is discharged by gravity and pumping to the existing surface water sewer in Foster's Avenue. For wastewater, the proposal involves the diversion of one of two existing private sewers in the site, a new slung drainage system for the apartments and communal amenity building at basement level, and a petrol interceptor for contaminated basement run-off, and all collected foul water to be discharged by gravity and pumping to the existing foul sewer in Foster's Avenue. For water supply, existing watermain infrastructure within the site will be removed and water supply for the proposed development will be provided through new piped infrastructure connecting to the existing public watermains in Foster's Avenue.
- 2.7. In addition to the standard plans and particulars, the application as initially lodged was accompanied by the following reports and documentation:
- Planning Report;

- Architectural Design Statement (with Schedule of Accommodation);`
- Photomontages;
- Structural Inspection of Existing Buildings;
- Site Investigation Report;
- Engineering Services Report;
- Traffic and Transport Assessment (TTA);
- Mobility Management Plan (MMP);
- Preliminary Design Stage Quality Audit;
- Site Specific Flood Risk Assessment (SSFRA);
- Phase 2: Hydrogeological Site Assessment;
- Stage 1: Surface Water Audit;
- Daylight and Sunlight Assessment;
- Noise Impact Assessment;
- Environmental Impact Assessment (EIA) Screening Statement;
- Screening Report for Appropriate Assessment (AA);
- Landscape Report and Visual Impact Assessment;
- Ecological (Biodiversity) Appraisal;
- Arboricultural Assessment;
- Bat Assessment;
- Architectural Heritage Assessment;
- Archaeological Assessment;
- Utilities Report;
- Site Lighting Report;
- Energy Analysis Report;
- Luminaire Schedule;

- Building Lifecycle Report;
- Construction and Demolition Waste Management Plan (CDWMP);
- Construction and Environmental Management Plan (CEMP);
- Operational Waste Management Plan (OWMP); and
- Letter of consent from Dún Laoghaire Rathdown County Council to include 0.547 ha of lands within the site.

2.8. Following a Further Information (FI) request, revised plans were submitted for the proposal (the FI response was deemed to be significant FI (SFI) and readvertised accordingly). Revisions were proposed to the scheme, key among which included a reduction in the total number of apartments to 71, revisions of the building height, elevational treatments, fenestration and balcony/ terrace screening arrangements of Blocks A, B, and C, and additional cycle facilities.

2.9. At SFI response stage, in association with the revised plans the following revised reports were submitted:

- Planning Report;
- Architectural Design Statement Response;
- Photomontages;
- Bat Specialist note on outdoor lighting plan;
- SSFRA;
- Daylight and Sunlight Assessment;
- Landscape Report, including appendices on Hydrology/ Hydrogeology, Arboricultural Assessment details, and Basement Structural Details; and
- CEMP, including appendices on Outline Demolition Plan, Asbestos Survey Report, Dust Management Plan, and Traffic Management Plan.

2.10. The planning authority granted permission for the proposed development with 39 conditions, two of which further amended the scheme. Condition 2 amalgamated four apartments into two apartments in Block B, and Condition 3 omitted two apartments in Block C, thereby reducing the total number of apartments from 71 (revised in the SFI response) to 67 apartments.

2.11. For clarity and ease of reference, the following tables present the principal characteristics, features and floor areas of the proposed scheme as granted permission by the planning authority. That being, these key statistics incorporate the amendments from the SFI response stage and Conditions 2 and 3. I have extrapolated the key statistics from the application form, plans and particulars with the application, and details with the appeal (some are necessarily estimations):

Table 1: Key Statistics (as granted permission with amending conditions)

Site Area	0.6547 ha (0.6 ha applicant controlled, 0.547 ha DLRCC controlled)
Floor Areas	Structures/ hardstanding areas to be demolished: 3,657 sqm Block A: 1,417 sqm Block B: 2,387 sqm Block C: c.2,479 sqm Block D/ communal amenity building: 99 sqm Basement level: 2,810 sqm Apartment blocks with basement level: c.9,192 sqm
Residential Units (see Table 2)	67 apartments
Residential Density (net)	112 units per hectare (based on developable site area)
Building Height (principal heights)	Block A: 3 and 4 storeys (16.65m to pyramid hipped roof, majority 12.6m to 4 th storey/ third floor level flat roof) Block B: 1 – 4 storeys (principal heights as above) Block C: 2 – 4 storeys (principal heights as above) Block D/ communal amenity building: 1 storey (6.55m)
Aspect	Dual aspect: 46 apartments (69%)
Part V Provision	7 apartments (3 1-bedroom and 4 2-bedroom apartments at ground floor level of Block B)
Public Open Space	1,780 sqm* of public open space within the scheme. (*The applicant's SFI response quantum is disputed by the planning authority as not all areas accepted as usable open space. Condition 3 replaces Unit C.GF04 in Block C (c.96 sqm total floor area) with

	public open space, increasing the SFI response quantum to c.1,876 sqm).
Car Parking	Surface: 2 drop-off spaces Basement: 85 spaces
Bicycle Parking	Surface: 36 spaces (3 cycle stores of 10, 10, and 16 spaces) Basement: 135 spaces (1 cycle store area under Block B)
Motorcycle Parking	Basement: 4 spaces

2.12. The proposed residential mix, the tenure of which is assessed as being build-to-sell, is as follows:

Table 2: Summary of Residential Unit Mix

Unit Type	1 bed	2 bed	3 bed	Total
Block A	0	15	0	15
Block B*	5	19	2	26
Block C**	4	21	1	26
Total	9	55	3	67
% of Total	14%	82%	4%	100%

(*Condition 2 stipulates that in Block B two 2 bedroom apartments at first floor level and one 1 bedroom apartment and one 2 bedroom apartment at second floor level be amalgamated into two apartments. The planning authority did not specify the number of bedroom spaces for the two newly amalgamated apartments. In the first party appeal, the applicant indicates the amalgamated apartments as both being 3 bedroom apartments. The implication of Condition 2 is a reduction in total apartments in Block B from 28 to 26 apartments, a reduction in the number of 1 bedroom apartments from 6 to 5, a reduction in the number of 2 bedroom apartments from 22 to 19, and an increase in the number of 3 bedroom apartments from 0 to 2.

**Condition 3 stipulates that in Block C one 2 bedroom apartment at ground floor level and one 3 bedroom apartment at first floor level be omitted. The implication of Condition 3 is a reduction in total apartments in Block C from 28 to 26 apartments, a reduction in the number of 2 bedroom apartments from 22 to 21, and a reduction in the number of 3 bedroom apartments from 2 to 1.)

3.0 Planning Authority Decision

3.1. Summary of Decision

3.1.1. On 18th March 2021, the planning authority issued a Notification of Decision to Grant Permission subject to 39 conditions. I highlight to the Board that the third party

appeal is against the decision to grant permission, and the first party appeal is against Conditions 3 and 4. For ease of reference, these conditions and associated reasons are provided in full below. Additionally, the following is an overview of the remaining conditions attached:

Condition 2: residential amenity protection measures revising the design and layout of the western part of Block B by amalgamating two apartments at both first and second floor levels into single apartments, and revising the western elevation of these amalgamated units by omitting balconies facing towards 30 Foster's Avenue and requiring windows to be fitted with obscure glazing and/ or high level windows.

Condition 3: *Prior to commencement of development the Applicant shall submit for the written agreement of the Planning Authority revised drawings showing the 2-bedroom apartment (unit C.GF04) at ground floor level and the 3-bedroom apartment (unit C.0104) at first floor level, both apartments located on the south east corner of Block C, being removed and the resulting space being dedicated to open space. Revised landscape drawings showing the landscape proposal and its integration in the wider landscape strategy shall also be provided and agreed prior to commencement. Thereafter, the development shall be carried out in accordance with the agreed details.*

Reason: In the interest of an adequate provision of open space and residential amenity.

Condition 4: *Prior to commencement of development, the Applicant shall submit revised drawings for the written agreement of the Planning Authority showing the gradient of the access ramp to the basement not exceeding 7% (1:14). Subsequent amendments to basement and ground floor level may be made in order to comply with this condition. Revised drawings shall be submitted and agreed with the planning authority prior to commencement of development. Thereafter, the development shall be carried out in accordance with the agreed details.*

Reason: In the interest of traffic safety.

Condition 5: residential amenity protection measures requiring that, other than high-level windows, windows in the eastern elevation of Block A that are c.10m from the eastern boundary to be fitted with obscure glazing.

Conditions 6, 27, 32, 33 and 34: operational matters for the scheme requiring single use residency of each apartment, establishment of a management company, name of which to be submitted to the planning authority, all public services to be located underground, and agreement for (naming) numbering the scheme.

Condition 7: surface water drainage arrangements including details of construction runoff, attenuation tank, maintenance of SuDs features, and implementation of mitigation measures in the lodged SSFRA.

Conditions 8, 35, 36, 37, 38 and 39: procedural items relating to compliance with Part V obligation, the payment of development contributions, and lodgement of security bonds to the planning authority.

Conditions 9, 10, 11, 12, 13, 14 and 31: biodiversity, ecology, and arboricultural protection measures relating to bats, invasive species, and landscaping/ trees requiring the implementation of mitigation measures, operation in accordance with licence, submission of management plan/ monitoring report/ completion certificate, and employment of a qualified ecologist and a landscape consultant to oversee applicable works.

Conditions 15, 17 and 18: road safety protection measures relating to the design of the scheme and works in the public realm, requiring a Stage 3 Quality Audit, works on public road/ footpath being at developer's expense and to certain standard, and undertaken under a road opening licence.

Conditions 16, 20, 21, 22 and 27: traffic and transport operational matters for the scheme requiring future occupants to be notified of restrictions in car parking provision/ entitlement, refuse collection to occur within site curtilage, implementation of objectives and targets in the lodged Mobility Management Plan, and name of appointed Mobility Management Coordinator to be submitted to the planning authority.

Conditions 19, 23, 24, 25, 26, 28, 29 and 30: demolition and construction protection measures relating to traffic/ activities and other road users, prevention of materials/ spills/ debris onto and repair of any damage to public roads, specification of entrance at 26 Foster's Avenue as only site access for works, and requiring the implementation of measures included in the lodged CEMP, provision of contact details of the Site Liaison Officer, and submission of a number of reports (various

titles including Construction Phase Traffic Management Plan, Construction and Demolition Management Plan (inclusive of a Traffic Management Plan), Detailed Demolition Waste Management Plan, and Environmental Management Demolition Plan).

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

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

- Site described as brownfield, under-performing, occupied by vacant low-rise industrial buildings, and suitable for residential development at an appropriate density;
- National and local policy cited which supports the redevelopment of brownfield sites, in built-up urban locations, in close proximity to public transport;
- No issues or concerns raised in planning history cases relating to the demolition and site clearance works;
- Information provided for the recently granted application (PA Ref. D20A/0406) on the site for demolition and clearance works (heritage value of the buildings, arboricultural, and bat assessments) has been incorporated into the current proposal;
- No. 24 Foster's Avenue confirmed as not being in the Record of Protected Structures (RPS) in the Development Plan, nor proposed to be included in the RPS of the draft Development Plan as it is not on the National Inventory of Architectural Heritage (NIAH);
- Density (higher than existing area), design and layout (separate blocks with a staggered front building line), and building height (3 to 4 storeys with highest elements at centre and stepping down to site boundaries) are positively noted and considered acceptable;

- Concern for the visual impact of the northwestern corner, and the potential overlooking of adjacent properties to east and west, and between the Blocks;
- Satisfied that daylight and sunlight of neighbouring properties will not be materially reduced and that future occupants will have an adequate level of amenity;
- Apartments appear to meet national planning guidelines requirements in terms of mix, size, aspect, heights, and private amenity space (waste storage is outstanding);
- Concern for the scheme's public open space, both in quantitative and qualitative terms;
- Extent of tree maintenance and protection measures for bat populations present in the site are positively noted;
- Refusal reasons (adverse impacts on residential amenity and bat populations) for the previous SHD application (PL06D.304063) are considered to be adequately addressed;
- Screening for appropriate assessment undertaken which concludes the proposed development would not significantly impact on a Natura 2000 site;
- Screening for environmental impact assessment (EIA) undertaken which concludes that the need for EIA has been excluded at preliminary examination;
- Applicant's Part V proposal for transferring ownership of seven units is acceptable;
- Scheme is not proposed to be taken in charge by the planning authority and therefore will be required to be maintained by a management company;
- FI requested on 17 items including a redesign of the Blocks to address potential overlooking; quantitative details on public open space; more detailed arboricultural assessment; outdoor lighting scheme suitable for bat populations; transportation proposals for the basement level, ramp access, parking spaces, bicycle facilities, pedestrian footpaths, set down area, refuse

collection, construction management, and quality audit; surface water drainage details; and waste storage proposals.

- SFI response resulted in changes to the scheme including the omission of one 2 bed apartment from Block B (71 apartments in revised total); revision of building height and western elevational treatment of Block B; omission of windows, changes in fenestration design in Blocks A, B, and C and of balcony/ terrace screening arrangements; and provision of additional cycle facilities (dedicated cycle access, cycle lift in Block B, and covered surface level cycle parking) and waste storage facilities;
- Applicant's position on the quantum and quality of the scheme's public open space (classification of useable open space and associated measured areas for same), the reliance on the site's proximity to UCD and Deerpark for recreation by future residents, and the use of planters for screening on balconies/ terraces in particular along the western elevation of Block B are not considered acceptable by the planning authority;
- Concludes that, subject to conditions, the proposal as revised in the SFI response would not adversely impact on the amenity of adjacent properties, not significantly detract from the character of the area, and accords with relevant policy; and
- The subject to conditions of note are Condition 2 (amalgamation of four apartments into two apartments with revisions to/ omission of windows and balconies on the western elevation of Block B), Condition 3 (omission of two apartments in southeast corner of Block C and replacement at surface level with public open space), and Condition 4 (access ramp to the basement to have a gradient not exceeding 7% (1:14) and acknowledgement that the basement and ground floor levels may require amendments).

3.2.2. Other Technical Reports

Transportation Planning: Initial report indicates quantum of car parking spaces is below, and of bicycle parking spaces is above, the Development Plan standard, but in line with national standards in the apartment planning guidelines and therefore acceptable. FI requested on a number of transportation items (incorporated into the planner's report outlined in the previous subsection above). Subsequent report

notes satisfactory resolution of certain items (dedicated cycle access, cycle lift in Block B, and covered surface level cycle parking). Clarification of FI sought due to the gradient of the basement ramp (for access/ egress by cyclists and for turning movements for refuse trucks). In the event of a grant of permission, no objection subject to 11 conditions (including one that forms the basis of Condition 4).

Surface Water Drainage Planning: Initial report notes the SSFRA and indicates it is applicant's responsibility that existing groundwater flow rates and paths are maintained (report notes Trimleston Stream indicated as being to the northeast of the site, not downgradient of the site). FI requested on SuDs design information including run-off rates, permeable paving, green roof coverage. Subsequent report states no objection subject to conditions.

Parks Department: initial report recommended FI for a revised layout with retention of more trees, more analysis in the arboricultural assessment based on ground conditions, hydrological information and construction methodology, quantitative and qualitative details on the public open space, specification for play areas, and a play rationale and layout plan. Subsequent report seeks clarification of FI as dissatisfaction remains with the quantum and quality of public open space to serve the residents, particularly the Communal Garden area. Consideration of omission of units to the southeast of the site and replacement with open space recommended (forms the basis for Condition 3).

Environmental Health Officer: initial report recommended FI on refuse storage and subsequent report indicates compliance with the national planning guidelines is achieved. No objection subject to conditions.

Housing Department: report indicates the proposed transfer of ownership of seven apartments to comply with Part V obligations is acceptable.

3.3. **Prescribed Bodies**

Irish Water: no objection, recommend standard conditions for connection agreements subject to available capacity and compliance with codes and practices.

3.4. **Third Party Observations**

- 3.4.1. The planning authority received 28 submissions (initial stage and at SFI stage) from third party observers during the processing of the application. All submissions are in objection to the proposed development.
- 3.4.2. The issues raised in the third party submissions to the planning authority continue to form the basis of the grounds of appeal for the third party appellants, which are outlined in detail in Section 6.0 below.

4.0 Planning History

Appeal Site

ABP 309966-21, Referral case

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

PA Ref. D20A/0406, ABP 308770-20

Permission granted to the applicant on 4th November 2020 for demolition and site clearance works. The decision to grant permission is subject of an appeal, ABP 308770-20, which is being assessed presently (at the time of writing ABP decision pending).

ABP 304063-19, SHD application

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

1. *Having regard to the design, scale, bulk and height of the development, to its proximity to site boundaries and to the proposed removal of trees at the development site, it is considered that the proposed scheme would be overbearing when viewed from adjacent residential properties and would seriously injure the residential amenities of adjoining properties through undue levels of overlooking, overshadowing and noise impacts. In addition, the*

development would have an adverse visual impact on Fosters Avenue due to its bulk and scale in close proximity to the road in advance of the established building line to the west of the site, and to the extensive nature of the façade at the road frontage. The proposed development would be contrary the National Planning Framework and Ministerial Guidelines, which promote innovative and qualitative design solutions and would seriously injure the amenities of property in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. *The Bat Survey Report indicates that there are three bat species present at the development site, that is the Soprano Pipistrelle, Common Pipistrelle and Leisler's Bat, which are all protected under the European Communities (Birds and Natural Habitats) Regulations 2011 and the Wildlife Act 1976 (as amended). It is considered that the proposed development would have a significant adverse impact on the bat species present at the site due to the removal of existing trees that provide connectivity and foraging habitat and to potential light spillage from the apartment building and the public lighting serving the development. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

5.0 Policy Context

- 5.1. Having considered the nature of the proposed development, the receiving environment, the application and the appeal documentation, and the decision of the planning authority, I consider the following policy and guidance to be of relevance to the determination of the appeal.

5.2. National Planning Context

National Planning Framework, Project Ireland 2040 (NPF)

- 5.2.1. A number of overarching national policy objectives (NPOs) are identified relating to targeted future growth in appropriate locations in Dublin City and suburbs. The appeal site is located within the boundary of the 'Dublin City and suburbs' area which is identified for consolidated future growth in the NPF.
- 5.2.2. NPOs for appropriately located and scaled residential growth in the Dublin area include:

- NPO 2a: A target of half (50%) of future population and employment growth will be focused in the existing five Cities and their suburbs.
- NPO 3b: Deliver at least half (50%) of all new homes that are targeted in the five Cities and suburbs of Dublin, Cork, Limerick, Galway and Waterford, within their existing built-up footprints.
- NPO 4: Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.
- NPO 27: Ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments, and integrating physical activity facilities for all ages.
- NPO 33: Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.
- NPO 35: Increase residential density in settlements, through a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

Section 28 Ministerial Planning Guidelines

5.2.3. The following Section 28 Ministerial Guidelines are considered to be of relevance to the proposed development. For ease of reference, I propose using the abbreviated references for the titles of certain guidelines, as indicated below.

- Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities, 2009, and the accompanying Urban Design Manual: A Best Practice Guide, 2009 (Sustainable Residential Development Guidelines);
- Sustainable Urban Housing, Design Standards for New Apartments, Guidelines for Planning Authorities, December 2020 (Apartment Guidelines);
- Urban Development and Building Heights, Guidelines for Planning Authorities, December 2018 (Building Height Guidelines);

- Design Manual for Urban Roads and Streets, December 2013 (DMURS); and
- The Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009 (Flood Risk Guidelines).

5.2.4. As appropriate, specific requirements, policies, and objectives of the Section 28 Guidelines are cited and considered within the Section 7.0 Planning Assessment of this report.

5.3. Regional Planning Context

Regional Spatial and Economic Strategy for the Eastern and Midland Region 2019-2031 (RSES)

5.3.1. The RSES provides a development framework for the region, including a specific Metropolitan Area Strategic Plan (MASP) covering Dublin City and suburbs, which the appeal site is located within. The MASP identifies the 'City Centre within the M50' as a Strategic Development Area/ Corridor. Accordingly, a number of regional policy objectives are applicable to the proposed development, including:

- Development Policy for the 'City Centre within the M50' focuses on the processes of regeneration, redevelopment, and consolidation of older residential, industrial and underutilised lands;
- In Table 5.1 Strategic Development Areas and Corridors, the City Centre within the M50 area is identified as having a population capacity total of 60,000 persons (in the short term of 35,000, increasing by 10,000 in the medium term, and increasing by 15,000 in the long term);
- RPO 5.3: Future development in the Dublin Metropolitan Area shall be planned and designed in a manner that facilitates sustainable travel patterns, with a particular focus on increasing the share of active modes (walking and cycling) and public transport use and creating a safe attractive street environment for pedestrians and cyclists.
- RPO 5.4: Future development of strategic residential development areas within the Dublin Metropolitan Area shall provide for higher densities and qualitative standards as set out in the 'Sustainable Residential Development in Urban Areas', 'Sustainable Urban Housing: Design Standards for New

Apartments' Guidelines and 'Urban Development and Building Heights Guidelines for Planning Authorities.

- RPO 5.5: Future residential development supporting the right housing and tenure mix within the Dublin Metropolitan Area shall follow a clear sequential approach, with a primary focus on the consolidation of Dublin and suburbs, and the development of Key Metropolitan Towns, as set out in the Metropolitan Area Strategic Plan (MASP) and in line with the overall Settlement Strategy for the RSES. Identification of suitable residential development sites shall be supported by a quality site selection process that addresses environmental concerns.

5.4. Local Planning Context

Change between Dún Laoghaire Rathdown County Development Plans

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

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

Dún Laoghaire Rathdown County Development Plan 2022-2028

5.4.3. The relevant 2022 CDP map based designations include:

- The site is zoned as 'A' with the stated objective '*To provide residential development and improve residential amenity while protecting the existing residential amenities*';
- Along Foster's Avenue, the site's northern boundary, are a Strategic Road Reservation with a specific local objective (SLO), SLO 4 seeking to promote future leisure, recreational, biodiversity uses along the Dublin Eastern Bypass reservation corridor;

- Opposite the site, the entrance gate and piers (Nova entrance into UCD campus) associated with Merville House is included as part of that protected structure entry, RPS 94; and
- The site does not contain, is not located within, nor subject to any other CDP designations (e.g. protected structures, architectural conservation area, sensitive landscape character area), or other map based SLOs.

5.4.4. I consider the most relevant local 2022 CDP policy and requirements to be within Chapter 4 Neighbourhood: People, Homes and Place (higher density, densification, housing mix, quality building design), Chapter 12 Development Management (urban design, qualitative and quantitative standards, environmental impacts), and Appendix 5: Building Height Strategy (provisions to be used in assessing individual planning applications).

5.4.5. Chapter 4 Neighbourhood: People, Homes and Place outlines policy for increasing the supply of quality residential development in an appropriate manner:

- Section 4.3.1.1, Policy Objective PHP 18: Residential Density – increase housing supply and promote urban growth through consolidation and intensification of infill sites, and encourage higher residential densities whilst balancing existing residential amenities and the established character of areas with the need to provide for sustainable development;
- Section 4.3.1.2, Policy Objective PHP 19: Existing Housing Stock – Adaptation – conserve and improve existing housing stock, and densify existing built-up areas through infill development whilst having regard to the amenities of existing established residential neighbourhoods;
- Section 4.3.1.3, Policy Objective PHP 20: Protection of Existing Residential Amenity – infill developments of greater density and building height to adjacent residential areas required to demonstrate not overdevelopment, compliance with building height strategy, provision of a buffer from rear garden boundary lines, and incorporation of a stepped back design;
- Section 4.3.2.3, Policy Objective PHP 27: Housing Mix – create sustainable residential communities by providing a wide variety of housing and apartment

types, sizes, and tenures in accordance with the provisions of the Housing Need Demand Assessment (HNDA); and

- Section 4.4.1.8, Policy Objective PHP 42: Building Design and Height – encourage high quality design and compliance with the Building Height Strategy in new developments (applicable for the appeal case is Policy Objective BHS 3).

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

- Section 12.3.1.1, Design Criteria – includes compliance with land use zoning, policy objectives, national planning guidance, and the achievement of higher density, sense of place, context, relationships, variety, privacy and amenity, and quantitative and qualitative standards;
- Section 12.3.3.1, Residential Size and Mix and Table 12.1 – ensure new developments have an appropriate mix of units, including a proportion of larger units (for proposals with 50 + units (such as the appeal case) a maximum of 80% of studio, 1 and/ or 2 bedroom units and a minimum of 20% 3 bedroom + units is required);
- Section 12.3.5, Apartment Development – numerous qualitative and quantitative standards for design, siting, separation distances, and penthouses (below);
- CDP 12.3.5.4 Penthouse Development – a penthouse level may be acceptable where living space constitutes the equivalent of one storey and is set back from the edge of the building, is consistent with the overall design of an apartment block, finished with high quality materials and does not have a negative visual impact on the skyline and/ or streetscape;
- Section 12.3.7.7, Infill – in accordance with Policy Objective PHP 19, infill development shall respect the height and massing of existing residential units, and retain the physical character of the area such as boundaries trees, and landscaping (particularly for those areas that exemplify Victorian era to early-mid 20th century suburban ‘Garden City’ planned settings and estates);

- Section 12.3.9, Demolition and Replacement Dwellings – replacement of a single dwelling with multiple units will be weighed against a number of factors including distinctiveness of dwelling and gardens, and whether any such dwelling is habitable, and encourage retention of exemplar 19th and 20th century dwellings on sites in excess of 0.4 ha;
- Section 12.3.9 states regard is to be given to Chapter 11 Policy Objectives HER 20 and HER 21 for demolition proposals:
 - Section 11.4.3.2, Policy Objective HER 20: Buildings of Vernacular and Heritage Interest – retain where appropriate and rehabilitate older buildings/ structures/ features which make a positive contribution to the character and appearance of the area and streetscape in preference to their demolition and redevelopment; and
 - Section 11.4.3.3, Policy Objective HER 21: 19th and 20th Century Buildings, Estates and Features – encourage the appropriate development of exemplar 19th and 20th century buildings and estates, including features that contribute to their character;
- Section 12.4.5.6, Residential Parking – resident and visitor parking in apartment schemes to be differentiated, residents not to be sold separately from the units, and all managed by a management company (applicable to the appeal case are parking standards for Zone 2: Near Public Transport, 1/ 2 spaces per 1 & 2 bedroom/ 3 bedroom units;
- Section 12.7.1, Green Infrastructure – works affecting a protected species require a derogation licence from the NPWS in advance of works being undertaken, preferable that the licence is obtained before planning permission applied for, and undertake an Ecological Impact Assessment to address impacts;
- Section 12.7.2, Biodiversity – precautionary approach to environmentally sensitive sites, a derogation licence from the NPWS required in advance of permission, ecological risk and/ or impact assessments and an invasive species management plan required as necessary;

- Section 12.8.3, Open Space Quantity for Residential Development – public open space (applicable to the appeal case are 15% of the site area) and communal open space (5 sqm – 9 sqm dependant on unit);
- Section 12.8.11, Existing Trees and Hedgerows – existing trees and hedges to be incorporated as far as practicable, arboricultural assessments required, and tree protection undertaken in accordance with referenced standard (BS 5837);
- Section 12.9.6, New Developments/ Change of Use: Environmental Impacts – design specifications for/ plans addressing impacts arising from climate change, stormwater, SuDS, sediment and water pollution control, construction management (including waste, environmental, and traffic management plans), operational waste management, waste storage facilities, flood prevention of basement levels, flood risk management; and
- Section 12.9.10.1, Light Pollution – careful and sensitive design of lighting schemes to minimise light pollution on the environment.

5.4.7. Appendix 5: Building Height Strategy outlines the policy approach to building height in different locations of the County (the appeal site is located in a ‘Residual Suburban Area’);

- Section 4.4, Policy Objective BHS 3: Building Height in Residual Suburban Areas – promote a general building height of 3 to 4 storeys provided there is a balance between the reasonable protection of existing amenities including residential amenity and the established character of the area; and
- Only proposals for taller buildings (i.e. more than 2 storeys taller than the prevailing height of the area) are required to be assessed against performance based criteria in Table 5.1.

5.5. Natural Heritage Designations

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

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

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

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

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

5.6. Screening Determination for Environmental Impact Assessment

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

5.6.2. The project comprises the demolition of existing buildings within the site (total floorspace of c.3,657 sqm), felling of 63 trees, removal of three hedgerows and front boundary wall along Foster's Avenue, removal and/ or diversion of existing foul water, water supply, and surface water drainage infrastructure from site, construction of residential scheme comprising three blocks of apartments (72 apartments applied for, 67 apartments granted by condition, 68 apartments recommended in this assessment) and a communal amenity building, soft and hard landscaped open spaces with new/ supplemented boundary treatments (tree/ timber and steel post boundaries), new front boundary brick wall with railings with-three vehicular/ pedestrian accesses, surface level with 2 set-down car spaces and 36 bicycle spaces, basement level with 85 car, 4 motorcycle, and 135 bicycle spaces, and services, new piped connections into existing public surface water drainage,

wastewater drainage, and watermains infrastructure located in the footpath along Foster's Avenue, and all other site development works in a site measuring 0.6547 ha located within a built up area. I note that there is a concurrent appeal case at the site, ABP 308770-20 (which is subject of a separate screening determination for EIA), for demolition and site clearance works at the site.

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

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

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

an EIA Screening Determination based on the criteria in Schedule 7, which is set out in Appendix A of this report.

- 5.6.5. Of the characteristics of the proposal, the nature and the size of the proposed development are notably below the applicable thresholds for EIA. The proposal differs from the surrounding residential area, but the difference is not considered to be significant in terms of character or scale. The proposal will cause physical changes to the appearance of the site and its boundaries though, similarly, these are not considered to be significant in effect. The site development works produce waste including asbestos containing material, a hazardous substance, that will be removed, transported, and disposed of. The proposal will also cause noise and vibration, and air (asbestos and dust) impacts. Underground excavation works for the construction of the basement level cause a change in site topography/ ground levels, and surface changes arise from the removal of existing tree (63 trees) and hedgerow cover (three), and replacement with new soft landscaping (c.80 trees, and landscaped areas with shrubs and plants). Impacts in relation to the site development works will be addressed through mitigation measures in the preliminary Demolition Management Plan (DMP), Construction and Environmental Management Plan (CEMP), the Construction and Demolition Waste Management Plan (CDWMP). The proposal does not cause a change in land use, or to waterbodies, or a significant use of natural resources during the site development works process. The proposal does not involve discharge of pollutants to ground or surface water environments. Project connects into the public water services systems which have sufficient capacity to accommodate demands. Project includes solar panels, energy efficient design, is located close to amenities, and public transport options. There is no risk of major accidents given the nature of project, nor is it part of a wider large scale change in the area as the site is an infill site within an established built-up location. The proposal results in a moderate increase in population and residential activity, which are not considered likely to result in significant effects on the environment, and no cumulative significant effects with development works in the area are reasonably anticipated.
- 5.6.6. Of the location of the proposed development, the site is not in, on, or adjoining a European site, a designated or proposed Natural Heritage Area, or any other listed area of ecological interest or protection. There are no archaeological features

recorded at the site, and no architectural heritage or landscape designations pertaining to the site. There are no high quality or scarce resources on or close to the site. There are no watercourses within or under the site, or direct connections to watercourses in the area. The site is not located within a flood plain. Traffic generation associated with the project is of a scale would have a negligible impact on the surrounding road network and is not anticipated to contribute to congestion. Of most note regarding the site's location is the presence of protected bat species, and its being adjacent to residential development, a sensitive receptor. Bat activity recorded at the site includes commuting, foraging, and roosting (three roosts are identified in 26 Foster's Avenue). The proposal causes impacts on the local bat populations, with mitigation measures to address and ameliorate these impacts contained in the Bat Assessment, Ecological (Biodiversity) Appraisal and Arboricultural Assessment. The proposal causes impacts on the residential amenity of adjacent properties, with mitigation measures to address and ameliorate these impacts contained in the DMP, CEMP, MMP, and SSFRA. The location of the proposed development does not contain designations, include features, or display sensitivities such that the proposal is considered likely to result in significant effects on the environment.

5.6.7. Of whether there are any other factors which could lead to environmental impacts, the proposal is at an infill site within an established built-up location. As such, and given the nature of the proposal, the associated impacts arising will be temporary (site development works), localised, and not significant in terms of use or scale. While appellants refer to development works in the wider area, which are noted, including at the UCD campus and in the Mount Merrion area, there are no cumulative significant effects on the area that are reasonably anticipated. There are no transboundary effects arising. There is a concurrent appeal case at the site, ABP 308770-20, which is under consideration. As is discussed in Section 7.12 of this report below, I consider the current appeal and the concurrent appeal to be mutually exclusive projects, and the concurrent appeal is subject of a separate EIA Screening Determination.

5.6.8. To enable the EIA Screening Determination, the application included an EIA Screening Statement. The Statement includes information required to be provided under Schedule 7A of the Regulations. The information comprises a description of

the proposed development (context, components, characteristics), of aspects of the receiving environment likely to be significantly affected (environment factors including population, human health, biodiversity, land, soil, water, air, climate, noise, vibration, landscape, material assets, archaeological, architectural and cultural heritage), of likely significant effects of the proposed development (types and characteristics of impact on the above environmental factors). As applicable, references are made to the reports included in the application documentation, with descriptions of the mitigation measures proposed to address identified impacts.

- 5.6.9. I have reviewed the EIA Screening Statement and the reports referred to (as updated/ revised in the SFI response, first party appeal, and/ or third party appeal response documentation), confirm the nature of impacts identified, and the range of mitigation measures proposed. I am satisfied that the submitted EIA Screening Statement identifies and describes adequately the effects of the proposed development on the environment. The EIA Screening Statement submitted with the appeal concludes that an EIA is not required due to the project being significantly below thresholds for Schedule 5 classes of project requiring EIA, that mitigation measures are proposed to address impacts identified at demolition, construction, and operation phases, and that the proposed development is not considered likely to cause significant effects on the environment.
- 5.6.10. Having regard to the foregoing, I have concluded that the proposed development would not be likely to have significant effects (in terms of extent, magnitude, complexity, probability, duration, frequency, or reversibility) on the environment and that the preparation and submission of an environmental impact assessment report is not therefore required.

6.0 The Appeal

6.1. Grounds of Appeals

- 6.1.1. This appeal case comprises a first party appeal against Conditions 3 and 4 attached to the grant of permission, and a third party appeal by 13 appellants against the decision to grant permission for the proposed development.

First Party Grounds of Appeal

6.1.2. The main issues raised in the first party grounds of appeal can be summarised as follows:

- Welcomes the decision of the planning authority to grant permission;
- Requests that the Board upholds the decision but revise Condition 3 and omit Condition 4;
- Appeal is accompanied by updated and revised plans and particulars including:
 - schedule of accommodation;
 - site layout plan, block floor plans, elevations, and sections;
 - public open space details and a Landscape Masterplan; and
 - an engineering technical note.
- Updated and revised plans and particulars indicate:
 - Condition 2 as granted – with the revised first and second floor levels in Block B and corresponding revisions to the western elevation;
 - Revision of Condition 3 – incorporating the requested revisions in Block C outlined below; and
 - Omission of Condition 4 – incorporating the requested alternative route and turning area for refuse vehicles;
- Requested Revised Condition 3:
 - (i) maintains the omission of Unit C.GF04 (2 bedroom apartment) at ground floor level in Block C, with the area released redesignated as public open space,
 - (ii) sets back the southern building line of the adjacent Unit C.GF05 at ground floor level in Block C, with the released area designated as public open space; and
 - (iii) reinstates the omitted apartment at first floor level (Unit C.0104) in Block C, amended from a Type 3PB (3 bedroom apartment) to a Type 2A (2 bedroom apartment);

- Omission of Unit C.0104 in its entirety is not necessary, as a smaller unit could be accommodated therein, and causes a gap in the southeastern corner of Block C as the second and third floor levels overhang the omitted first floor level space;
- Setting back of the southern building line of Unit C.GF05 at ground floor level and reinstating Unit C.0104 with a smaller Type 2A at first floor level address the overhang issue;
- Reinstating Unit C.0104 at first floor level would result in a final total of 68 apartments in the proposed scheme; and
- Setting back of the southern building line of Unit C.GF05 at ground floor level allows released area to be redesignated as public open space and incorporated into the submitted revised Landscape Plan.
- Requested Omission of Condition 4:
 - (i) requirement for the ramp with 1:14 gradient is not necessary due to adequate alternatives for bicycle access within the scheme; and
 - (ii) an alternative route for refuse vehicles at surface level is proposed;
 - Basement ramp with a gradient of less than 1:14 is not required in engineering terms for bicycle access and/ or turning movements for refuse vehicles;
 - Alternatives to the basement ramp for bicycle access exist between the surface and basement levels as Block B has a designated cycle lift which can accommodate two bicycles with cyclists;
 - Each of the three blocks also has lift that can be used by cyclists if the designated cycle lift was being maintained or repaired;
 - As scheme will be under the control of a management company, any technical failure or servicing issue will be addressed through an immediate notification process standard in lift system management;
 - Planning authority does not cite the full policy when referencing standards for cycling facilities in new developments i.e. does not give an allowance to the availability of the other lifts in the blocks;

- Provision of basement ramp with gradient as conditioned has notable implications including the re-siting of the amenity building, loss of open space, reconfiguration of basement layout, and more extensive excavation works; and
- An alternative arrangement for refuse vehicles is proposed ensuring that trucks avoid traversing the basement ramp, whereby trucks access the site, reach the waste marshalling area at the top of the basement ramp and then reverse onto a newly proposed grasscrete area to the west of the site entrance prior to exiting the site.

Third Party Grounds of Appeal

6.1.3. Grounds of appeal have been received from 13 third party appellants with addresses given at Foster's Avenue, St. Thomas Road, Wilson Road, and The Rise. The main issues raised can be summarised as follows:

- Contrary to the Zoning Objective:
 - Proposal runs counter to the statutory zoning objective for the site which seeks to protect and improve residential amenity;
 - Proposal would not protect the amenity of adjoining residents and would certainly not improve it; and
 - Proposal not in accordance with CDP policy in Section 8.3.2, Transitional Zonal Areas which seeks to avoid abrupt transitions in scale and use.
- Classification of the Site and Location:
 - Planning authority incorrectly describes the site's location as urban when it is suburban and therefore not suitable for this form of development;
 - Site should be considered as an infill site rather than a brownfield site which is relevant due to the importance of context in any assessment;
 - As the site is in a suburban location, it is not subject to the ministerial guidelines for residential development in urban areas, or for urban development and building heights; and
 - Narrative and reference pictures used in the building height guidelines reflect the city centre locations, not the Mount Merrion area.

- **Planning History:**
 - Planning history of residential applications dating from 2002 to 2020 is outlined, several of which have been refused permission;
 - Planning authority refused permission in 2008 for 19 houses, yet has granted permission for the current proposal, which is much greater in scale and density;
 - The two reasons in the refusal of permission for the SHD application continue to apply/ remain valid as the current proposal is similar in scale (in terms of floorspace and principal dimensions, regardless of the decrease in total units), and continues to propose the destruction of bat roosts; and
 - Current proposal continues to be inappropriate in its design, scale, bulk and height (higher than previous refused SHD scheme), is too proximate to adjacent boundaries (closer to some boundaries than the previous scheme), is excessive in tree removal and impact on bats, is unacceptable in extent of overlooking, and causes a negative visual impact on Foster's Avenue (all same as previous).

- **Architectural Heritage and Existing Character of the Area:**
 - Foster's Avenue is a formal tree-lined avenue dating from the mid 18th century, laid out in alignment with St. Helens (Radisson Hotel) to the northeast;
 - Foster's Avenue maintains its original form with wide verges ornamented by roadside trees;
 - 24 Foster's Avenue is a unique building of architectural merit, a landmark building on Foster's Avenue which will be added to the list of protected structures by local councillors;
 - 28 Foster's Avenue is one of several dormer bungalows located midway along the road built by Waites Dormy in the 1950s (elsewhere stated as 1960s) which provide a unique streetscape, form and character;

- Demolition of 24 and 28 Foster's Avenue is an unacceptable loss of dwellings that have architectural merit and positively contribute to the streetscape;
- Existing character of the area is low rise and low density, created by detached family homes of dormer bungalows and two storey houses in a mature suburban setting;
- Existing structures in the site are c.7m-8m in height, and the industrial buildings are particularly discreet being largely invisible from the public road;
- Planning authority decision does not give due regard to the existing character of the area and historical context of the receiving environment; and
- Intended development of oversized apartment blocks would be a serious departure from the established layout.
- Demolition and Site Clearance Works:
 - Dwellings to be demolished have been wastefully neglected and allowed to fall into disrepair;
 - Engineering report condemning the buildings is insufficient comprising only a visual inspection;
 - Health and safety concerns to local residents due to the demolition of the buildings and the proposed removal of large amounts of asbestos containing material (63 tonnes) from the site;
 - Discrepancy in the number of trees in the site (SHD proposal cited 53 trees and the current application cites 83 trees), and the proposal involves the felling and removal of a greater number of trees (51 vs 63);
 - Demolition of 28 Foster's Avenue is counter to draft Development Plan policy objective PHP 19: Existing Housing Stock;
 - Demolishing the two dwellings would set a precedent for other houses on the road to be demolished and replaced with apartments;

- No reference to or condition governing the demolition works for the shared garage structure between 28 and 30 Foster's Avenue;
- Garage structure has a shared roof made of asbestos and it should be conditioned that the applicant replaces the roof, roof joists and other materials of the garage of 30 Foster's Avenue damaged by the unmaintained garage of 28 Foster's Avenue;
- Bats:
 - Demolition and site clearance works (including tree removal) would result in far-reaching destruction of wildlife including EU protected bat species, and the mitigation measures are not an acceptable solution;
 - Demolition works will cause adverse impact on the natural environment (bats, birds, remaining trees, vegetation) through pollution from asbestos material;
 - Development of the site would destroy bat's feeding area by destroying prey insects' cultivation area and through destructive illumination;
 - Proposal will destroy the bat roosts (in buildings), bat habitat and will lead directly to the starvation of bats;
 - Bat Assessment is incomplete, inclusive, and incorrect (eg. surveys of 24 and 28 Foster's Avenue, selection of mitigation measures);
 - Bat mitigation guidelines state that bat boxes are not a substitute for roosts in buildings and no roost should be destroyed until replacement and monitoring undertaken for 2 years;
 - Inconsistent approach to bat protection as the concurrent proposal (PA Ref. D20A/0406, ABP 308770-20) seeks to remove bat roosting sites from the buildings, fell 21 of the 83 trees on site, and put replacement bat boxes in the remaining trees, however the current proposal seeks to fell a higher number of trees, 63 of the 83 trees;
 - ABP refusal reason relating to bats in the SHD application has not been overcome;

- Inconsistencies between the information in the SHD application and current application about the number and species of bats and trees at the site;
- Derogation licence for the proposal, involving bat roost destruction, is invalid as its stated purpose is to protect wild fauna and conserve natural habitats whilst obvious reason is to develop the site; and
- Derogation licence is invalid as it relates to the demolition works associated with the concurrent application, a different project.
- Density of Development:
 - Appellants supportive of a suitable residential development at the site which should consist of two storey houses and/ or two storey duplexes;
 - Proposed density is too high having regard to the existing pattern of development and the density of the established surrounding area regardless of proximity to the N11 QBC;
 - No other similarly dense forms of apartment developments exist within the suburban block bound by Foster's Avenue, St. Thomas Road, and North Avenue;
 - Density is unreasonably high when compared to guidance in the planning guidelines, and those of recent permitted schemes in the area;
 - No amount of revisions such as reduction in units, set backs, and screening will address the fact the proposal is an overdevelopment of the site;
 - Overdevelopment of a suburban infill site which will create a dangerous precedent,
 - Create an undesirable precedent for further high rise, high intensity and high density developments at inappropriate locations in established suburban residential areas; and
 - Estimates of between 136 or 272 new residents accommodated in the scheme using and/ or requiring necessary services in the area.
- Design, Height, Scale and Visual Amenity:

- Efforts of planning authority to address design in northwest corner appreciated but an entirely new location-specific and sympathetic design required;
- Proposal an attempt to force an overly aggressive development into a site unsuited to its scale and bulk;
- Overdevelopment of the site as the blocks pushed out to all site boundaries, including incorporating the streetscape and removing trees lining the road;
- 'Off the peg design' using a cost-effective template for greenfield sites and not a sympathetic bespoke architectural approach for this infill site;
- Proposal has dimensions equivalent to those of the Montrose Hotel;
- Proposal of four storeys in height will tower c.10m above the adjacent single storey bungalows and 1.5 storey houses;
- Proposed building height (described as 4 storeys with 5th storey roof element) is in breach of the CDP Building Height Strategy as site not a large infill site or in a commercial core;
- Design of proposal is inconsistent with that of the receiving environment, its height, bulk and scale are excessive, resulting in serious injury being caused to the visual amenity of the area;
- Proposal bears no relationship to the neighbouring dormer bungalows and two storey houses and is totally at odds with setting of Foster's Avenue;
- Visual impact from the public road is excessive as proposal appears as one continuous block measuring c.60m in width (5m separation distance between Blocks A and B filled in by view of Block C in the background);
- Visual impact is excessive, oppressive, incongruous and overbearing for adjacent residential properties;
- Proposal is forward of the established building line to the west and along the front of the site negatively impacting the existing streetscape;

- Proposal is completely out of character with Foster's Avenue, will be visually jarring, and have a severely adverse visual impact on the streetscape;
- Scale of blocks, 3 and 4 storeys in height with combined widths extending across the site, will dwarf the adjacent dormer bungalows and is wholly out of context with the surrounding environment;
- Photomontages do not include an unbiased series of pictures, being instead the result of careful camera-work, as the proposal's height and bulk are not fully apparent;
- Disputes statement in applicant's landscape and visual impact assessment report that the development would 'not be terribly visible in the neighbourhood';
- Public open space provision in the scheme is inadequate, insufficient, poor quality, overshadowed and unusable; and
- Proposed landscaping of trees along the southern boundary is deficient in elements to adequately screen adjacent properties and the 2m steel fence with timber posts and seats with planters is a safety and security concern.
- Residential Amenity:
 - Significant impact on 30 Foster's Avenue due to proximity to boundaries (stated as 6m at front and 5.7m at rear) and breaking of front building line;
 - 30 Foster's Avenue will suffer a serious degree of overbearance, morning sunshine cut off, shade across garden, and loss of privacy;
 - Obstruction of sunlight and overshadowing to many houses is unacceptable, particularly of 30 Foster's Avenue given the height of the proposal;
 - All properties to the west will be overlooked (by windows, balconies, roof terraces of the proposal) and the use of planters and hedging cannot be regarded as a permanent solution;

- Due to siting of Block C, adjacent properties to the south (21, 23, 25 and 29 St. Thomas Road) will be overlooked, suffer a visually incongruous eyesore, and an increased intensity of use, noise and light disturbance;
 - No line of Macrocarpa trees at the end of the garden of 25 St. Thomas Road and intention to cut overhanging vegetation will further expose southern properties;
 - Destroy the ability of neighbouring properties to enjoy their homes due to unacceptable extent of overlooking and the overbearing nature of the proposal;
 - Detrimental impact on the enjoyment of, and interference with the amenity of, the homes and gardens of adjacent properties;
 - Windows, balconies, terraces of the apartments in the blocks face the adjacent boundary properties as opposed to being orientated to be within the proposed development;
 - Alternative design for the apartments facing an inwards courtyard with no balconies overlooking the adjacent properties should have been proposed;
 - Concern for the proposal's impact on trees and their roots systems located within 29 St. Thomas Road, adjacent to the site's southern and western boundaries which provide a considerable amount of screening;
 - Unacceptable construction impacts on existing residents arising from the extent of excavating, piling, and build-time;
 - Close proximity of the blocks to each other and the site boundaries will undoubtedly impact on the quantity and quality of daylight and sunlight for future residents; and
 - Future residents of apartments at ground and first floor levels along the southern/ southwestern boundary will have very limited daylight/ sunlight, poor quality private amenity spaces, and poor outlook from their living accommodation due to the steeply rising ground and tree cover.
- Traffic and Transportation:

- Foster's Avenue is a regional road, a major arterial route for city commuters, already experiencing high traffic flow rates (causing traffic queues to the N11 junction) especially at peak morning and evening periods;
- Proposal will further add to traffic congestion, cause a deterioration in the situation, create additional dangers on this extremely busy road, and result in more vehicles using side roads for alternative access routes and overspill parking;
- Exiting cars will not be able to turn right towards the N11 (due to Foster's Avenue being busy) and will therefore turn left and travel through surrounding adjacent residential streets;
- Front building line of Block A protrudes beyond the established building line of properties to the west with direct implications for adjoining properties' line of visibility when existing onto the public road;
- Car parking provision of 85 spaces for 136 potential residents is wholly inadequate;
- Questions the control and management of emergency vehicle access route and the cyclist/ pedestrian access to the cycle parking lift;
- Proposal granted permission without an operational traffic management plan, a construction and demolition traffic management plan, or proposals to address illegal on-street parking by construction workers, and subsequent residents and visitors; and
- Insufficient access for fire tenders, particularly the apartments in the south of the site.
- Water Services and Utilities:
 - Known deficiencies in the public sewer system due to insufficient capacity and deficient discharge rates;
 - Concern that due to insufficient capacity there could be failure to discharge sewage from southern properties and that a backup would occur;

- Irish Water letter clearly cannot confirm that there is capacity in the system for c.136 residents (estimated number is based on bedspaces);
- Heavy rainfall gushing from higher streets causes localised flooding on the public roads;
- Flooding potential will increase due to the proposed tree removal, topsoil stripping, and ground excavations;
- Trimelston Stream runs underground at the rear gardens of Foster's Avenue/ St. Thomas Road before existing at Booterstown Marsh, a protected nature reserve; and
- Local knowledge of a substantial stream flowing underground of the site and construction works including foundations may negatively affect the stream and water table.
- Procedural Items:
 - Under section 37(5) of the Planning and Development Act 2000, the planning authority had no jurisdiction to grant permission for the proposed development as an application for the same development had been appealed (PA Ref. D20A/0406, ABP 308770-20);
 - Existence of two applications for the demolition and site clearance works is invalid, has no basis in law, and amounts to project splitting to avoid cumulative impact assessments, mislead, create confusion, and/ or cause fatigue;
 - Legal entitlement of the applicant to make the application is questioned in respect of a strip of land between the public footpath and the perimeter wall of the front of the site, as planning authority correspondence states this area is not in its ownership;
 - Queries the inclusion of the public footpath and grass verge along Foster's Avenue in the site layout as this is the public realm;
 - Board should find the northern boundary of the site to be arbitrary, incorrect, and misleading;

- Description of development was incorrect (number of 1 and 2 bedroom units), therefore the floor areas cannot be relied upon, and there is a misleading reference to Block D;
- Initially lodged contiguous elevation drawings have errors which should be amended;
- Planning authority has incorrectly concluded that the need for EIA can be screened out as there is a real likelihood of significant effects on the environment as the project entails bat roost destruction and removal of 60t of asbestos containing material; and
- Planning authority has acted ultra vires as Conditions 2-4 require material revisions to the project which have not allowed public participation, and the EIA and AA screening assessments are flawed as not based on the final decision.
- Other Matters:
 - No engagement with owners of neighbouring properties to the west;
 - Concerns raised in third party submissions were noted but largely discounted by the planning authority's final decision;
 - Large number of conditions in planning authority's decision have to be complied with which leaves open the probability of disputes;
 - Concerns that particulars in the application indicate adjacent properties to the west (30 and 32 Foster's Avenue) developed as three storey apartment development;
 - Cause a devaluation of adjacent properties, including an estimation of €500,000 for 23 St. Thomas Road;
 - Proposal does not address the emerging post-Covid work from home context where people are seeking to purchase houses with office space not apartments;
 - Largescale apartment schemes in the wider area are very expensive (not serving new families or even down-sizers) and have not sold (no demand as people want houses);

- Proposed development will not address the housing crisis as whole apartment schemes are acquired by a (named) investment fund that rent the units, and are known to drive up rental prices in south County Dublin; and
- Local residents have experienced years of worry and lost peace of mind due to continual harassment of overzealous developers and plans to develop the site.

6.2. Responses to Appeals

First Party Response

6.2.1. A response to the third party grounds of appeal has been received from the applicant, and the main issues raised can be summarised as follows:

- Zoning and Classification of Site:
 - New residential development is a permissible use class under the 'Objective A' zoning;
 - Sufficient regard has been given to protecting the residential amenity of adjacent properties which are similarly zoned 'Objective A';
 - Site can be described as both infill and brownfield for assessment purposes as policy context supports consolidation of both underdeveloped and underutilised lands; and
 - Policy on transitional zoning not applicable to the case as the site and surroundings lands are all zoned as Objective A.
- Architectural Heritage and Existing Character of the Area:
 - Incorrect conclusions drawn about historical development and heritage context of Foster's Avenue, its relationship with St. Helen's, and the site being part of the Garden City influenced development;
 - 24 Foster's Avenue was constructed by the Ralph family who maintained an adjacent area as a market garden or nursery (i.e. the majority of the site);

- This garden area, developed in the 1950s as an industrial estate, has been at odds with the historical pattern of residential development along Foster's Avenue and St. Thomas Road at that time;
- Architectural Heritage Assessment concludes 24 Foster's Avenue has no architectural features that warrant its protection and/ or retention;
- Planning authority confirms 24 Foster's Avenue is not a candidate for the RPS in the new Development Plan;
- Proposal will have little or no impact on the historical qualities of Foster's Avenue as tree-lined avenue (two trees being removed are being replaced), vistas to/ from, and long views along (in which residences are not visible) remain unaffected; and
- Blocks are visible in direct views on Foster's Avenue but the scale of these cannot be said to be out of keeping with the sheer scale of Foster's Avenue itself (which is 20m wide with road, paths, and verge).
- Demolition and Site Clearance Works:
 - Existing buildings on site are vacant, semi-derelict state, gone beyond repair and are detracting from the amenities of the area;
 - Demolition is necessary and justified due to their poor condition and for health and safety reasons;
 - Arboricultural Assessment is an accurate tree survey and assessment, any discrepancy in number of trees on site from that in the SHD application arises from information in the latter application; and
 - Preliminary Demolition Management Plan included in appeal outlines the treatment of 30 Foster's Avenue semi-detached garage during/ after demolition of garage in 28 Foster's Avenue.
- Bats:
 - Large volume of information and survey work gathered over three years on bat populations at the site;

- Information gathered indicates the site is principally being used for commuting activity to the main foraging areas in UCD, rather than for foraging and roosting;
- Three roosts were identified for individual bats, appropriate mitigation measures were designed reflecting the status of the roost, which includes the provision of bat boxes;
- Buildings at 24 and 28 Foster's Avenue were surveyed, and no bat roosts were recorded;
- Derogation licence for 26 Foster's Avenue, where bats were confirmed to be roosting, was granted on 28th September 2020 and applies until 1 October 2022; and
- Appellant's contention that the derogation licence is invalid as it was provided for the concurrent application is refuted as the obligation to hold a derogation licence is separate to the planning process.
- Density of Development:
 - Area of public realm has not been included in site area for density calculation purposes;
 - Densities of other referred-to developments are not applicable comparisons as those have significantly more units;
 - Proposed density complies with CDP RES3 which promotes minimum densities of 50 uph within 500m of a QBC;
 - Proposed density also in line with national policy context in the Building Height and Apartment Guidelines which encourage compact growth and higher densities at accessible locations; and
 - Planning authority accepted the proposed density as being appropriate for the site.
- Design, Height, Scale and Visual Amenity:
 - Proposal has been developed and refined in response to its context and sympathetic to its setting;

- Design and layout informed by planning history with use of blocks instead of a single building, in stepped arrangement with appropriate setbacks and transitions in scale to boundaries;
- Proposed building heights comply with CDP UD6 and the proposal satisfies the terms of the Building Height Strategy for upwards modifiers;
- Proposed heights also comply with the national Building Height Guidelines and the 'scale of' development management criteria for the purposes of SPPR 3;
- Planning authority accepted a maximum of 4 storeys as being appropriate for the site;
- Refused SHD proposal was for a 4 storey and partial 5 storey building (principal heights 13.8m and 15.8m respectively), while the current proposal is for blocks predominantly 3 storey (10.65m) and partial 4 storey (12.6m) as the higher pitched roof elements are for visual interest and not adding an additional storey;
- Comparison of floorspaces between the refused SHD proposal and the current scheme is inaccurate, as the former is 11,030 sqm including basement level and latter is 10,782 sqm including basement level;
- More appropriate comparison necessary between the above-ground floorspaces for the SHD proposal (10,580 sqm) and the current proposal (originally submitted 7,713 sqm, reducing to 7,599 sqm at SFI stage, and reducing to 6,475 sqm in first party appeal);
- Comparison to the Montrose Hotel is dismissed as not being an appropriate comparison in terms of use, design, scale and context;
- Separation distances are adequate and in urban contexts to be balanced with need for compact growth, increased density, greater building heights, and streetscape improvements;
- Appellants have generated images (approximate height and trees removed) which are not verified (i.e. professionally prepared) and cannot be relied upon;

- Photomontages of the proposal (updated in accordance with revisions) are accurate, verified, and illustrate there is no significant undue visual impact;
- Almost half (2,920 sqm, c.50%) of the site comprises connected landscaped areas and planting, of which 1,780 sqm is usable public open space;
- Quantitatively, provision exceeds the CDP (10%) and apartment guidelines requirements;
- Qualitatively, high quality hard and soft landscaped areas with a range of functions including the woodland garden, communal terrace, eco garden, and natural play space;
- Proposed revision to Condition 3 results in additional open space enhancing the connection between the central courtyard and woodland garden; and
- Daylight and sunlight assessment indicates that all the amenity spaces are well orientated and over 75% of open space achieves the recommended 2 hours sunlight on the 21st March.
- Residential Amenity:
 - SFI response included revisions which addressed overlooking and loss of privacy concerns for adjacent properties to the west (30 Foster's Avenue) and to the east (1 and 2 The Fosters);
 - First party appeal includes plans indicating the requirements of Condition 2 for the western elevation of Block B with only high-level windows remaining;
 - Due to the separation distances, changes in level, and/ or screening there will be no undue impact on the residential amenity of properties to the west (further than 30 Foster's Avenue which have been addressed in revised designs) or those to the south;
 - Noise impact assessment with the application indicates balconies are at distances comparable to typical residential settings;

- Daylight and sunlight assessment (updated in accordance with revisions, including in the first party appeal) indicates a minor reduction in sunlight to some windows of the most proximate eastern and western properties; no reduction in sunlight for the southern properties which are within the zone of influence; and, for the proposed development, the apartments and amenity spaces meet the recommended standards.
- Trees in adjacent southern properties will not be adversely impacted as these are located on higher ground and supported by the retaining wall, therefore their roots do not extend into the site and Block C is setback c.10m from the trees;
- Security concerns arising from landscaping proposals on the southern boundary are unfounded as terraced planter is only proposed against the retaining section of the existing boundary and the existing freestanding boundary wall is retained with gaps infilled with timber fencing;
- Residential amenity protected during the construction phase through implementation of mitigation measures included in the submitted CEMP (appendices include an Outline Demolition Plan and an Asbestos Survey Report), and the Traffic Management Plan, and/ or as required separately to be agreed with the planning authority by conditions; and
- Future residents will have the level of residential amenity provided for by the Apartment Guidelines as all minimum standards are met and/ or exceeded.
- Traffic and Transportation:
 - Proposal will not generate a material impact on the performance of the Stillorgan Road/ Foster's Avenue junction;
 - Proposal has no impact on neighbouring existing visibility splays/ sightlines and visibility splays/ sightlines for the proposed entrance comply with DMURS requirements for 50kph limit;
 - St. Thomas Road does not provide drivers a shorter travel distance (in comparison with more convenient routes along Foster's Avenue and North Avenue);

- The TTA analysis predicted no driver to/ from the proposal would use the St. Thomas Road route as an alternative, and therefore traffic surveys of the road were not commissioned for the TTA;
 - Illegal on street parking refuted as 2 set down spaces (use/ operation of spaces will be managed) are considered sufficient to serve the proposal and 7 basement spaces are provided for visitors;
 - TTA does not include the UCD student residences development referred to as no additional car parking provision is being delivered due to the existence of a parking cap in the campus;
 - 87 car spaces provided for scheme with 68 apartments (1.2 spaces per unit) which is considered sufficient due to site being an accessible urban location, proximity to public transport corridor, quantum of bicycle parking spaces, and implementation of a Mobile Management Plan; and
 - Confirmation that a fire tender vehicle can access and be accommodated within the site.
- Water Services and Utilities:
 - Incorrect interpretation that Irish Water cannot confirm the wastewater system has capacity as the Confirmation of Feasibility does so;
 - No evidence put forward that proposal will have a negative effect on flooding in the area;
 - Proposal will positively result in existing surface water runoff being reduced to greenfield runoff rates and the rate of existing surface water entering the combined sewerage system being reduced by a factor of 3; and
 - Thereby providing adequate capacity in the existing sewerage sewer for the proposed foul discharge.
- Procedural Items:
 - Application is valid as Section 37(5) of the Act does not apply as the concurrent application was not subject of an appeal at the time of making the current application;

- Development descriptions of the two applications are materially different, the planning authority accepted the current application as valid; and
- Board is not legally precluded from determining the current appeal.
- Land registry search has been undertaken and did not identify owner of public realm area along the northern site boundary;
- Public realm (roadway, footpath and verge) is under the control of the planning authority;
- Facilitating works proposed include those within the statutory powers/ functions of the planning authority; and
- Standard practice in cases involving such works for the planning authority to submit a consent letter of the type provided.
- Acknowledged errors in the description of development, application form, plans have been addressed in the documentation provided to date;
- Block D is confirmed as the communal amenity building;
- Notwithstanding post Covid 19 working context, the proposal meets and/ or exceeds all requirements in the Apartment Guidelines;
- Standard and accepted practice for planning authorities to impose conditions requiring alterations to applications where they are considered necessary;
- Planning authority has not acted ultra vires attaching amending Conditions 2-4 as these address/ reduce the impact of the development on residential amenity of adjoining properties/ in environmental terms;
- Refutes the requirement for EIA as the impacts on bats and removal of asbestos material have been fully considered and addressed (Bat Assessment and Asbestos Survey (which informed/ included in the CEMP and CDWMP));
- No project splitting, the cumulative impacts of the demolition works and the residential development have been considered, and there is no gap in the EIA screening;

- Planning authority's EIA and AA screening determinations are valid as the amending conditions could not affect the conclusions of the AA Screening, or of the EIA Screening as the number of units has decreased; and
- Board will undertake its own EIA and AA screenings of the project with all revisions considered.
- Documentation supporting the appeal response includes:
 - Appendix 3: DBFL Consulting Engineers (engineering response on matters of demolition and construction (including information on treatment of semi-detached garage, and a Preliminary Demolition Management Plan with a Traffic Management Plan and the Asbestos Survey Report); drainage and flooding; and traffic and parking;
 - Appendix 4: BSM Built Environment (landscaping and biodiversity response on matters of visual impact, public open space, arboricultural assessments, building height and ecological appraisal, and AA Screening);
 - Appendix 5: Bat Eco Services (bat specialist response on matters of bat habitat, bat boxes, bat roosts, derogation licence, and mitigation measures);
 - Appendix 6: Historic Building Consultants (heritage response on site development and impact on Foster's Avenue); and
 - Appendix 7: Digital Dimensions (specialist response on daylight and sunlight matters for the scheme as granted and with revised Condition 3).

Third Party Response

6.2.2. A response to the first party appeal has been received from one third party appellant, which also refers to other third party appeals. A number of issues raised in the response are reiterations of issues raised previously in the third party grounds of appeal (which I have summarised above). The main issues raised on the first party appeal can be summarised as follows:

- Plans submitted seek changes to proposed Block B arising from Condition 2 which have not been publicly notified and therefore should be rejected;
- Requested Revised Condition 3:

- Revised landscape plan again illustrates how ill-conceived the scheme is; and
- Agrees that the revised condition is more pragmatic but does not enhance the scheme.
- Requested Omitted Condition 4:
 - Proposal now for waste collection trucks to be driven onto open space to turn around should be dismissed as the low quality open space would be further degraded;
 - Concedes over-development of the site, making it spill out onto the public realm; and
 - Further injury to residential amenity and a threat to public safety.

6.3. **Planning Authority Response**

- 6.3.1. A response was received from the planning authority stating that the grounds of appeal do not raise any new matter which would justify a change of attitude to the proposed development.
- 6.3.2. The planning authority has not commented on or assessed the applicant's proposal to revise Condition 3 (with implications in architectural design, potential overlooking, quantum/ quality of public open space) and/ or omit Condition 4 (with implications in basement access, traffic safety, and servicing).

6.4. **Observations**

There are no observers on the appeal.

6.5. **Further Responses**

- 6.5.1. Further responses (section 131 submissions) were received on the applicant's response to the appeal grounds from 10 third party appellants.
- 6.5.2. A number of issues raised in the further submissions are reiterations of issues raised previously in the third party grounds of appeal (which I have summarised above). The main issues raised in relation to newly submitted information can be summarised as follows:

- Refutes the manner in which the applicant has interpreted, summarised, and described the third party appeals, described as self-serving;
- Bats:
 - Destruction of bat roosts is an activity generally prohibited under Article 12 of the Habitats Directive;
 - Roost destruction cannot be mitigated by use of bat boxes or alternative artificial roosts as the only mitigation possible under EU law is to avoid entirely the prohibited destruction;
 - Bat assessment is inconclusive about the presence of bat roosts in 24 Foster's Avenue and 28 Foster's Avenue and therefore there is potential for bats to return to these structures;
 - Application must be rejected as it is based on a derogation licence which is:
 - granted for the demolition works (a different project that did not consider the construction works),
 - granted for the stated purpose of protecting wild fauna and conserving natural habitats (not for the purpose of carrying out demolition works and destruction of bat resting places), and
 - invalid as it does not identify and is not strictly limited to particular roosts that are licenced for destruction (as per the Finnish Wolves case).
- Design, Height, Scale and Visual Amenity:
 - Refutes the applicant's position that the blocks are a maximum of 4 storeys in height, as they are instead 5 storeys in actual height and visual impact terms;
 - Dismisses the rationale for the pitched roof elements (cupolas) as being for 'visual interest' as these cause the blocks to be higher than the refused SHD application, to be visible, overbearing, intrusive, and detract from amenity of adjacent properties; and

- Building Height Strategy recommends two storey height in Mount Merrion and only if there are no detrimental effects may additional height be acceptable.
- Residential Amenity:
 - Adverse impact on southern properties from Block C have not been addressed;
 - Overlooking (orientation of balconies, no planters or upstands proposed, no landscaped screening possible on boundary due to proximity of building),
 - Overshadowing and noise disturbance (assessments indicating impacts typical/ acceptable not accepted);
 - Security concerns (terracing allows unauthorised access); and
 - Damage to trees and their root systems located along the southern boundary but within adjacent properties.
- Traffic and Transportation:
 - No surveys of St. Thomas Road have been undertaken so it is impossible to predict 'very little if any' use of the road, the local experience is of increased short-cut use and predicted car parking by non-residents.
- Procedural Items:
 - Planning authority decision to validate the application is currently being disputed;
 - Development descriptions in the two applications are the same and not materially different; and
 - Incorrect information has been provided in the planning application form and applicant does not have sufficient legal interest to make the application.

7.0 Planning Assessment

7.1. Introduction

7.1.1. Having examined the application and appeal documentation on the case file, including the planning authority reports, submissions received from third parties and prescribed bodies, having inspected the site, and having regard to the relevant national, regional, and local policies and guidance, I consider that the main issues in this application are as follows:

- Principle of Development;
- Demolition Works and Architectural Heritage;
- Residential Density and Population;
- Design, Layout and Public Realm;
- Building Height and Visual Amenity
- Residential Amenity of Proposed Properties;
- Residential Amenity of Adjacent Properties;
- Biodiversity and Green Infrastructure;
- Traffic and Transportation
- Water Services and Utilities;
- Procedural Matters; and
- Appropriate Assessment.

I intend to address each item in turn below.

7.2. Principle of Development

7.2.1. As outlined above in Section 5.4 Local Planning Context, at the time the planning application was lodged and appeals made, the Dún Laoghaire Rathdown County Development Plan 2016-2022 (2016 CDP) was in effect. The application and appeal documentation both cite/ refer to policy/ objectives in the 2016 CDP. In the interim, the Dún Laoghaire Rathdown County Development Plan 2022-2028 (2022 CDP) has come into effect and is the applicable CDP for the assessment of the appeal case.

7.2.2. Where necessary, I will refer to policy/ objectives in the 2016 CDP and, where applicable, I will identify the same or similar policy/ objectives in the 2022 CDP. I highlight to the Board that the site continues to be zoned for residential use, there

are no new designations pertaining to the site or buildings therein (e.g. protected structures, architectural conservation area, tree preservation orders, protected views), and the Building Height Strategy (Appendix 5 of the 2022 CDP) continues to recommend a building height of 3 to 4 storeys at locations such as appeal site.

7.2.3. In the current CDP, the site is zoned as 'A' with the stated objective '*To provide residential development and improve residential amenity while protecting the existing residential amenities*'. Under Zoning Objective 'A', the proposed development, comprising the demolition of buildings, site clearance works, and the construction of an apartment scheme, is a permitted use class (residential). The principle of development is acceptable therefore subject to the detailed considerations in the following sections.

7.2.4. In the grounds of appeal, appellants question the classification of the site for assessment purposes. Third parties dispute whether the site is infill or brownfield, submit that the location is suburban as opposed to urban and imply that the development of the site is not subject to national planning guidelines in respect of residential density and building height. While I accept these terms are somewhat interchangeable, there are implications for the assessment of the proposal. As discussed below in Section 7.4 (in terms of density) and Section 7.6 (building height), in short, the site is an infill site located in a built-up area (i.e. urban) outside of Dublin City centre (i.e. suburb) and its development is subject to national policy.

7.2.5. Also raised in the grounds of appeal is that the proposal does not accord with 2016 CDP policy in Section 8.3.2 on Transitional Zonal Areas (an equivalent policy is 2022 CDP Section 13.1.2 Transitional Zonal Areas). This policy is not applicable to the appeal case as it refers to different abutting zonings (the site and abutting lands are Zoning Objective 'A') as opposed to abutting developments (i.e. existing residences and the disused industrial complex at the site).

7.2.6. For clarity, I determine that the proposal has no impact on/ does not prejudice the achievement of map based SLO 4 and/ or the setting of the entrance gate, RPS 94.

7.3. Demolition Works and Architectural Heritage

7.3.1. The proposal comprises the demolition of the buildings within the site, with facilitating works including the removal of subsurface infrastructure, front wall boundary, trees, and hedges. The appellants strongly oppose the demolition of the buildings within

the site, citing the unjustified demolition of dwellings, the heritage value of the buildings, and the resultant alteration to the historic character of the streetscape. I propose to address these issues in turn.

Demolition of Dwellings

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

Objective PHP 19 due to densifying an existing built-up area through an infill development, the design of which, as considered below in Section 7.8 (in terms of residential amenity), has had regard to existing residential amenities. In my opinion, the demolition and replacement of the dwellings does not warrant a refusal reason in and of itself.

Heritage Value of Buildings

- 7.3.5. The grounds of appeal state the buildings have a heritage value and their demolition should not be permitted. From the available information, 24 Foster's Avenue is a 1930s detached three storey dwelling, 26 Foster's Avenue comprises 1950s industrial buildings, and 28 Foster's Avenue is a 1950s Wates Dormy designed detached dormer bungalow with a semi-detached garage. A number of appellants state that 24 Foster's Avenue was going to be placed on the record of protected structures (RPS) of the then draft 2022 CDP. It is also submitted that the proposal is a material contravention of CDP Policy AR5: Buildings of Heritage Interest (an equivalent policy is 2022 CDP Section 11.4.3.2, Policy Objective HER 20: Buildings of Vernacular and Heritage Interest).
- 7.3.6. I note that the planner's report states that no issues or concerns were raised in the planning history cases in respect of the proposed demolition works. The buildings are stated as not being protected structures in the 2016 CDP, nor proposed protected structures in the then draft 2022 CDP, and are not on the NIAH (specifically 24 Foster's Avenue). There is no report from the Conservation Officer in respect of the buildings, and the planner finds their demolition to be acceptable. I note that the planning authority's response to the appeal states that the grounds of appeal do not raise any new matter which would justify a change of attitude to the proposed development.
- 7.3.7. The application is accompanied by an Architectural Heritage Assessment, in respect of 24 Foster's Avenue, and an Archaeological Assessment in respect of the full site. Of the former assessment, the report comprises historical background, detailed descriptions of the exterior and interior with associated photographic records. From my site inspection, I confirm these to be an accurate reflection of the property. The report notes the dwelling has been extended on a number of occasions, with mixed results structurally and in terms of architectural style. The decorative style of the

house has three features (use of wrought iron, dark timbers, and Adamesque plasterwork) which are described as clashing. The report concludes the house is unusual but there is nothing about the style, design, or construction of the building to warrant its protection; a conclusion with which I concur. Of the latter assessment, there are no archaeological features at the site, the lands have been previously disturbed/ developed, and there are no issues arising in respect of archaeological heritage.

- 7.3.8. I have reviewed the 2022 CDP and confirm that none of the buildings within the site, including 24 Foster's Avenue, are included in the RPS. In this regard, I concur with the planning authority and applicant, and I consider that the structures are not of sufficient architectural heritage value (i.e. not uniquely distinctive or examples of vernacular buildings as per Policy Objective HER 20; nor exemplar 19th and 20th century buildings as per Policy Objective HER 21) to justifiably refuse permission for their demolition and replacement. The site, and structures therein, lend themselves to modern redevelopment and a more efficient use can be gained from the assembled serviced lands. In this instance, I consider the proposal satisfies the provisions of CDP Section 12.3.9, and in turn, is not a material contravention of Policy Objective HER 20 as claimed in the appeal grounds.

Historic Character of the Streetscape

- 7.3.9. The appellants refer to the historic development of Foster's Avenue and object to the demolition of the buildings due to their contribution to the historic streetscape and their role in defining the character of the area. In response, the applicant submits certain historic references are incorrect, and that the historical qualities and streetscape value of the Avenue (tree lined, with vistas and long views, of an imposing scale (length and width)) are unaffected by the proposal.
- 7.3.10. I do not consider the buildings within the site or the front boundary wall to form a distinctive streetscape. The boundary wall includes rendered blockwall with steel gates, the detached dwellings are intermittingly visible from the public road, do not directly address the public realm being set back within their properties, with significant separation distances between the building forms. The industrial buildings are not visible from the public road and make no contribution to the streetscape. There are two trees (Tree 3 and Tree 1) in the grass verge opposite 26 and 24

Foster's Avenue respectively, that are proposed to be felled due to site facilitating works and will be replaced. In the Arboricultural Assessment, these trees are classified as Category U and C, the lowest values, and I consider their felling and replacement to be acceptable having regard to their status and overall supplementing landscaping plan.

- 7.3.11. CDP Section 12.3.7.7 requires infill development to retain the physical character of the area, such as boundaries, trees, and landscaping, and Policy Objective HER 20 seeks to retain features that make a positive contribution to the character and appearance of the area and streetscape. However, these policies are particularly applicable for infill sites which exemplify Victorian era to early-mid 20th century suburban 'Garden City' planned settings and estates, and infill sites that have such features. The appeal site does not exemplify such settings, nor contain features which make a uniquely positive contribution to the character of the area and streetscape. On balance, I find the demolition works to be acceptable and to not adversely impact the streetscape through loss of historic fabric, replanted trees, or altered vistas.

7.4. Residential Density and Population

- 7.4.1. The site area is indicated as 0.6547 ha, including 0.6 ha owned by the applicant and 0.547 ha under the control of the planning authority. The latter area corresponds with a rectangular strip enclosing the public footpath/ grass verge on Foster's Avenue. The applicant states that this area is excluded for the purposes of calculating the residential density of the scheme. The proposed development, as granted permission, comprises 67 apartments, representing a residential density of 112 dwellings per hectare (dph). The first party appeal seeks an increase in the total number of units by one to 68 apartments, increasing the residential density marginally to 113 dph.
- 7.4.2. In its decision, the planning authority accepts that the density of the scheme is higher than the existing density in the area but considers it appropriate due to the site's location within 500m of the Stillorgan Road QBC, citing Policy RES 3: Residential Density of the 2016 CDP (an equivalent policy is 2022 CDP Policy Objective PHP 18: Residential Density), and national policy on compact growth and efficient use of residentially zoned lands. Conversely, the appellants strongly object to the density

of the proposed development, citing concern for the increase in population in the area, with reference to permitted higher density developments in the wider area, and the demand on services and facilities. The applicant states the density is appropriate and complies with applicable national policy.

Density Guidance

7.4.3. With regard to guidance on residential densities, I consider the following planning policy to be applicable to the development of the site due to its being:

- Sustainable Residential Development Guidelines: a residentially zoned, infill site, in a city (built up area), less than 500m from a public transport corridor which is appropriate for increased residential densities, minimum net 50 dph;
- Apartment Guidelines: in an 'accessible urban location' (due to its being within the required walking distance of c.400-500m from high frequency bus services (QBC) and of c.1,000-1,500m from a third level institution (UCD) which is appropriate for apartment development (which can be large scale, high density of more than 45 dph, and apartments-only in typology);
- NPF and RSES: located within the NPF's 'Dublin City and Suburbs' area and the RSES' MASP area which require more efficient and sustainable patterns of development with consolidated growth achieved through higher densities and increased building heights; and
- 2022 CDP: an infill site which is appropriate for increased housing supply and urban growth achieved through consolidation, intensification and encouragement of higher densities whilst balancing existing residential amenities and the established character of areas with the need to provide for sustainable development.

7.4.4. There is no upper limit on residential densities at locations such as the appeal site. The policy context requires the efficient use of serviced, accessible lands that are well served by public transport, balanced with consideration of the character of the area and the residential amenity of adjacent properties. I consider that the site is relatively unique in the Mount Merrion area (from a review of the Residential Development Capacity Audit map in the 2022 CDP), is suitable for densification, and is of a scale that can deliver of a notable quantum of new dwellings.

7.4.5. As discussed further in Section 7.5 (in terms of design and layout), I consider the applicant's proposed revision to Condition 3 reinstating a ground floor apartment in Block C to be acceptable, therefore in the event of a grant of permission, the proposal will comprise 68 apartments yielding a residential density of 113 dph. I find the density of the proposed development to be in accordance with national, regional and, as discussed further in Section 7.8 (in terms of residential amenity), local policy (i.e. Zoning Objective 'A' and Policy Objective PHP 18: Residential Density).

Population and Social Infrastructure

7.4.6. In respect of the potential population increase, appellants submit there will be between 136 and 272 people residing in the scheme. From the information in the applicant's Schedule of Accommodation (as per the first party appeal) and a review of the floor plans, I estimate there will be 255 residents (18 in 1 bedroom units (2 persons), 3 in a 2 bedroom unit (3 persons), 216 in 2 bedroom units (4 persons), and 18 in 3 bedroom units (6 persons). In the event that the Board concurs with my recommendation to reinstate a 2 bedroom unit (4 persons) in Block C (as per Section 7.5 of this report) and to redesign the largest 11 2 bedroom units to 3 bedroom units (5 persons, note: while the proposed 3 bedroom apartments are designed for 6 persons, the guidelines indicate 5 persons) (as per Section 7.7), this estimation increases to 270 persons.

7.4.7. Appellants raise concerns in relation to a population increase and the resultant demand on facilities and services, though no evidence of capacity issues in the local social infrastructure is provided. From a review of the case documentation, the planning register, the 2022 CDP, travelling in the wider area, and my site inspection, I consider the area to be mature with an established range of economic services, facilities, public transportation, education, recreation, and leisure opportunities available. I consider that the demands arising from the proposal will be accommodated into the established urban area without significant impact. Due to the often market driven nature of service provision, I do not consider the resultant demand on social infrastructure in the area to be a substantive issue for the proposal.

7.4.8. The proposed development includes a communal amenity building for residents. I consider the inclusion of this space, with kitchen and toilet facilities, to be a positive

design feature and to contribute to the amenities of future residents and to the area. The proposed development is subthreshold for a standalone childcare facility.

- 7.4.9. In conclusion, I consider that proposed development comprises an appropriate density having regard to the location and context of the site, and guidance in respect of density and efficient use of finite resources. I consider that the number of units being provided and the potential population increase are in accordance with the planning policy context, and appropriate given the site's infill nature in this built up and serviced area in the County. Supporting services and facilities to serve the population are provided and will continue to be.

7.5. Design, Layout and Public Realm

- 7.5.1. The overall design approach to the proposal has been determined by the site context and responding to key site characteristics. The context is the site as an infill site with existing low rise, low density residential development surrounding on three sides, with limited opportunities for access and permeability through the site. The key characteristics include the disused buildings, extensive tree/ vegetation cover and the presence of protected bats species.
- 7.5.2. The grounds of appeal include strong objections to the design, layout, public open space, building height, and visual impact of the proposed development. While there is a degree of crossover between these grounds of appeal, I propose addressing the substantive issues of design and layout in this section, and building height and visual amenity in the following Section 7.6.

Design

- 7.5.3. The proposal comprises four detached buildings (Blocks A, B, C (apartments) and D (communal amenity building)). The apartment blocks increase in size from Block A (principal dimensions include width c.23.8m, depth 23.4m, floorspace c.1,417 sqm), to Block B (w. c.26.2m, d. c.35.4m, c.2,387 sqm), to Block C (w. c.44.3m, d. c.28.9m, c.2,572 sqm (inclusive of reinstated apartment)). Block D is a smaller ancillary single storey structure (w. c.9.3m, d. c.16.3m, 99 sqm). While the apartment blocks feature slight variations in height due to design (part-1 to part-3 storey), fundamentally the blocks are 4 storeys in height (c.12.6m to flat roof plane and c.16.65m to pyramid hipped roof/ roof lantern apex which contains penthouse level accommodation).

- 7.5.4. The apartment blocks are similar in architectural design with the use of rectangular forms with slight modulations through stepped building heights and staggered building lines, consistent design of roof profile with 3rd storey flat roof plane and a set-back pyramid hipped roof at 4th storey, simple elevational treatment of fenestration, entrances, balcony and screening arrangements, and consistent use of external finishes (rhythmic combinations of red (dark) and/ or white (light) brick for walls, neutral zinc cladding on the hipped/ roof lanterns, reconstituted stone string coursing and anodised cladding in elevations, painted galvanised steel frames with glass for balconies, green roofs). In my opinion, the architectural design of the blocks is well considered, a modern expression of the apartment typology, with high quality design details and finishes, and is acceptable.
- 7.5.5. A complimentary design approach is used for Block D, the communal amenity building. The block has simple building proportions, elevational features (windows, doors), pyramid hipped roof profile, and a similar range of external finishes (red brick, zinc cladding) to those of the apartment blocks. I consider the design of Block D to be an appropriate architectural expression for this ancillary use with a higher proportion of glazing to wall plate in the western elevation which addresses the public realm (the Communal Garden Terrace area) and solid block wall on the eastern elevation adjacent to the shared site boundary.
- 7.5.6. From a review of the contiguous/ streetscape drawings of the proposal, the buildings relate well to each other, being complimentary and not overly dominant. The buildings feature sufficient modulations in massing and external finishes, in particular the alternate brick finishes, to create variety and interest, whilst being sufficiently consistent in proportions and elevational treatment to ensure a balanced and cohesive scheme. I consider there to be a meaningful design relationship between the buildings, with each element contributing to the overall character of the scheme. I believe the design approach taken, where regard has been given to creating a coherent scheme within the site whilst also having due regard to its surrounding context to be an appropriate solution for this infill site.
- 7.5.7. In the first party appeal, the applicant requests Condition 3, relating to the southeastern corner of Block C, be revised. The applicant submits that through omitting Unit C.GF04 and Unit C.0104 at ground and first floor levels respectively, an overhang is created at the upper floor levels in the southeastern corner of Block C.

The applicant accepts the omission of Unit C.GF04, but requests revisions are made to Unit C.GF05 (the ground floor unit adjacent to the west of the omitted unit, note: unit references are as per SFI response Schedule of Accommodation) to facilitate the reinstatement of the omitted Unit C.0104 overhead at first floor level (albeit reduced in size). The revisions include setting back the staggered building line of the southern elevation of Unit C.GF05 by c.2m to be in line with the Unit C.GF06 further to the west, and amending internal layout of the block by removing the passageway accessing the omitted Unit C.GF04.

7.5.8. I have reviewed Condition 3, the floor plans and elevation drawings of Block C, and considered the details submitted with the first party appeal in support of the revised condition. I note the reason cited by the planning authority for Condition 3 is 'in the interest of an adequate provision of open space and residential amenity' and concur there is merit in the this. However, the implication of the condition is the creation of an unsatisfactory arrangement for the southeastern corner of Block C.

7.5.9. I concur with the applicant that the complete omission of Unit C.0104 is not necessary as the adequate provision of open space can be achieved from the omission of building footprint at ground floor level only. I accept the applicant's proposed solution of amending the southeastern corner and internal layout of Block C. In my opinion, in the interests of optimum design and building efficiency an apartment unit should be reinstated at first floor level thereby ensuring the corner will be streamlined, with flush elevations from ground to second floor levels, and no overhang of the upper floor accommodation.

7.5.10. In the event that the Board is minded to grant permission, I recommend that a revised condition be attached maintaining the omission of ground floor Unit C.GF04, setting back the southern building line of Unit C.GF05 to align with that of Unit C.GF06 as per SFI response plans, redesignating the released areas at ground floor level as public open space, and redesigning the first floor apartment Unit C.0104 as a 2 bedroom apartment consistent with the overhead apartment Unit C.0204 at second floor level.

7.5.11. In the interests of clarity, this recommended revision will be incorporated into the remainder of the assessment whereby the southern and eastern wall plates of Block C are flush from second to ground floor level, the building line of the southern

elevation (eastern end) is set back by a further c.2m from the southern site boundary, c.114 sqm (estimated total floor area released from setting back the building line and omission of Unit C.GF04) is redesignated as public open space, Unit C.0104 at first floor level is redesigned as a 2 bedroom (4 persons) apartment, and thereby the proposed development comprises 68 apartments in total.

Layout

- 7.5.12. The appeal site is rectangular in configuration and measures 0.6547 ha. The four detached buildings (Blocks A, B, C (apartments) and D (communal amenity building)) have square/ rectangular building footprints, are arranged in a rectangular configuration within the site, interspersed with landscaped open spaces. Apartment Blocks A and B are sited in the northern portion of the site, the larger Block C is laid out along the southern portion of the site, with Block D positioned mid-way along the site's eastern boundary. Separation distances between the blocks vary, at minimum, being c.5m between Blocks A and B, c.15m between Blocks A and C, and c.6m between Blocks B and C. Similarly, separation distances from boundaries range with Block A being c.9.45m from the eastern boundary, Block B and Block C being c.6 and c.11.2m from the western boundary, Block C being c.10.3m and c.14.9m from the southern and eastern boundaries, and Block D being 3m from the eastern boundary.
- 7.5.13. The northern elevations of Blocks A and B form the front building line of the proposal onto Foster's Avenue. As the main vehicular entrance is sited in the northeastern corner of the site, the façades of Blocks A and B form an urban edge of c.50m on Foster's Avenue. Appellants raise the siting of the blocks as a grounds of appeal, referring to the breaking of the building line formed by properties to the west, to associated traffic safety/ sightline issues, and to adverse impacts on the Foster's Avenue streetscape. The planning authority acknowledged the blocks came forward of the building line, deeming the layout of the proposal to be acceptable and positively noting the use of separate blocks with a stepped front building line in terms of streetscape and siting.
- 7.5.14. I have reviewed the plans and particulars, and at the time of my site inspection observed that there is no definitive building line at this location along the Foster's Avenue streetscape. To the west, there is a staggered building line between 28-38

Foster's Avenue, and similarly to the east there is a degree of stepping between 18-24 Foster's Avenue. While slightly forward of the building line (c.2m) from 30 Foster's Avenue, Block A is slightly back from the front building line formed by the more proximate 20 and 22 Foster's Avenue, while Block B is sited c.5m forward of 30 Foster's Avenue. I consider these deviations in front building line to be of minimal consequence, and find the siting and layout of the blocks to be acceptable. Conversely, I consider the staggered approach to building line between Blocks A and B to add rhythm and visual interest to the streetscape.

7.5.15. The main vehicular entrance is positioned in the northeastern corner of the site, providing access from Foster's Avenue via an internal road and ramp, at the eastern side of Block A, to the basement level. There are two additional entrances positioned at a central point and in the northwestern corner of the site onto Foster's Avenue. A series of open spaces are laid out adjacent to/ in between the blocks, supplemented with landscaped pedestrian corridors and buffers. The two additional entrances (with removable bollards) connect into a 'U' shaped path (part gravel/ part permeable paving) which encloses Block B. The path is principally intended for pedestrian use though is sufficiently wide to serve as an alternative vehicular access route for emergency vehicles. The scheme has other pathways around the blocks, to and through the open spaces, and there is a high degree of connectivity within the layout. The layout plans indicate most of the blocks and the centrally located open space are constructed over the basement level, while the majority of the open spaces (areas to the north of Blocks A and B at Foster's Avenue, and those to the south and west of Block C) are constructed directly at ground.

7.5.16. Access to each apartment block is provided internally via lifts and stairwells from the basement level, and an additional cycle lift is located in Block B. I note that this type of layout, involving access through a single vehicular point via a ramp into basement level parking, has the potential to result in car-based traffic patterns dominating the scheme with most residents accessing apartments directly from the basement level. However, I consider the potential for loss of activity and movement at ground level is avoided in the proposed development due to the advantageous location of the site, its high accessibility to and connectivity with the wider area, the segregated pedestrian/ cycle access points, and the creation of desire lines across and through the scheme.

7.5.17. I positively note the use of separate block forms in the layout which allows for more integrated open spaces and for a higher degree of connectivity. Blocks A and B frame open spaces adjacent to the grass verge and public footpath, and similarly, the rear elevations and side gables of each of the blocks address internal pathways and enclose the remaining open spaces. While the separation distances between the blocks is less than that recommended in 2022 CDP 12.3.5.2 (a general 22m distance for opposing windows), when taking the factors outlined above into account, I consider them to be acceptable. As demonstrated in the Daylight and Sunlight report, overall there is limited potential for overshadowing of the open spaces within the scheme due to the siting and heights of the blocks. On balance, having regard to the infill nature of the site, I consider the layout to be logical, efficient, and result in the creation of a quality, distinctive urban development as required in 2022 CDP Section 12.3.1.1, Design Criteria.

Public Realm

7.5.18. The principal elements in the public realm are the interfaces between the buildings at ground floor level and the adjacent paths, open spaces, and facilities. Details submitted for the public realm, including the Landscape Report, landscape masterplan, open space provision map, lighting schemes, indicate soft and hard landscaping, seating, paving, and public lighting. With regard to open space, the proposal identifies five distinct areas (Courtyard Garden adjacent to Block B, Eco Garden adjacent to Block A, Communal Garden Terrace bound by all blocks, Natural Playscape adjacent to Block C, and Woodland Garden Trail adjacent to Block C) in addition to landscaped pedestrian corridors and buffers.

7.5.19. Each apartment building is accessed through a pedestrian entrance positioned in proximity to each other (western elevation of Block A, eastern elevation of Block B, and northern elevation of Block C) and opening out onto the landscaped pedestrian corridors leading into the Communal Garden Terrace area. Similarly, the communal amenity building has a high amount of glazing in its western elevation and doors onto the Communal Garden Terrace area.

7.5.20. At surface level, there are two set down parking spaces (taxi, servicing use) located adjacent to the main vehicular entrance in front of Block A, and three stands for visitor bicycle parking (total of 36 spaces) located adjacent to the central access

point on Foster's Avenue, and at the communal amenity building. I consider the arrangement of the blocks, the positioning of the doorways, the location of the open spaces, and site entrances will create pedestrian desire lines through the scheme. The public realm is clearly delineated by soft and hard landscaping, overlooked, safe, and likely to be active and well trafficked by pedestrians.

- 7.5.21. In respect of the quantitative open space provision in the scheme, the SFI Landscape Report, landscape masterplan, and reiterated in the appeal response, the applicant submits that of four of the five open spaces (namely the Eco Garden 185 sqm, the Communal Garden Terrace 555 sqm, the Natural Playscape 225 sqm, and the Woodland Garden Trail 815 sqm) yielding a total of 1,780 sqm function as usable open space. Additional landscaped areas (corridors, buffers, the Courtyard Garden adjacent to Block B) are provided in the scheme but accepted as not functioning as usable space. During the assessment of the planning application, the Parks Section did not accept the provision submitted by the applicant as only the Natural Playscape is considered to qualify as usable open space.
- 7.5.22. In respect of the qualitative nature of the open space, I consider the key areas to be the Natural Playscape and the Communal Garden Terrace. The former is a rectangular natural play area with screening and seating located to the west of Block C, accessible, overlooked, enclosed by the blocks and site boundary wall but maintaining a with favourable sunlight conditions. The latter is an inverted 'L' shape space, enclosed between Blocks A, C, and D, designed with hard and soft landscaping, and seating in the southern portion, which as discussed below, has favourable sunlight conditions.
- 7.5.23. In considering the quality and amenity of the public realm for pedestrians and other users, I have had regard to the Daylight and Sunlight Report (as submitted as SFI and as updated in the applicant's response to the third party appeals). The applicant's report considers the potential daylight and sunlight provision within the scheme for the open space areas and the potential for overshadowing. As referred to by the Apartment Guidelines and the Building Height Guidelines, I confirm that regard has been given in the report to the quantitative performance approaches to daylight provision outlined in best practice guidance set out in the following documents:

- ‘Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice’ BRE, 2011 (BR209), which in turn has included standards from:

- BS8206 Part 2:2008, Lighting for Buildings, Code of Practice for Daylighting.

- 7.5.24. The SFI Daylight and Sunlight report considers the level of sunlight availability, referred to as ‘sun hours on ground’ of the amenity area in the proposed development. The BRE 2011 guidance recommends that for an amenity area to appear adequately sunlight throughout the year, at least half (50%) of the area should receive two or more hours of direct sunlight on March 21st (spring equinox). The assessment is undertaken of all open spaces within the scheme (i.e. in total as opposed to assessing each of the five open spaces), referring to the collective area as ‘communal open space’/ ‘L1’. The assessment finds L1 to meet the criteria for good quality sunlight with 75% of the area having more than 2 hours sun hours on the ground.
- 7.5.25. In the applicant’s response to third party appeals, an updated Daylight and Sunlight report is submitted. This report assesses the implications arising from the revised Condition 3 (i.e. omitted Unit C.GF04, revised southern building line of Unit C.GF05, redesignated area c.100 sqm as open space, reinstated Unit C.0104 and the revised southeastern corner of Block C) on sunlight availability.
- 7.5.26. The Parks Section of the planning authority, as reiterated by appellants as grounds of appeal, raised concerns in relation to the quality of the public open space, in particular the Communal Garden Terrace, in respect to its being overshadowed, undesirable and serving as a thoroughfare. The Parks Section recommended the omission/ reconfiguration of the south of Block C to improve the sunlight availability to the Communal Garden Terrace allowing it to become a destination open space area for use by persons of all ages. I positively note the marked improvement in sunlight availability for the Terrace area due to the implications of Condition 3. A comparison between the SFI report (Figure 17) and the appeal response report (Figure 24) clearly indicate the improved conditions with this increased area receiving between 4-8 hours of sunlight on March 21st.
- 7.5.27. The updated assessment finds L1 to meet the criteria for good quality sunlight with 76.5% of the collective open space area having more than 2 hours sun hours on the ground. I note that the central portion of the Communal Garden Terrace experiences

the highest ground in shadow due to its proximity to the three apartment buildings. The appeal response report includes hourly shadow diagrams for 10am-5pm on March 21st and it is apparent that all portions of the Terrace area receive c.2 hours of sunlight as the sun travels. Based on the assessment submitted, and having regard to the referenced guidance, I am satisfied that the proposed open spaces meet and exceed sunlight standards recommended under the BRE 2011 guidance, particularly the Natural Playscape, the majority of the Communal Garden Terrace, and the Woodland Garden Trail, thereby being high-quality spaces suitable for residential use.

7.5.28. Of relevance to the proposal, 2022 CDP Section 12.8.3 indicates that for residential developments in existing built up areas, 15% of the site area is required to be provided as public open space, in addition to a quantum of communal open space which is calculated on the basis of unit mix. The site area for the purposes of calculating standards is 0.6 ha (excluding the public footpath/ grass verge) thus yielding a requirement of 900 sqm of public open space. The residential mix of the proposed scheme (with recommended revisions) is presented in Table 3f in Section 7.7 below, which yields a requirement for 485 sqm of communal open space.

7.5.29. From the foregoing, I consider that the Natural Playscape and the Communal Garden Terrace Area come within the description of public open space (as per 2022 CDP Section 12.8.3). Arising from the revised Condition 3, I estimate these areas total c.894 sqm, which, while marginally short of the required 900 sqm, I am satisfied complies with the standard (given a margin of error as I have necessarily estimated certain areas). I consider the Eco Garden and Woodland Garden Trail due to their design, locations, restricted accessibility proximate to apartment buildings, and function come within the CDP description of communal open space, which can be managed by the management company. These areas total 1,000 sqm and exceed the communal open space requirement for the scheme. I concur with the applicant, and I do not consider there is a shortfall in open space. The proposal satisfies the applicable standards for public and communal open space in 2022 CDP Section 12.8.3.

7.5.30. In summary, I am satisfied that the design and layout of the proposed development is well considered and with a sound basis. The scheme features a hierarchy of routes and paths, and a variety of different functioning landscaped open spaces. I

consider the scheme to be a legible urban environment, with a public realm that is accessible, well connected, and not unduly overshadowed. Overall, I am satisfied that the proposal accords with the detailed requirements of 2022 CDP Section 12.3.1.1, Design Criteria in respect of complying with land use zoning, policy objectives, national planning guidance, and creating a high quality, distinctive scheme with variety and a sense of place.

7.6. Building Height and Visual Amenity

- 7.6.1. The proposed development comprises four detached buildings varying in height from 1 to 4 storeys. The blocks and principal height measurements are presented in Table 1: Key Statistics, in Section 2.0 above. While the apartment blocks feature slight variations in height due to design (part-1 to part-3 storey), fundamentally the blocks are 4 storeys in height (c.12.6m to flat roof plane and c.16.65m to pyramid hipped roof/ roof lantern apex which contains penthouse level accommodation).
- 7.6.2. The planning authority deemed the proposed building height of 3 to 4 storeys to be permissible due to the site's location in proximity of the Stillorgan Road QBC; identified that a maximum of 4 storeys on the site was in accordance with the Building Height Strategy in the 2016 CDP; and that the design approach to the height of blocks with the highest elements in the centre of the scheme and other levels are stepped down along the boundaries as being generally acceptable. The appellants are strongly opposed to the building heights of the blocks, describing them as excessive, unsympathetic, jarring, towering over and dwarfing adjacent dwellings.

Building Height Guidance

- 7.6.3. With regard to guidance on building heights, I consider the following planning policy to be applicable to the development of the site due to its being:
- Building Height Guidelines: a 'central/ accessible urban location' (as per the Apartment Guidelines) which is appropriate for the development of buildings taller than the prevailing building heights in the urban area, subject to assessment under the development management criteria/ 'scale of' test.
 - Building Height Guidelines: an infill site, in a suburban edge location in a city context which is appropriate for development of buildings up to 4 storeys in

height when integrating into existing neighbourhoods and 4 storeys or more along wider streets; and

- 2022 CDP: is located within a 'Residual Suburban Area' as identified in the Building Height Strategy (BHS), which is appropriate for the development of buildings of 3 to 4 storeys in height (Policy Objective BHS 3), subject to the protection of existing amenities including residential amenity and the established character of the area.

7.6.4. As such, the national and local policy context for the development of the site clearly indicates that developments of up to 4 storeys in height are appropriate and are to be encouraged. The BHS defines taller buildings as those in excess of two storeys than the prevailing height of the surrounding area, and only proposals for taller buildings are required to be assessed against the performance based criteria in Table 5.1 of the BHS (which aligns with the development management criteria/ 'scale of test in the Guidelines). I consider the prevailing height of the area to be two storeys (for the avoidance of doubt, the adjacent dormer bungalows are two storey in height, i.e. two floor levels of habitable accommodation) and the proposed penthouses (4th storey/ 3rd floor level) are a single storey (i.e. one floor level of habitable accommodation and not two storeys due to the floor-to-ceiling height as submitted by appellants). Consequentially, the proposal is in accordance with the BHS, there is no conflict with the Guidelines, and the specific assessment for determining acceptability of building height is not required to be undertaken. The building height of the proposal is acceptable in principle subject to other planning considerations.

Scale and Massing

7.6.5. A substantive consideration is the scheme's relationship with the surrounding area, which is characterised by detached dormer bungalows and two storey dwellings with staggered building lines (east, west, and south). I consider that the general siting, scale, and massing of Blocks A and B along the northern boundary (detached buildings, stepping from 1 to 4 storeys in height, sited mainly opposite the gables of the adjacent dwellings) and Block C on the southern boundary (similarly stepping from 2 to 4 storeys in height) to be reflective of the nature and conditions of the receiving area (lower topography, significant existing screening) and I accept the

applicant's position that due regard has been had to the impact of the proposal on the adjacent properties in terms of height, scale and massing.

- 7.6.6. At the 4th storey (3rd floor level) of each apartment building is an element of penthouse accommodation (Block A Unit A.0303, Block B Unit B.0306, and Block C Unit C.0302) featuring a pyramid hipped roof / roof lantern profile, and with a double floor to ceiling height of c.5.4m. Appellants are critical of the inclusion of the penthouse accommodation submitting the proposal is the equivalent of 5 storeys in building height and further increasing the adverse visual impact of the proposal. I do not agree, and instead find that the pyramid hipped roofs of the penthouses are a small component of the main roof plane (predominantly flat roof profile), set back from the majority of building edges, consistent in design with the overall scheme, with high quality finishes (zinc cladding), and contribute to the visual interest of the proposal's roof profiles without causing a negative visual impact on the skyline/ streetscape.
- 7.6.7. From a review of the cross-section drawings/ streetscape elevations of the proposal, it is clearly apparent that the apartment blocks are greater in scale and massing to the adjacent area. The blocks are a different residential typology which varies from the existing built form. However, in my opinion, the differences in height, scale and massing are not of such a degree to unduly dominate the receiving area including the Foster's Avenue streetscape which is of quite notable width (at the site of c.19m inclusive of verges) and length (at the site of c.70m, and in full c.820m). I consider the design approach taken for the proposal, including that for increasing scale (stepping up heights from the adjacent properties) whilst balancing massing (the staggering of building forms to be set back from the block façade edges) mitigate against associated overbearance impacts.

Visual Amenity

- 7.6.8. The application includes a Visual Assessment report for the proposal accompanied with photomontages (as updated in the SFI response). Eight viewpoints are chosen (with existing, proposed, summer, winter images) representative of views of the site's context, and from adjacent residential properties on Foster's Avenue and The Fosters, St. Thomas Road, St. Thomas Mead, and the pedestrian bridge on the N11. At my site inspection, I travelled the area noting these viewpoints and confirm the

accuracy of same. The report indicates the proposal is not particularly visible in the wider area (Views 6 and 7) and is well screened even in winter months in views from the south due to the topography and screening in the area (Views 4, 5, and 6).

7.6.9. A more notable impact is on views from the adjoining area, including those at adjacent properties and along Foster's Avenue (Views 1, 3 and 8). From these vantage points, while the height, scale and massing of the proposal are visible rising into the fore and/ or mid-ground distances, these do not overly dominate the views due to the stepped height and staggered built forms of the blocks, the extent of screening provided by the retained tree cover (within the site and on the grass verge) and from new planting. In respect of the Foster's Avenue streetscape, I concur with the report's finding that Blocks A and B recede in views, avoiding any abrupt transitions. The viewpoint most affected by the proposal is that in immediate proximity to the site (View 2). In this view the height, scale and massing of the proposal are most apparent, filling the foreground. Still, I do not consider the view to be adversely affected or injured by the proposal but simply altered (principal dimensions of blocks are not excessive, buildings are set back and staggered in form, of a high quality design with subtle external finishes, and are well screened). A review of the certain viewpoints (Views 1, 2 and 8) indicate the nature and extent of the existing visual impact of 24 Foster's Avenue (3 storey structure, on the shared boundary) from 22 Foster's Avenue, and 26 Foster's Avenue (roofscape of industrial buildings within the site) from The Foster's, and that the existing streetscape at the site (View 2) is not of particularly high architectural merit or value.

7.6.10. The report outlines the impact of the proposal on the eight viewpoints over three stages (construction, post construction-short term, and post construction-medium/ long term). The impacts on views from the less visible vantage points, Views 4, 5, 6 and 7 range from slight negative to imperceptible neutral, all of which I agree with. For Views 1, 3, and 8, the impacts range from moderate negative (construction stage from The Fosters) to slight neutral/ positive (post construction mid/ long-term/ i.e. when lived in as viewed along Foster's Avenue), which I agree with. View 2 is assessed as slight negative through to slight neutral/ positive in impact. In my opinion, the degree of impact is more likely to be moderate negative through to moderate neutral/ positive given the extent of change (though not adverse) of the appearance of the site once developed. I consider that the applicant has accurately

indicated the visual impact of the proposed development, and I agree with the conclusions of the assessment which demonstrate there is no significant negative effect on the landscape from any viewpoint.

Planning History: SHD Application

- 7.6.11. In the grounds of appeal, appellants submit that the first refusal reason of the SHD application remains applicable to the current proposal and has not been overcome. The refusal reason related to the design, scale, bulk, and height of that development being overbearing for adjacent properties and its proximity to the road, advancing forward of the building line, and extensive façade along the road frontage having an adverse visual impact on Foster's Avenue.
- 7.6.12. I have reviewed that previous proposal including the Inspector's report, and had regard to the positions of the planning authority and applicant on the matter. In my opinion, the current proposal has overcome the refusal reason cited for the previous SHD application in respect of design (use of detached blocks as opposed to a continuous inverted 'H' form), height (4 storeys as opposed to 5 storeys), scale (predominantly reduced unit numbers, principal dimensions and floorspaces), massing (effective use of stepping and staggering of built forms to reduce impact), and the degree of impact on the Foster's Avenue streetscape (reduced due to the foregoing).
- 7.6.13. In summary, I consider the approach to building height, scale and massing for the proposed development incorporating detached blocks with varying heights, building forms and components stepped and staggered, increasing from the site boundaries, to be an appropriate solution for the infill site which will assist the assimilation of the scheme into its surrounding area on all boundaries including the public interface with Foster's Avenue. While I acknowledge that the proposal is for a new residential typology, thereby introducing a different built form into the streetscape, I consider the proposal to be a medium scaled scheme, with principal dimensions that are not unduly excessive.
- 7.6.14. In summary, in terms of building height, I consider the proposed development does not adversely impact the character or cause injury to the visual amenity of the area. I have considered other visual amenity implications in respect of site clearance works and historical streetscape (Section 7.3) and of the proposed block layout and

building line (Section 7.5), and similarly find there to be no adverse impact on the Foster’s Avenue streetscape. I find the proposal is acceptable and accords with the applicable range of planning policy, including CDP Policy Objective PHP 42: Building Design and Height, Policy Objective BHS 3: Building Height in Residual Suburban Areas, and CDP 12.3.5.4: Penthouse Development.

7.7. Residential Amenity of Proposed Properties

7.7.1. The residential amenity of future occupants, considered through an examination of the residential unit mix, and range of quantitative and qualitative standards in the proposal, is assessed in this section. The impacts of the proposal on the residential amenity of adjacent properties are considered below in Section 7.8.

Apartment Unit Mix

7.7.2. In the planning authority decision, a total of 67 apartments were granted permission with Condition 2 amalgamating four 1 and 2 bedroom apartments into two 3 bedroom apartments in Block B, and Condition 3 omitting one 2 bedroom and one 3 bedroom apartment in Block C (see Table 3a).

Table 3a: Unit Mix as granted permission by planning authority

Unit Type	1 bedroom	2 bedroom	3 bedroom	Total
Total	9	55	3	67
% of Total	14%	82%	4%	100%

7.7.3. As discussed above in Section 7.5, I accept the applicant’s request in the first party appeal to revise Condition 3 whereby the apartment, Unit C.0104, is reinstated as a 2 bedroom apartment, and recommend this assessment is on the basis of a total provision of 68 apartments. Of the proposed 68 units, the unit mix caters for a range of 1, 2, and 3 bedroom residential units, with the majority, 82% of the units being 2 bedroom units, 14% are 1 bedroom units, and the remaining 4% are 3 bedroom units. Within each format are further differentiations due to variations in size and layout with five types of 1 bedroom apartments, 11 types of 2 bedroom apartments, and three type of 3 bedroom apartment (see Table 3b, note: there is no substantive difference in unit mix as % from the scheme as granted permission).

Table 3b: Unit Mix with revised Condition 3 as per First Party Appeal

Unit Type	1 bedroom 2 persons	2 bedroom 3 persons	2 bedroom 4 persons	3 bedroom 6 persons	Total
	9	1	55	3	68
Total	9	56		3	68
% of Total	14%	82%		4%	100%

- 7.7.4. At the time the planning application was lodged and assessed, the 2016 CDP was in effect and deferred to the SPPRs in the Apartment Guidelines in respect of residential unit mix and standards. For unit mix, SPPR 1 stated there was no minimum requirement for 3 bedroom + units, until a Housing Need Demand Assessment (HNDA) had been undertaken and incorporated into a respective CDP.
- 7.7.5. The 2022 CDP incorporates a HNDA and resultant policy is CDP Section 4.3.2.3, Policy Objective PHP 27: Housing Mix, Section 12.3.3.1 Residential Size and Mix, and Table 12.1. For residential apartment schemes in excess of 50 apartments in existing built up areas, such as the proposed development, a minimum of 20% of the total units is required to comprise 3 bedroom + units (with studios, 1 and 2 bedroom units comprising up to 80%).
- 7.7.6. In its current format, the proposed development does not comply with CDP Policy Objective PHP 27 and in turn Section 12.3.3.1 Residential Size and Mix, and Table 12.1. The proposal comprises 96% 1 and 2 bedroom units and 4% 3 bedroom units, thereby failing to satisfy the minimum requirement of a minimum of 20% 3 bedroom units. While this is understandable due to the change in CDP policy in the interim between the appeals being lodged and the current assessment, in my opinion such a deviation is material and the proposal in its current format contravenes materially 2022 CDP Policy Objective PHP 27 and Section 12.3.3.1 Residential Size and Mix. Conversely, the Board may disagree with my opinion finding instead the deviation in the standard to be a contravention, though not one of materiality, due to the continuance of use (remains a residential scheme of 68 apartments) at a minor increase in intensity (additional 11 persons).
- 7.7.7. While I consider this to be a substantive issue, I do not consider the deviation to warrant a refusal of permission. For the proposal to comply with the residential unit mix requirements of the 2022 CDP, of the proposed 68 apartments, the number of 3

bedroom apartments is required to increase by 11 units (16%) from 3 units (4%) to 14 units (20%), with a corresponding decrease in 1 or 2 bedroom apartments by 11 units (16%) from 65 units (96%) to 54 units (80%) (see Table 3c).

Table 3c: Unit Mix as required by the 2022 CDP

Unit Type	1 bedroom	2 bedroom	3 bedroom	Total
Proposed Mix %	14% + 82% = 96%		4%	100%
Proposed Mix	9 + 56 = 65		3	68
Required Mix %	80%		20%	100%
Required Mix	54		14	68
Amendment	(- 16%) - 11 units		(+ 16%) + 11 units	68

7.7.8. I have reviewed the applicant’s Schedule of Accommodation (as per the first party appeal), the floor plans and elevation drawings of the Blocks, and the 2022 CDP Section 12.3.5.5 minimum apartment floor areas (as aligned with SPPR 3 and Appendix 1 of the Apartment Guidelines). I confirm to the Board that 52 of the proposed 56 2 bedroom apartments exceed the 90 sqm minimum floor area required for a 3 bedroom apartment (5 persons) (see Table 3d).

Table 3d: Proposed Apartment Floor Areas

Apartment Types	No. of Units	Floor area proposed	Mini floor area/ persons in CDP/ Guidelines
1 bedroom	9	c.49 – 57.5 sqm	45 sqm (2 persons)
2 bedroom	1	65 sqm	63 sqm (3 persons)
2 bedroom	3	c.78 – 81 sqm	73 sqm (4 persons)
	52	c.92 – 127 sqm	
3 bedroom	3	c.140 – 188 sqm	90 sqm (5 persons)

7.7.9. I have identified 11 2 bedroom units with floor areas of between 96.6 sqm and 127.7 sqm, and from a review of their respective floor plans, note that these units are provided with larger living areas and/ or ancillary rooms/ areas such as walk in wardrobes. I am satisfied that these apartments can be redesigned as 3 bedroom

apartments due to their being in excess of the required minimum 90 sqm floor area (5 persons) and including ancillary spaces that can be redesigned accordingly (see Table 3e).

Table 3e: 3 bedroom apartments

Proposed 3 bedroom apartments				
No.s	Block, floor level	Unit ref	Type	Sqm
1	Block B, first floor	B.0106	3PC	188.6 sqm
2	Block B, second floor	B.0206	3PD	140.1 sqm
3	Block C, third floor	C.0302	3PA	143.4 sqm
2 bedroom apartments recommended to be redesigned as 3 bedroom apartments				
No.s	Block, floor level	Unit ref	Type	Sqm
4	Block A, ground floor	A.GF02	AT 2C	96.2 sqm
5	Block A, first floor	A.0102	AT 2C	96.2 sqm
6	Block A, second floor	A.0202	AT 2C	96.2 sqm
7	Block A, third floor	A.0303	2PA	102.2 sqm
8	Block B, first floor	B.0102	AT 2G	109.8 sqm
9	Block B, second floor	B.0202	AT 2G	109.8 sqm
10	Block B, third floor	B.0301	2PC	117.7 sqm
11	Block B, third floor	B.0306	2PB	127.7 sqm
12	Block C, ground floor	C.GF02	AT 2G	109.8 sqm
13	Block C, first floor	C.0102	AT 2G	109.8 sqm
14	Block C, second floor	C.0202	AT 2G	109.8 sqm

7.7.10. If the Board is minded to grant permission, I recommend that these 11 units be redesigned by way of condition and through agreement with the planning authority of the final plans, elevations, and particulars. I acknowledge that some amendments to elevations in respect of windows/ balconies may be necessary, but consider that these are, if at all, likely to be minimal and not material to the overall design/ elevational treatment of the scheme. To ensure scope for the redesign of the units with sufficient protection of the residential amenity of adjacent properties, I

recommend any redesign of floor plans be subject to a corresponding condition relating to the windows/ glazing in the elevations.

- 7.7.11. For clarity, I have considered whether there are implications arising from Condition 2 on the western elevation of Block B and Condition 5 on the eastern elevation Block A (in terms of the residential amenity protection measures) and confirm there is no apparent impediment to the redesign of the applicable units. That being, the redesigned unit on the western elevation of Block B (Unit B.0306) is at third storey level, with no windows in the main western elevation wall, one window and door onto a balcony area in the northwest corner are screened by a high wall with additional screening planters, and the unit is sited opposite the side gable/ front area of 30 Fosters Avenue. The redesigned units on the eastern elevation of Block A (Units A.0102, A.0202 and A.0303) have standard windows that are in excess of the c.10m distance from the eastern boundary, thereby should not require obscured glazing.
- 7.7.12. The recommended redesign of these 11 2 bedroom apartments amends the unit mix provision to include for 14 3 bedroom apartments within the scheme thereby complying CDP Section 4.3.2.3, Policy Objective PHP 27: Housing Mix, Section 12.3.3.1 Residential Size and Mix, and Table 12.1 (see Table 3f).

Table 3f: Final Unit Mix

Unit Type	1 bedroom 2 persons	2 bedroom 3 persons	2 bedroom 4 persons	3 bedroom 5/6 persons	Total
Total	9	1	44	14	68
% of Total	13%	2%	65%	20%	100%

Apartment Unit Standards

- 7.7.13. The 2022 CDP Section 12.3.5, Apartment Development includes a range of qualitative and quantitative standards for apartments. These standards (many aligning with the applicable SPPRs of the Apartment Guidelines) include dual aspect ratios (12.3.5.1, SPPR 4, 50% of scheme), separation between blocks (12.3.5.2, min 22m for opposing windows in general), storage space (12.3.5.3, various 3-9 sqm), minimum floor areas (12.3.5.5, SPPR 3 and Appendix 1, various 45-90 sqm), and additional design requirements (12.3.5.6, floor to ceiling heights (SPPR 5), maximum

number of apartments per floor per core (SPPR 6)). Further advice in the Apartment Guidelines includes regard being had to daylight/ sunlight provision, the provision of privacy strips for ground floor apartments, and of a building lifecycle report for the running and maintenance costs of the apartments.

- 7.7.14. The Schedule of Accommodation (as updated in the first party appeal) outlines the key statistics for the proposed development, compliance with the applicable SPPRs of the Apartment Guidelines, analysis of the floor areas, dual aspect ratios, ceiling heights, lift and stair cores, storage, and private space. The applicant has submitted a Daylight and Sunlight Assessment (as updated in the third party appeal response) analysing the standards achieved within the scheme (residential units and open spaces), and the impact on adjacent areas.
- 7.7.15. I have reviewed the Schedule of Accommodation and floor plans of each block. I confirm that all apartments meet or (predominantly) exceed their applicable minimum standards in respect of floor areas, aggregate living and bedroom areas, room sizes, storage areas, and private open space as per CDP Section 12.3.5/ SPPR 3 and Appendix 1 of the Apartment Guidelines. As stated in the previous section above, from a review of the plans and particulars, I am satisfied that there is sufficient scope for the largest 11 2 bedroom units to be redesigned as 3 bedroom apartments satisfying the minimum requirements for 3 bedroom (5 person) apartments.
- 7.7.16. CDP 12.3.5.1/ SPPR 4 requires a minimum provision of dual aspect apartments in a single scheme (33% in accessible urban locations/ 50% in suburban locations). The proposal exceeds such standards with 69% of the 68 units, including the reinstated Unit C.0104, indicated as being dual aspect. CDP 12.3.5.2 (not an SPPR in the Apartment Guidelines) recommends separation between blocks in the region of 22m between opposing windows for residential amenity purposes. The separation distances between the blocks were considered by the planning authority and subject of a detailed SFI response by the applicant whereby the fenestration of opposing apartments in Block A and Block B, and Block B and Block C were redesigned to address issues of overlooking, and I consider the resultant arrangements to be acceptable. CDP 12.3.5.6/ SPPR 5 requires a minimum of 2.7m floor to ceiling height for ground level apartments. I confirm that these minimum requirements are achieved for each floor level in the blocks, with the penthouse units having a partial double floor to ceiling height c.5.4m. CDP 12.3.5.6/ SPPR 6 specifies a maximum of

12 apartments per floor per core, with which the proposed development complies. Typically the blocks range from four units in Block A, to 6 units in Block B, to eight units Block C on each level per core, accessed from the basement level and/ or ground floor street level by a single main door through to a lobby area of varying size. In respect of private open space, recessed balconies are proposed for the majority of units from ground to third floor levels, with terrace areas for seven units at second and third floor levels of the three blocks (largest number on the third floor of Block C). The balcony and terrace floor areas comply with the applicable standards in CDP 12.8.3.3 (ii)/ Appendix 1 of the Apartment Guidelines. In the event of any issue arising in private open space provision from the recommended redesign of the 11 2 bedroom apartments into 3 bedroom apartments, I highlight that there is flexibility in the CDP about the standards whereby regard can be had to the quality and quantum of communal open space in a scheme, which as assessed in Section 7.5 above, I consider to be sufficient and of high quality.

7.7.17. From a review of the site layout plan and landscaping details (as updated in the first party appeal), the proposed ground floor apartments adjacent to public areas including pathways and open spaces, are provided with privacy strips in line with the advice of the Apartment Guidelines and/ or private open spaces that are delineated with landscaping and various boundary treatments.

Daylight and Sunlight

7.7.18. The information in the Architectural Design Statement is supplemented by the analysis in the applicant's Daylight and Sunlight Report (as submitted as SFI and as updated in the applicant's response to the third party appeals). As outlined in Section 7.5 above in respect of the public realm, the report considers the potential daylight and sunlight provision for the proposed development and, of relevance to this subsection, within the habitable rooms of the residences. The Apartment Guidelines and the Building Height Guidelines both cite the necessity of considering quantitative performance approaches to daylight provision. The report follows best practice guidance set out in the following documents:

- 'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice' BRE, 2011 (BR209), which in turn has included standards from:
- BS8206 Part 2:2008, Lighting for Buildings, Code of Practice for Daylighting.

- 7.7.19. The BRE 2011 recognises the importance of a proposed residential development receiving adequate daylight and the appropriate daylight test is referred to as the Average Daylight Factor (ADF), which is a method for calculating the amount of daylight occurring within a space in a habitable room. In relation to apartments, the BRE 2011 and the BS8208 Part 2:2008 recommend the following minimum ADFs; Bedrooms 1%, Living Rooms 1.5%, and Kitchens 2%. In the case of rooms that serve more than one function, the higher of the two minimum ADFs should be demonstrated. Within the proposed development, the apartments feature typical floor plans in which the living/ kitchen/ dining areas are designed as open plan, and accordingly, these areas are assessed for the higher 2% ADF. The report indicates that 5% ADF is a well daylit space.
- 7.7.20. In the report, all habitable rooms in each apartment, on each floor, in each Block are assessed for ADF. The results are presented by floor plan (generated analysis with a colour coded scale 0%-5%) and tabular format. All habitable rooms (100%) meet the minimum recommended ADF targets of 1% for a bedroom and 2% for a living/ kitchen room, with many meeting and exceeding the 5% optimum. A review of the generated analysis of the floor plans indicates the favourable conditions at ground floor level for the habitable rooms in the perimeter apartments of each block, and the continual improvements with daylight provision increasing with the rising floor levels and penetrating deeper into the centrally positioned habitable rooms within the blocks. In terms of access to daylight, I consider the apartments to be of a design and layout that will afford future occupants with high levels of amenity.

Other

- 7.7.21. In respect of the Part V obligation, the applicant is proposing seven units, three 1 and four 2 bedroom apartments at ground floor level in Block B. The planning authority has indicated this proposal to be acceptable in principle, and I consider it an appropriate basis for an agreement.
- 7.7.22. The application contains a Building Lifecycle Report which as required by the Apartment Guidelines includes an assessment of long-term running and maintenance costs as they would apply on a per residential unit such as service charges with sinking fund costs, as well as demonstrating what measures have been specifically considered by the proposer to effectively manage and reduce costs for

the benefit of residents. I have reviewed the report, note its contents accord with the requirements of the Guidelines and consider, in the instance of a grant of permission, the report to be purposeful for future residents and beneficial to have as part of the public record.

- 7.7.23. The proposal includes a Site Lighting Report and Luminaire Schedule in respect of public lighting in the scheme. The former indicates illumination levels, colour coded images of light penetration, and models of the lighting in the public realm and I consider that the design of the public lighting scheme has been undertaken to minimise light pollution and avoid nuisance to the future residents, which complies with 2022 CDP Section 12.9.10.1 Light Pollution.
- 7.7.24. I positively note the provision of the communal amenity building (with a multi-purpose recreational space, kitchen area, and toilets) which will serve the residents and be operated by the management company. Residents will have access to a variety of landscaped and different functioning open spaces, and will be able to move easily in and through the scheme, accessing Foster's Avenue with close proximity to urban centres of Mount Merrion and Dundrum, UCD, and Stillorgan Road QBC route. Secure parking for vehicles and bicycles, and communal refuse collection will be provided, all in a managed environment.
- 7.7.25. In summary, I consider that overall, the proposed development is of a design and layout, with services that will provide a high standard of amenity for the future occupants of the scheme. Due to the orientation of and separation distances between the blocks, I do not anticipate any adverse impacts on the amenity of the apartments or on public open spaces within the scheme due to overbearance, overshadowing, or overlooking. I consider the proposal, as recommended to be amended by condition in respect of unit mix, accords with 2022 CDP Policy Objective PHP 27: Housing Mix, and meets and/ or exceeds all applicable requirements of Section 12.3.5, Apartment Development.

7.8. Residential Amenity of Adjacent Properties

- 7.8.1. The proposed development's negative impact on the residential amenity of adjacent properties is a key concern for many appellants. The grounds of appeal include overlooking and loss of privacy, overshadowing and loss of daylight, overbearance and injury to visual amenity, disruption (noise, pollution, construction works), and

traffic related inconvenience (which I consider in the following subsection). I propose to address each issue in turn.

Overlooking and Loss of Privacy

- 7.8.2. Of the 13 appellants, seven have properties located to the west of the appeal site along Foster's Avenue (30-42, even numbers), and four have properties located to the south of the site on St. Thomas Road (19, 23, 25, and 29). There are no appellants with addresses at properties to the east of the site along Foster's Avenue or in The Fosters. The appellants whose properties share a boundary with the appeal site include those at 30 Foster's Avenue, and 23, 25, and 29 St. Thomas Road. 30 Foster's Avenue is somewhat unique sharing an attached garage structure with that of 28 Foster's Avenue (to be demolished) and the western boundary along the full extent of site.
- 7.8.3. The existing residences, located adjacent to the east, west, and south of the proposed development, are detached dormer bungalows and two storey dwellings. On the eastern boundary, Block A is positioned in the northeast corner of the site, the gable of which is c.20m from that of 22 Foster's Avenue and c.24m from the rear wall of 1 The Fosters. The eastern gable of Block C is c.15m to the rear wall of 2 The Fosters and the rear wall of Block D (communal amenity building) is c.19m to that of 1 The Fosters. On the western boundary, Block B in the northwestern corner of the site is c.9m from the gable of the most proximate dwelling, 30 Foster's Avenue, and the western gable of Block C is c.11m from the shared boundary and c.42m to the rear wall of the dwelling. On the southern boundary, Block C is positioned opposite 21-29 St. Thomas Road (uneven numbers), with separation distances of between of c.45m–c.50m to the rear walls of these dwellings.
- 7.8.4. General guidance from CDP policy on separation distances is in quantitative standards relating to apartment and mews developments (deriving from industry standards in other national guidance). A distance of 22m between opposing above ground floor windows is generally sought to prevent overlooking and maintain privacy, though flexibility is allowed in design solutions. In practice, this measurement typically equates to a separation distance within each property of c.11m between directly opposing above ground floor windows.

7.8.5. In respect of the eastern boundary, Block A and 22 Foster's Avenue are aligned generally side to side, though the southern portion of Block A's building footprint is opposite that property's rear garden and part of the rear garden of 1 The Fosters. The building line of the eastern elevation of Block A is staggered whereby the southeast corner is closer to the eastern boundary than that of the northeast corner (c.9.45m, c.11m respectively). The eastern elevation of Block A (as indicated in the plans and elevations submitted with the first party appeal) includes a combination of standard windows and high-level windows for the northeast corner apartments, and high level windows for those in the southeast corner. I find there to be no overlooking of 22 Foster's Avenue or 1 The Fosters arising from the use of high-level windows regardless of separation distances. For the northeast corner, the standard windows serve dining room areas. In respect of overlooking, these windows have an outlook to the gable of 22 Foster's Avenue and oblique views of the rear gardens of that property and of 1 The Fosters. Due to the separation distances of c.20m–c.24m (including c.11m within the appeal site), the general alignment of the building footprints of the block and that of 22 Foster's Avenue, the proposed windows' outlook to the dwelling's gable wall and oblique angles to garden areas, and the provision of a landscaped buffer along the eastern boundary, I consider that Block A will not result in overlooking of eastern properties that would cause an undue loss of privacy. A further consideration specific to the eastern boundary is the extent of existing overlooking from 24 Foster's Avenue (three storey structure with a large glazed terrace area at first floor level) of 22 Foster's Avenue (sited directly on the shared boundary) and 1 The Fosters. I do not consider the potential for overlooking from the proposal to be any greater or more impactful than is presently the case.

7.8.6. Condition 5 relates to Block A and seeks to address overlooking issues. It specifies that other than high-level windows, windows in the eastern elevation that are c.10m from the eastern boundary are to be fitted with obscure glazing. I consider that due to the specified 10m distance, the condition only applies to fenestration at first and second floor levels of the southeast corner of the block (i.e. the northeast units and third floor southeast unit are further away than c.10m and, notwithstanding Condition 5, do not cause undue overlooking). The design of Block A accords with the condition whereby the southeast corner units are served by high-level windows. As

such, I do not consider the continued attachment of Condition 5 to be necessary in the event of a grant of permission.

7.8.7. Condition 3 relates to Block C and revised the southeast corner by omitting the ground floor and first floor apartments and removing the staggered building lines at different floor levels. As outlined in Section 7.5, I recommend the reinstatement of the first floor unit allowing the eastern elevation of Block C to be flush from ground floor to second floor level. The implication of the condition is an increase in separation distance between the eastern elevation of Block C and the rear wall of 2 The Fosters from c.7m to c.15m at first floor (i.e. above ground floor level). The eastern elevation of Block C (as indicated in the plans and elevations submitted with the first party appeal) includes a combination of standard windows, high-level windows and recessed balconies for the eastern apartments. The standard windows and balconies will have outlooks to the rear wall of 2 The Fosters and oblique views of the rear garden, which is sited to the south of the dwelling. Due to the separation distances of c.15m (nearly all within the appeal site), the siting of 2 The Fosters at the shared boundary, the general alignment of the building footprints of the block and 2 The Fosters, the change in topography whereby 2 The Fosters is at higher ground and the shared boundary is a partial retaining wall, the oblique outlooks to the garden area, and to the provision of a landscaped buffer along the eastern boundary, I consider that Block C will not result in overlooking of the eastern property that would cause an undue loss of privacy. There is no issue overlooking arising from Block D to 1 The Fosters adjacent 1 to the east.

7.8.8. In respect of the western boundary, Block B and 30 Foster's Avenue are generally aligned side to side, though the southern portion of Block B's building footprint is opposite part of that property's rear garden. The building line of the western elevation of Block B is slightly staggered whereby the southwest corner is stepped further away from the shared boundary, opposite the garden area close to the rear of the dwelling. Condition 2 relates to Block B and seeks to address overlooking issues, which was a feature of the assessment of the application by the planning authority. It revises the western elevation of the block by amalgamating apartments, omitting balconies facing 30 Foster's Avenue and requiring windows at first and second floor levels to be fitted with obscure glazing and/ or high level windows. Due to the limited separation distance between the western elevation of Block B and the

side gable of 30 Foster's Avenue (c.9m in total, c.6m of which is within the appeal site), I concur with the approach taken by the planning authority and consider Condition 2 requiring design measures to prevent overlooking and protect privacy to be necessary.

- 7.8.9. The western elevation of Block B (as indicated in the plans and elevations submitted with the first party appeal) includes high-level windows in recesses for the amalgamated apartments at first and second floor levels. I find there to be no overlooking of 30 Foster's Avenue due to the omission of opposing balconies and the use of high-level windows. In the northwestern corner of Block B, I note that there are balconies and a window/ door onto a balcony at third floor level, but these are forward of the front building line of 30 Foster's Avenue, do not face directly towards that property, and are subject to additional privacy measures (screening walls, planters). In the southwestern part of Block B, I note that there are windows and/ or balconies facing towards 30 Foster's Avenue but these are set back c.11m from the shared boundary, and also subject to the additional privacy measures. Due to the omission of balconies and use of high level windows in the western elevation of Block B, the general alignment of the building footprints of the block and 30 Foster's Avenue, the oblique outlook from and set back of the balconies in the northwestern corner of Block B, the separation distance of c.11m between the southwestern part of Block B and 30 Foster's Avenue, to the retention of existing trees, and provision of supplemented landscaping along the western boundary, I consider that Block B will not result in overlooking of western properties that would cause an undue loss of privacy
- 7.8.10. The western elevation of Block C includes a combination of standard windows, high-level windows and recessed balconies for the western apartments. The standard windows and balconies will have outlooks to the rear garden area of 30 Foster's Avenue and oblique views of the rear wall of that property. Due to the separation distances of c.11m to the shared boundary and c.42m to the rear wall of the dwelling, the change in topography whereby 30 Foster's Avenue is at slightly higher ground level, the oblique outlooks to the rear of the dwelling, the retention of existing trees, and provision of supplemented landscaping along the western boundary, I consider that Block C will not result in overlooking of the western properties that would cause an undue loss of privacy.

7.8.11. In the interests of clarity, while the above has focussed on overlooking of 30 Fosters Avenue, I confirm my conclusions are applicable to other western properties further along Foster's Avenue. That being, there is no undue overlooking of these properties due to the design and siting of the western elevations of Blocks B and C, the inclusion of protective screening measures for balconies and windows, and the increasing separation distances between the proposal and properties 32 to 42 Foster's Avenue (c.16m to c.80m respectively).

7.8.12. In respect of the southern boundary, Block C occupies the majority of the southern portion of the site. The site shares the boundary with five properties, and Block C is sited opposite 21-29 St. Thomas Road (uneven numbers) with separation distances of between of c.45m–c.50m to the rear walls of these properties. As referred to previously, Condition 3 relates to Block C and revised the southeast corner by omitting the ground floor and first floor apartments and removing the staggered building lines at different storeys. As outlined in Section 7.5, I recommend the reinstatement of the first floor unit allowing the southern elevation of Block C to be flush from ground floor to second floor level, and the applicant's proposed revision to Condition 3 amending the southern elevation's building line (southeast corner) to be setback from the boundary by c.2m (thereby increasing the separation distance between this part of the southern elevation of Block C and the opposing rear wall of 23 St. Thomas Street). The southern elevation of Block C (as indicated in the plans and elevations submitted with the first party appeal) includes a combination of standard windows and recessed balconies for the southern apartments, which will have southerly outlooks. Due to the significant separation distances of between c.45m–c.50m to the rear walls of these properties, including a minimum of c.10m within the appeal site, the change in topography whereby St. Thomas Road is at notably higher ground level and the shared boundary is a retaining wall, and to the presence of mature tree screening along the southern boundary, I concur with the positions of the planning authority and applicant, and consider that Block C will not result in overlooking of the southern properties that would cause an undue loss of privacy.

7.8.13. In summary, it is apparent that the design of the proposal has attempted to ameliorate associated overlooking impacts on the adjacent properties. Parts of the eastern and western elevations of Blocks A and B respectively do not feature

balconies or standard windows, relying instead on high-level windows or balconies positioned on different elevations with notable screening interventions to provide amenity for the residents of the proposed apartments. I consider the impacts associated with overlooking to be of a scale and range that is within acceptable parameters.

Overshadowing and Loss of Daylight

- 7.8.14. Appellants on the western and southern boundaries raise strong concerns in relation to overshadowing from the proposal on their properties, both dwellings (windows and rooms) and the rear garden areas. As discussed in Section 7.5 (in respect of the proposed public realm) and Section 7.6 (in respect of the proposed apartments), the applicant has submitted a Daylight and Sunlight Report which, in addition to analysing the proposed scheme, also examines the impact of the proposed development. Using criteria in the BRE 2011 and BS8206 Part 2:2008, the report presents detailed technical analysis of the daylight and sunlight availability to neighbouring properties, both dwellings and amenity areas.
- 7.8.15. The BRE 2011 guidance recommends a series of measures/ tests to calculate the impact of a proposed development on potential daylight availability for rooms in adjoining properties where daylight is required, including living rooms, kitchens, and bedrooms. For neighbouring properties, the accepted test is the Vertical Sky Component (VSC), which is a measure of how much direct daylight a window is likely to receive. If the VSC of a window with the new development in place exceeds 27% then sufficient daylight is reaching that window, and if the VSC is both less than 27% and less than 0.8 times (i.e. reduced by more than 20%) of its former value, occupants of the existing building will notice the reduction in the amount of daylight affected.
- 7.8.16. The BRE 2011 guidance identifies living rooms, and to a lesser extent kitchens and bedrooms, as being most important for assessment of sunlight availability, and recommends the use of the Annual Probable Sunlight Hours (APSH) as a measure of how much sunlight a window is likely to receive. If the APSH of a window with the new development in place is less than 25% (of annual total) and 5% (of winter period, 21st Sept-21st March) and less than 0.8 times (i.e. reduced by more than

20%) of its former value then a window in an existing dwelling may be adversely affected.

- 7.8.17. The report determines which properties to assess by establishing the Zone of Influence for the proposal in accordance with the BRE 2011 guidance. The zone is determined by the height of the proposal (excluded properties if the distance between a subject window and the applicable part of the proposal is greater than three times the height of that part of the proposal), with analysis being undertaken of included properties based on the proximity of the proposal (if the proposal subtends (is within) a 25 degree angle as measured horizontally from the centre point of the lowest window in an included property).
- 7.8.18. The Zone of Influence for the proposal (Figure 2 of the report) includes 11 properties (dwellings and/ or rear garden areas): 20 and 22 Foster's Avenue, 1, 2 and 3 The Fosters to the east, 30, 32 and 34 Foster's Avenue to the west, and 23, 25 and 27 St. Thomas Road to the south, with analysis of 12 windows (two windows in 30 Foster's Avenue) in these 11 properties (at locations A-M (excl. I)), with analysis indicated on section images. (Note: I highlight that the report includes the building footprint on plan (as per Figure 2) and section (as per View J) of Block C from the SFI response (i.e. with the stepped design of the southeastern corner) and I confirm there is no implication for my review of the assessment as the results are the same for both designs).
- 7.8.19. From the initial assessment, 20 Foster's Avenue to the east and the three southern properties are excluded from further analysis due to their being outside of the Zone of Influence/ sections not subtended. The remaining seven properties (1, 2, and 3 The Fosters and 22, 30, 32, and 34 Foster's Avenue) are subject to further analysis. 29 windows, which represent the worst-case scenarios for the adjacent residential properties, are assessed for daylight (VSC) and sunlight (APSH) conditions.
- 7.8.20. In respect of daylight, compliance with daylight requirements is achieved in 100% of the windows, whereby all windows retained a VSC of 27% or exceeded 0.8 times their former value. Reductions are recorded in five windows in 32 and 34 Foster's Avenue though access to sufficient daylight remains for each and the impact is described as negligible, with which I concur.

7.8.21. In respect of sunlight, compliance with daylight requirements is achieved in c.97% of the windows, whereby all windows except one (W6 is in 2 The Fosters) retained a APSH in excess of 25% and 5%, or exceeded 0.8 times their former value. I note that the subject window, which had a value less than 0.8 times its APSH during winter, is a ground floor window towards the rear of the dwelling, has a northerly orientation, has existing annual and winter APSH values which are lower than the standard 25% and 5%, and is understood to serve a bedroom. On balance, I am satisfied that the extent of non-compliance is minimal, that the nature (a bedroom) and scale (c.56% reduction in value in winter) of the impact is modest and acceptable given the urban location.

7.8.22. The report includes an analysis of the level of sunlight availability, or sun hours on ground, for the rear gardens of seven properties, 22 and 30 Foster's Avenue, 1 and 2 The Fosters, and 21, 23 and 25 St. Thomas Road to the south. The BRE 2011 guidance indicates that front gardens and rear gardens of properties due south of a proposal do not need to be assessed for sunlight. The BRE 2011 guidance recommends that at least 50% of an amenity area, including private rear gardens, should receive a minimum of two hours sun hours on ground on March 21st. Of the seven properties analysed, all gardens are found to retain two or more hours of direct sunlight over 50% of their areas on the day, thereby indicating no undue overshadowing caused by the proposal. A marginal change in sunlight availability (98% of garden area receiving 2hrs of sunlight reducing by 2% to 96%) is recorded in the rear garden of eastern property, 22 Foster's Avenue, and the impact is described as imperceptible, with which I concur.

7.8.23. In summary, I consider the extent of overshadowing and loss of daylight arising from the proposed development to be minimal as the properties (both dwellings and rear gardens) assessed maintain acceptable standards in terms of daylight and sunlight availability, and any impact is considered to be well within acceptable parameters having regard to the urban location and existing conditions.

Overbearance and Loss of Visual Amenity

7.8.24. Overbearance caused by the proposed development and an associated loss of visual amenity is cited as a grounds of appeal. In Section 7.6 above, I have previously considered the visual impact of the proposal and have concluded that the

proposed development is an appropriate design solution for the site, does not cause injury to the streetscape along Foster's Avenue, and does not have a significant negative effect on the landscape of the local surrounding area.

7.8.25. In terms of overbearance as a component of residential amenity, I consider that the existing structures within the site (24 and 26 Foster's Avenue) presently exert a strong visual effect on the eastern properties (22 Foster's Avenue, 1 and 2 The Fosters). This arises from their current structural condition, building height, and immediate/ close proximity to the shared boundary. The proposal comprises their demolition, a new landscaped buffer along the boundary, and an increase in separation distances by c.15m–c.20m to Block C and to Block A respectively, which I consider represents an improvement in terms of visual effect and visual amenity. For the western properties, in particular 30 Foster's Avenue, the proposed development will unavoidably result in a change in outlook from that which currently exists due to the inconspicuous scale of development proximate to the western boundary. However, I do not consider the extent of change to be excessive (trees to be retained, new screening planted along boundary, stepped building heights, staggered building lines and forms) or adverse (proposed scheme is well designed with high quality features, finishes, and boundary treatments). For the southern properties, due to the significant separation distances (c.45m–c.50m), the mature tree screening, and the change in topography, I do not consider that the proposal will be overtly visible, instead constituting built forms visible in the mid-ground/ on the mid-skyline. In summary, I do not consider the extent of the change in outlooks from the adjacent dwellings to be adverse or significant, nor that the proposal exerts an overbearing visual impact which would be injurious to the residential amenity to the adjacent properties.

Disturbance and Disruption

7.8.26. Other issues of relevance in determining the proposal's impact on existing residential amenity, a number of which are raised in the grounds of appeal, include noise disturbance, boundary treatments and safety concerns, and disruption arising from the demolition and construction impacts associated with the proposal.

7.8.27. In respect of noise, the application includes a Noise Impact Assessment. The impact of noise on the residential amenity of adjoining properties had been cited by the

Board as part of the first refusal reason of the previous SHD application. The Assessment report considers noise at the operational phase (i.e., occupation of the apartments), including traffic noise (from traffic generation and use of the basement level parking, neither of which are found to exceed standards/ create a significant effect), plant noise (no significant effect), noise associated with the communal amenity building (recommendations for windows, controlling noise at source, and managing use), and noise associated with residents' use of balconies (acceptable due to siting and separation distances, and recommends control through management). I note that the planning authority including the EHO did not express concerns over the matter. While I note the appellants' opposition in relation to noise disturbance with a particular focus on the presence of roof top terraces, I highlight that the proposal is a residential use in itself, residents will be subject to the requirements of the management company and other applicable noise prevention legislation. I accept the findings in the report and the position of the applicant that the separation distances involved are similar to/ exceed rear gardens in conventional residential developments. I do not consider the operational noise impacts arising from the proposal to be of a nature or scale to have a significant negative effect on or cause injury to the residential amenity of the adjacent properties.

7.8.28. In respect of safety concerns, appellants submit that the boundary treatment and landscaping proposals (2m high fence with posts and seats with planters) along the southern boundary is security risk allowing opportunities for unauthorised access to the southern properties. The applicant refutes the claim, stating the existing retaining wall remains with gaps filled with timber and the terraced planter erected against the retaining wall. I have reviewed the boundary details and landscaping plans and consider the development of this area as a Woodland Garden Trail to be a positive and advantageous feature. The design (hard and soft landscaping) includes a walking route with seating areas thereby encouraging formal use which in turn is a security measure. The area is adjacent to the apartments of Block C which will have outlooks towards the boundary wall, providing further passive surveillance. The scheme will also be managed by a management company. I do not consider that the development of this area with seating and planting against the boundary wall to be a safety concern for the southern properties. Any criminal activity is a matter for An Garda Siochana.

- 7.8.29. In respect of the site development works (i.e. demolition and construction phases), appellants raise concerns regarding the associated adverse impacts on their residential amenity. These include from noise, pollution (asbestos, dust, dirt), waste, hours of operation, traffic inconvenience, length of time for the works to be undertaken, and a lack of information on the processes involved. The demolition management process is among the key issues raised and considered in the concurrent appeal at the site, ABP 308770-20. Similarly, for this appeal case, the site development works (broadened to also include the construction phase of development) continue to be a concern for appellants. This is reflected in the range of demolition and construction documentation included in the application and appeal.
- 7.8.30. In considering the residential amenity of the adjacent properties, I have reviewed the documentation and identify the most relevant documents as being the Construction and Demolition Waste Management Plan (CDWMP, as lodged with the application), the Construction and Environmental Management Plan (CEMP, as submitted at SFI response with the Outline demolition Plan (ODP) as an appendix), and as supplemented by the preliminary Demolition Management Plan (DMP) submitted in response to the third party appeals (which supersedes the ODP included in the CEMP, and is the same report included in the concurrent appeal ABP 308770-20). Several of the concerns raised by appellants are typical of impacts that arise during site developments adjacent to residential properties. I consider that the provisions outlined in the CEMP, including good site management practices, specified hours of operation, local traffic control measures, parking and compound area within the site boundaries, noise, vibration, dust and asbestos surveying and monitoring, and involvement of a range of personnel (main contractor with a traffic marshal, site liaison officer, noise and vibration specialist, specialist asbestos contractor, and independent asbestos analysts) will address and ameliorate the impacts.
- 7.8.31. Particular to the residential amenity of 30 Foster's Avenue, is the proposal's impact on the property due to its being located adjacent to the west of 28 Foster's Avenue, sharing a site boundary, and a garage structure with a shared party wall and roof covering. The appellants raise concerns in relation to the demolition of the garage and request it be conditioned that the applicant replaces the roof, roof joists and other materials of the garage of 30 Foster's Avenue damaged by the unmaintained garage of 28 Foster's Avenue. The applicant acknowledges that provision is

required to retain the shared party wall and commits to a list of measures in the DMP of the CEMP (design, investigative, stability, protective, weathering, and remedial measures will be undertaken as necessary). I consider that the range of protective measures are sufficient to ameliorate the demolition impacts.

Summary

7.8.32. Final considerations in respect of the residential amenity of adjacent properties relate to the refusal reason for the previous SHD application, and compliance with the zoning objective and 2022 CDP policy.

7.8.33. In respect of the previous SHD application, appellants claim the refusal reason remains applicable to the current proposal and has not been overcome. The Board's refusal reason included that serious injury would be caused to the residential amenity of adjoining properties due to overbearance, overbearing, overlooking, overshadowing and noise impacts from that scheme. As outlined in the relevant subsections above, I consider the current proposal to be acceptable in terms of those aspects and in my opinion, this scheme has addressed and overcome the previous refusal reason.

7.8.34. In respect of the residential zoning objective, appellants submit that the proposal runs counter to the (previous 2016 CDP) statutory zoning objective, not protecting the amenity of adjoining residents and would certainly not improve it. As outlined in Section 5.4, the 2022 CDP has come into effect in the interim since the appeals were lodged and is the applicable CDP for the appeal case. The appeal site is zoned as 'A' with the stated objective *'To provide residential development and improve residential amenity while protecting the existing residential amenities'*. The proposal causes the loss of two uninhabitable dwellings and the provision of 68 new apartments, which is in accordance with the zoning objective. I consider that the zoning objective describes the necessary balance between providing new homes for people in a manner that protects the amenities of existing residents. As outlined in the relevant subsections above, in my opinion, the current scheme achieves that balance and I find the proposal to accord with the zoning objective.

7.8.35. Similarly, I consider that the proposed development satisfies 2022 CDP Policy Objective PHP 20: Protection of Existing Residential Amenity being an infill development of greater density and building height than adjacent residential areas

but not excessive (acceptable principal dimensions, including 4 storeys in height which complies with the BHS) or overly dominant (detached blocks, stepped building heights and staggered built forms), and of a design (privacy protection features, omission of balconies, use of high windows) and layout (building footprint alignment, sufficient separation distances) that protect the amenities of adjacent properties.

7.8.36. In summary, I have noted and considered the concerns of adjacent residents and assessed in detail issues of overlooking, overshadowing, overbearance, disturbance and disruption. I consider that the applicant has had due regard to and respect for the residential amenity of adjacent properties and has incorporated a number of measures to protect and prevent undue impacts. I am satisfied the current scheme overcomes the previous refusal reason of the SHD application, is in compliance with applicable 2022 CDP policy, and does not injure the residential amenity of adjacent properties. I consider that finalised plans for the site development works and measures to protect the residential amenity can be addressed appropriately by condition in the event of a grant of permission.

7.9. **Biodiversity and Green Infrastructure**

7.9.1. The site comprises three distinct properties, two dwellings with garden areas, and the industrial buildings complex. Reflective of this context, there are many mature trees and hedgerows within the site and along the historic site boundaries (Arboricultural Assessment and Landscape Report identify 83 trees, three hedgerows, and a treeline).

7.9.2. The proposal comprises the demolition of all buildings, the removal and/ or diversion of site services, and the felling of 63 trees (c.76% of total cover) and the three hedgerows within the site (located along the northern boundary, the internal boundary between 26 Foster's Avenue and 28 Foster's Avenue, and the eastern boundary). Investigations undertaken did not locate the presence of a watercourse (third party references are made to a locally known Trimlestown Stream) at or adjacent to the site. The presence of four protected bats species at the site with recorded commuting, foraging, and roosting activity is the most notable feature for the proposal in respect of biodiversity.

7.9.3. The grounds of appeal refer to the adverse impact of the proposal on the natural environment through the loss of trees, air pollution from asbestos, and potential

pollution of groundwater conditions. Raised in detail by appellants is the negative impact of the proposal on the local bat population. I propose to address these main grounds in turn.

Ecological Value of the Site

- 7.9.4. In respect of biodiversity, submitted with the application are an Ecological (Biodiversity) Appraisal, Arboricultural Assessment (with a Tree Constraints Plan, and Tree Protection Plan), a Bat Assessment, a Landscape Report (as updated in the SFI Response), a Hydrogeological Assessment, and an Appropriate Assessment Screening report. There is also a degree of overlap with the demolition and construction management documentation on the case file. The applicant's third party appeal response includes further information on the drainage and flooding items (engineering response, Appendix 3), arboricultural and ecological items (landscaping, arboricultural and hydrogeological response, Appendix 4) and bat items (bat specialist response, Appendix 5).
- 7.9.5. The main findings of the Ecological (Biodiversity) Appraisal for the site (supported by three field surveys undertaken over different months) include there being no wildlife or nature conservation designations, no watercourses (the Hydrogeological Assessment indicates that the Trimlestown Stream is located c.160m northeast of the site (downgradient of the site), and the site investigations indicated that groundwater underlying the site was discharging in a northwesterly direction and not towards the stream), no rare, threatened, or protected plant species (including trees and shrubs), no rare bird species (including red listed high conservation concern), no badgers or otters (protected mammals), and no protected amphibians, reptiles, or insects. The notable records of flora and fauna at the site include the identification of the three cornered garlic, a listed invasive species listed in the European Communities (Birds and Natural Habitats) Regulations 2011 and, most notably, of four species of bats (details and impacts are assessed in greater detail in the following subsection).
- 7.9.6. The Arboricultural Assessment is accompanied by a Tree Constraints Plan and Tree Protection Plan. The Assessment identifies 83 trees including four trees in the public grass verge at the northern boundary, one treeline in adjacent properties along the southern boundary, and three hedges (one between 26 Foster's Avenue and 28

Foster's Avenue, and two along the eastern boundary). The Assessment classifies the trees into one of four qualitative categories (A, B, C, and U, corresponding with high quality to low quality recommending removal). Of the 83 trees identified, there are no Category A trees, five Category B trees, and a combined total of 78 Category C and Category U trees (i.e. low quality and low quality recommending removal). Of the 63 trees proposed to be felled to allow for the site development works, one is a Category B tree and the remaining 62 are Category C and Category U trees. Other works include cutting back the canopy of the treeline on the southern boundary where it overhangs 26 Foster's Avenue. The Landscape Report reiterates findings from the Ecological (Biodiversity) Appraisal and the Arboricultural Assessment.

- 7.9.7. In terms of ecological impacts, the Appraisal finds the demolition works and vegetation removal to have no impact on badgers, other large mammals, reptiles, lepidoptera, or other species groups, and no loss of habitat for overwintering birds. The trees to be removed have minimal ecological value (their species), and there will be no impact on breeding birds. The presence of three-cornered garlic/ leek, an invasive species, is identified and its necessary eradication will be undertaken through the site development works. The potential for impacts on water quality (contaminated run-off and sedimentation) from the site development and operational phases is highlighted, with reference made to ameliorating measures in the CEMP and subsequent correct design and operation of water services. The findings of the hydrological investigation and the AA Screening report are highlighted, whereby the Trimlestown Stream is located to the northeast of the site, groundwater underlying the site does not appear to be discharging towards the stream, and therefore there is no pathway for pollution damage to the European Sites. In relation to the impact on trees, the Arboricultural Assessment notes the tree loss, and finds that the proposed tree and shrub replanting plan will ameliorate the impact, with a selection of appropriate species offering replacement biodiversity and screening benefits.
- 7.9.8. In respect of mitigation measures and monitoring proposals, I highlight there is a degree of overlap between those in the Ecological (Biodiversity) Appraisal, Arboricultural Assessment, and Bat Assessment (which is outlined in the following subsection). The Appraisal identifies mitigation measures in respect of tree removal (protective fencing for existing trees, replacement trees (minimum 80, different sizes), ecological favourable planting), birds (outside of nesting season, if not

measures for nest investigation) and bats (bat boxes as roost alternatives) with monitoring as necessary from the project ecologist. The measures included in the Assessment are that the canopy of the southern boundary treeline be cut back, identified trees felled in accordance with the requirements of BS 5837, remaining 20 trees retained and protected, with proposed tree, shrub and hedge planting and landscaping undertaken in accordance with the requirements of BS 5837.

Monitoring of tree felling, tree protection, tree pruning and installation of new hard and soft landscaping to be undertaken/ supervised by the project arboriculturist ensuring works accord with the agreed tree protection/ landscaping plans.

7.9.9. I note that the planning authority did not cite any objection to the proposal in respect of biodiversity. The planner's reports screened out the requirement for environmental impact assessment and appropriate assessment, and the grant of permission includes seven conditions relating to biodiversity, landscaping, and arboriculture. In the event of a grant of permission, I am satisfied that the impacts arising from the proposal can be managed through the measures of the Ecological (Biodiversity) Appraisal and Arboricultural Assessment, and as necessary, any outstanding agreement of documentation with the planning authority.

7.9.10. Save for the presence of bats species, which is considered in detail below, I am satisfied that the applicant has demonstrated that the site is not valuable in ecological, habitat, or arboricultural terms. The 63 trees to be felled from a total of 83 are not significant in and of themselves (their species), their limited ecological value (choice for birds nesting), with a notable proportion (c.26%) being retained with protective measures. In my opinion, the proposal, supported by an arboricultural assessment, is in accordance with CDP policy in Section 12.8.11 with trees and hedges retained as far as is practicable, and tree protection measures to be employed to the required standard.

7.9.11. While I note the concerns raised by the appellants in relation to pollution of the natural environment, as I outlined in the previous subsection in respect of the CEMP (as supplemented by the DMP) and waste management, the identified asbestos containing material will be removed by an asbestos removal contractor and disposed of offsite in accordance with the applicable legislation. In this regard, the concerns raised by the appellants are somewhat generalised and without any substantiated environmental evidence provided. In summary, I am satisfied that the applicant has

comprehensively surveyed the site for biodiversity (flora, fauna, habitats) and has demonstrated that the site has limited ecological value save for the presence of bats species. I consider the impacts identified and described as none or minor in effect to be an accurate assessment, and am satisfied these can be adequately addressed by the proposed mitigation measures.

Bats: Grounds of Appeal

- 7.9.12. The grounds of appeal relating to the proposal's impact on the local bat populations include the injury caused through widespread destruction of bats roosts, their feeding habitats, and illumination effects, that the Bat Assessment is incomplete, the mitigation measures are not in compliance with national guidelines, and the information submitted is inconsistent with that of the concurrent application, that the derogation licence for the demolition works is invalid due to the manner in which it was applied for, is for the concurrent application, does not meet strict criteria set by case law, and the information submitted is inconsistent with that of the concurrent application, that the SHD refusal reason relating to bats has not been overcome, and that the project requires an EIA due to the destruction of bats roosts.
- 7.9.13. The applicant's appeal response submits that the site is of low importance to foraging and commuting bats and the extensive landscape planting proposed will increase foraging habitat, that the Bat Assessment is fully comprehensive, based on detailed surveys with targeted mitigation measures that comply with the Guidelines and are in line with best practice and key reference texts, the derogation licence granted by the National Parks and Wildlife Service (NPWS) accords with the applicable 2011 Regulations and is valid, the derogation licence covers the demolition of 26 Foster's Avenue (which is applicable to both applications), and the derogation licence process is separate from the planning process with a reference to case law, and the Ecological (Biodiversity) Appraisal, and Bat Assessment ensure that the proposal does not have an adverse impact on bats thereby addressing the SHD refusal reason.
- 7.9.14. In the further responses, appellants maintain that the Bat Assessment remains inconclusive in respect of the presence of bat roosts in 24 and 28 Foster's Avenue, that bat roost destruction is an activity generally prohibited, cannot be mitigated against, and should be avoided, and that permission cannot be granted as the

derogation licence applies to a different project, was granted for an inappropriate purpose, is invalid and does not satisfy cited case law.

Bats: Bat Assessment

7.9.15. I have reviewed the range of information in the application and appeal case relating to bat species recorded at the site and activity in the wider area. This includes the Bat Assessment submitted with the application, and the applicant's appeal response which includes responses from the bat specialist to issues raised in the third party grounds of appeal (Appendix 5).

7.9.16. The Bat Assessment outlines the extent of survey work undertaken in support of the proposal (stated as necessary to address the refusal reason of the SHD application). The survey work, including building and tree inspections, dawn and dusk surveys, walking transects, and use of static bat detectors, has been undertaken over different months during the summer active season for three years (2018, 2019, and 2020).

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

- Four species of bats are recorded at the site: the common pipistrelle, soprano pipistrelle, Leisler Bat, and the Brown long eared bat;
- Bat populations recorded are of local importance (four out of nine Irish species present, described as the most common/ widespread species);
- Site is a small area within an urban setting network of connected mature gardens;
- Site is principally being used by bats as a commuting route to main foraging habitats in UCD;
- Site is of low importance for commuting and foraging bats;
- Site is occasionally used for roosting (26 Foster's Avenue) and is of low importance for roosting bats;
- Three bat roosts are recorded during surveys in 2018 and 2019 (two night roosts, one for an individual common pipistrelle and for an individual soprano pipistrelle, and a day roost for an individual brown long eared);

- No bat roosts are recorded in 24 or 28 Foster's Avenue, or any trees in the site;
- No maternity or hibernation roosts are recorded at the site;
- Overall level and type of bat activity is classified as of a Low-Medium level;
- Site has a total of 83 trees, only one of which is classified as a Category 2 tree with potential to be a bat roost (PBR);
- Proposal involves felling of 63 trees (74% of total), including the PBR tree, removal of three hedgerows, retention of 20 (26%) trees along north and west boundaries, and treeline on southern boundary;
- Demolition of buildings (26 Foster's Avenue), in terms of roosting, will have a minor negative impact on the common pipistrelle, soprano pipistrelle, and brown long eared bat species, and no impact on the Leisler Bat species;
- Felling of trees, in terms of foraging and commuting, causes a minor negative impact on the common pipistrelle, soprano pipistrelle, and brown long eared bat species, and no impact on the Leisler Bat species (as fly high); and
- Landscaping plan, in terms of foraging, as proposed with 86 trees and extensive shrub, buffer, grass planting, causes a minor positive impact (on brown long eared and Leisler Bat species) to moderate positive impact (common and soprano pipistrelle); and
- Lighting plan, in terms of disturbance, designed with industry compliant luminaires and maintaining dark as possible conditions at boundaries, causes a minor negative impact on brown long eared bat (other species can tolerate low LUX levels).

7.9.18. The Bat Assessment proposes several mitigation measures to reduce the identified impacts including:

- Erection of alternative roosting sites prior to the demolition of the buildings (two rocket bat boxes on freestanding poles in a dark zone at the rear/ western boundary of the site, two temporary summer bat boxes on existing trees, and four integrated bat tubes built into the external wall of the communal amenity building adjacent to the boundary wall;

- Demolition works to be undertaken during spring or autumn months, in daytime hours with no external lighting, and in stages (five steps over two days);
- Bat specialist to be present during demolition works, check buildings, known roosts, roof spaces, cavities;
- Prior to demolition, bat specialist resurvey of 24 Foster's Avenue and 28 Foster's Avenue to ensure no bats are present;
- Tree felling undertaken in specified spring (February) or autumn (September, October, November) months; and
- Prior to felling of Category 2 PRB tree, bat specialist will undertake endoscope inspection to ensure no bats are present.
- Prior to demolition works, bat specialist to meet/ advise project manager and workers on bat related items;
- Monitoring measures during demolition works (bat box inspections, night-time static surveillance units in 26 Foster's Avenue and western boundary, dusk and dawn surveys, and endoscope inspections of crevices, small spaces) and reporting to planning authority;
- Course of action if a bat is encountered (works temporarily cease, bat specialist removes bat (unless already flown away), secures in bat captivity box, releases to a bat box prior to dusk);
- Implementation of the Landscaping Plan with:
 - maintenance of site's western (with majority of retained trees) and southern (with mature treeline) boundaries along which most bat commuting activity is recorded;
 - extensive planting of native and deciduous trees and night-scented herbaceous plants that particularly attract and support insect populations; and
- Implementation of Lighting Plan with;
 - industry compliant LED luminaires in terms of intensity (LUX), spectrum, height, tilt, light spill;

- maintenance of dark zones along the site boundaries to facilitate movement of light sensitive bats; and
- avoidance of lighting in the vicinity of the alternative roosts and along the western boundary;
- Monitoring measures post-construction works (inspection of alternative roosting site within one year of erection, register bat box scheme with Bat Conservation Ireland, and annual inspection for at least two years); and
- Monitoring of bat mitigation measures (full summer bat survey, post works survey within one year of project completion with focus on effectiveness of implementation of Landscaping and Lighting Plans).

7.9.19. In respect of the adequacy of the Bat Assessment, I note the applicant's appeal response to the criticisms and stated shortcomings. The response outlines the extent of the survey work in respect of 24 and 28 Foster's Avenue, the selection of the mitigation measures (i.e. recommendation for use of bat boxes has been designed relative to the roost status and suitability for the recorded bat species, and are located in areas where the survey work established in use by bats), and the multi-disciplinary design team approach to the landscaping and lighting plans. I find the proposal to be in accordance with 2022 CDP policy in Sections 12.7.1, 12.7.2 and 12.9.10.1 whereby a precautionary approach has been taken to the site development works based on best expert knowledge, incorporating a number of protective measures for the local bat populations, including careful and sensitive design of the lighting schemes.

7.9.20. Appellants state that inconsistent information has been submitted between the current appeal and the concurrent appeal (PA Ref. D20A/0406, ABP 308770-20) in respect of the trees to be felled and the mitigation measures in the respective Bat Assessments. I have reviewed the relevant information on both appeal cases and note there are differences between the schemes in respect of the extent of site development works, subsequent landscaping plans, and Bat Assessment mitigation measures. However, while the current proposal involves the felling of 63 trees and the concurrent proposal is of 21 trees, the mitigation measures for both proposals include retention of a number of trees along the site's western boundary, two alternative bat boxes on poles and two summer bat boxes on trees, all to be erected

on the western boundary (the current proposal also includes four bat tubes at the proposed communal amenity building). In this respect, that the current proposal involves a greater number of felled trees does not have any implication on the achievement of the mitigation measures of the concurrent proposal. In any event, as discussed further in Section 7.12, I consider the proposals to be mutually exclusive whereby in the event of grants of permission, only one proposal can be implemented. Therefore, I find that the proposals are materially different with resultant varying but not inconsistent information.

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

7.9.22. Additionally, I note the positions of other experts with authority on the matter. The Ecological (Biodiversity) Appraisal (authored by a different ecologist) concurs that the removal of the buildings on site and the loss of trees will have a potential minor negative impact on bats at local level. The planning authority raised no issue on/objection to the matter, and as discussed in the following subsection, the NPWS has granted Derogation Licence No.: DER/BAT 2020-93 in respect of the destruction of known bat roosts associated with the demolition of 26 Foster's Avenue.

Bats: Derogation Licence

7.9.23. All Irish bat species are protected under the Wildlife Act 1976, as amended, and are listed as Annex IV species of the Habitats Directive 1992 which is transposed into Irish law by the European Communities (Birds and Natural Habitats) Regulations 2011, as amended. The destruction, alteration, or evacuation of a known bat roost is a notifiable action, and a derogation licence must be obtained in accordance with Regulation 54 of the 2011 Regulations from the Minister for Culture, Heritage, and the Gaeltacht through the NPWS before works entailing same can commence.

7.9.24. During the processing of PA Ref. D20A/0406 by the planning authority (concurrent appeal case, ABP 308770-20), at SFI response stage the applicant submitted Derogation Licence No.: DER/BAT 2020-93 as granted by the NPWS. The licence has attached terms and conditions including:

- Licence relates solely to activities relating to the demolition of 24, 26, and 28 Foster's Avenue;
- Mitigation measures in the Bat Assessment (specifically pgs. 43-46 of the Bat Assessment, SFI response of PA Ref. D20A/0406, ABP 308770-20) together with any changes or clarification agreed with the NPWS are to be carried out;
- No work to begin before 1st October 2020 and to be completed by 1st October 2022; and
- Works to be supervised by the applicant's bat specialist.

7.9.25. The grounds of appeal include that the derogation licence for the demolition works is invalid due to the manner in which it was applied for, is for the concurrent appeal case, and does not meet strict criteria set by case law. That the appeal should be refused on this basis is recommended. In the appeal response, the applicant refutes the grounds, outlining that a derogation licence was applied for, granted, and is valid for the demolition of buildings at the site where bats were confirmed to be roosting (i.e. covering 26 Foster's Avenue), the licence was granted on 28th September 2020 and applies until 1 October 2022, the legal obligation to hold a derogation licence is governed by the 2011 Regulations, and that the licensing process is separate to and independent of the planning process.

7.9.26. I have reviewed the Derogation Licence No.: DER/BAT 2020-93 as granted by the NPWS (submitted with the SFI response of PA Ref. D20A/0406, ABP 308770-20),

the Bat Assessment (as per SFI response of PA Ref. D20A/0406, ABP 308770-20), and the Bat Assessment of the current appeal case. While there are differences in the mitigation measures between the Bat Assessments, naturally reflective of the differences in the proposals (current proposal has measures relating to the landscaping and lighting plans), the derogation licence covers activities associated with bat roost destruction caused by the demolition of the buildings within the site which is a component common to both proposals. Additionally, I highlight that the terms and conditions of the derogation licence incorporate flexibility by allowing for any changes or clarifications to apply as agreed with the NPWS.

7.9.27. Furthermore, I make two observations on the grounds of appeal relating to the status of the derogation licence. Firstly, it is the NPWS on behalf of the Minister that has responsibility for authorising derogation licences and is precluded from unless satisfied that certain conditions pertain. Secondly, the derogation licence process is subject to the 2011 Regulations, is a separate process to the planning consent process, and as submitted by the applicant, a grant of permission does not obviate the need to obtain a derogation licence.

7.9.28. In respect of the policy context, while I note 2022 CDP Section 12.7.1 and 12.7.2 states that it is preferable for a derogation licence to have been applied for and/ or obtained prior to submission of any planning application, and that the applicant has been granted such a derogation licence by NPWS, it is not a mandatory requirement for a planning consent. Therefore, I accept that Derogation Licence No.: DER/BAT 2020-93 is valid in so far as it has been authorised by the NPWS and that it covers the demolition of buildings within the site, which is a component of the current proposal, and that the Board can have regard to same in so far as the licence is relevant for the appeal case.

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

undertaken in accordance with the terms and conditions of Derogation Licence No.: DER/BAT 2020-93 or any changes to the licence, or the terms of another derogation licence as may be authorised by the NPWS, a copy of which shall be provided to the planning authority.

Bats: SHD Application

- 7.9.30. In respect of the bat related refusal reason of the SHD application, I have reviewed the SHD application documentation and the Board's decision. In assessing the SHD application, the Inspector indicates that it was unclear from the Bat Survey whether the interior of the building (26 Foster's Avenue) was examined for potential bat roosts, and accordingly the survey was found to be deficient. The Inspector considered light spillage from the proposed apartments and the public lighting scheme to be incompatible with the stated mitigation measures, and concurred with the planning authority which had recommended refusal of the SHD application for reasons including the adverse impact on bats.
- 7.9.31. While in similarity with the SHD application, the current proposal comprises demolition works and the construction of an apartment scheme, I consider there to be some notable differences between the schemes in respect of their nature and the information provided by the different applicants. The Bat Survey (while prepared by the same bat specialist) for the SHD application was based on survey work undertaken over two days in 2018. In the current proposal, the Bat Assessment is based on more extensive survey data over three years, with clarity on the nature of the roost investigations, and with more detailed mitigation and monitoring measures proposed. There is a reduction in impact from the more extensive tree removal and boundary treatment changes of the SHD application landscaping details. The Bat Assessment in the current proposal is supplemented by the Ecology (Biodiversity) Appraisal, Arboricultural Assessment, Landscape Report and Landscaping Plan, Site Lighting Report and Luminaire Schedule, and Bat Specialist note at SFI response stage (confirming standards complied with on the outdoor lighting plan), which indicate the extent of design team consultation and cross-referencing between specialists to design and incorporate measures to protect the local bat populations. I also note that the planning authority granted permission for the current proposal, having objected to the SHD application.

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

Bats: EIA Requirement

7.9.33. In respect of the project requiring an EIA due to the destruction of bat roosts, I have had regard to the applicant's Bat Assessment, Ecological (Biodiversity) Appraisal, and EIA Screening Statement, and I have undertaken a Screening Determination for EIA in Section 5.6 of this report. The presence of four bat species (out of the nine species of Irish bats) has been identified at the site. Of these, three species are described as common, one as widespread, with no rare species being present. The bat activity comprises commuting (to habitats in UCD), foraging, and roosting. Three bat roosts (two night time and one day time) for three individual bats were recorded in 26 Foster's Avenue during surveys in 2018 and 2019. No roosts were identified in the bat survey in 2020. Over the three year survey period, no maternity roosts were recorded, no roosts were recorded in 24 or 28 Foster's Avenue, and no roosts were recorded in any trees.

7.9.34. In qualitative terms, I note that the overall type and level of bat activity is described as of being a low-medium level. The site is classified as being of low importance for commuting and foraging bats, and of low importance for roosting bats. In terms of roosting, the demolition of the buildings in the site is classified as having a minor negative impact on three of the four species. In terms of commuting and foraging, the proposed tree removal is described as having a minor negative impact on three of the four species. In terms of foraging, the proposed planting and landscaping is described as having a minor to moderate positive impact on the four species. While in terms of disturbance, the lighting plan is described as having a minor negative

impact on brown long eared bat species. I concur with these descriptions and assessments of the nature and scale of the impacts.

7.9.35. However, I consider that a comprehensive range of mitigation and monitoring measures are proposed to address the impact of the bat roosts destruction including the erection of alternative roosting sites (four bat boxes on poles/ trees and four bat tubes), resurveying of all buildings and the single PRB tree prior to demolition and felling, seasonal restrictions for undertaking the works, daytime undertaking of works, subsequent monitoring of the landscaping and lighting plans, and all works being under the supervision of the bat specialist. Having regard to the above, while the proposal does involve the destruction of bat roosts, I do not consider this to constitute a significant effect on the environment.

Bats: Summary

7.9.36. In summary, having reviewed and assessed the range of information, I consider that the impact of the proposal on the local bat populations and their habitats is not unduly injurious or so adverse as to warrant a refusal of permission. I consider the Bat Assessment for the proposal to be contain sufficiently comprehensive surveys, allowing impacts to be identified and mitigation measures to be proposed accordingly. A derogation licence is required for the destruction, alteration, or evacuation of a known bat roost, and Derogation Licence No.: DER/BAT 2020-93, as authorised by the NPWS (the competent authority for same), is in place, valid, covers the demolition of 26 Foster's Avenue, which is included in both the current and concurrent appeals. I am satisfied that the Board can have regard to same in so far as the licence is relevant in the determination of the appeal case (satisfies the CDP policy context), but the licence is not a legal requirement for the planning process. I am satisfied that the previous refusal reason for the SHD application has been addressed and overcome in the current proposal, and that the destruction of bat roosts does not constitute a significant effect on the environment requiring an EIAR to be prepared for and an EIA to be undertaken of the proposal.

Green Infrastructure

7.9.37. As outlined in Section 7.5 above, the proposal is provided with a variety of open space areas, differing in design, landscaping, and function. Despite concerns raised by the Parks Section and reiterated by appellants, I have assessed these areas in

both quantitative and qualitative terms, find them to be acceptable, and to contribute to the green infrastructure of the local area. In terms of the biodiversity value of the open spaces, I have had regard to the Landscape Report (as updated in the SFI response), with landscaping and planting plans, and the Arboricultural Assessment. The proposal retains 20 trees along the northern and (predominantly) western boundaries, with new tree planting (c.80 trees) and a range of shrub and buffer planting throughout the scheme. The landscaping selection in the proposed planting plan (insect friendly) has been considered regarding foraging habitats for bats in the subsection above, and I consider it to be similarly favourable for birds and small mammals.

7.9.38. In respect of the proposed tree retention measures, appellants raise concerns in relation to the impact of the proposal on the treeline along the southern boundary of the site. I note the contents of the Landscape Report (as updated in the SFI response with landscaping, hydrogeologist and arboricultural inputs) and the applicant's response to the appeal grounds, which outline that there will be no impact on the southern treeline due to the trees being at higher ground level, their root systems being fully within the southern properties and held by the retaining wall along the boundary. The proposed landscaping plan involves their canopy being pruned due to overhanging onto 26 Foster's Avenue, and the construction of Block C at this location will be c.10m-11m away from the boundary. The construction of the basement level will require the temporary lowering of the groundwater table, but the proposal involves the installation of a drainage layer along the southern boundary towards the eastern and western boundaries facilitating the movement of groundwater around the basement structure. I note that the Parks Section of the planning authority did not raise any objection to same on receipt of the SFI response, and consider the applicant has satisfactorily demonstrated that there will be no undue impact with the inclusion of the measures outlined above.

7.10. Traffic and Transportation

7.10.1. The application is accompanied by a Traffic and Transport Assessment (TTA) Report, a Design Stage Quality Audit, a Mobility Management Plan (MMP), a Construction and Environmental Management Plan (CEMP, with a Traffic Management Plan, as submitted with the SFI response), revised plans and particulars in the first party appeal in respect of access and Condition 4 of the grant

of permission, and further traffic, parking and demolition traffic information submitted with the applicant's response to third party appeals (Appendix 3).

7.10.2. Traffic and transportation related issues in the appeal case focus on the scheme's access, parking, traffic generation, and construction related impacts arising from the proposal. Appellants raise concerns in respect of each issue, while the planning authority, during the assessment of the application, focussed on access and facilities for cyclists in the scheme leading to the attachment of Condition 4. The first party grounds of appeal include the omission of Condition 4, with justification for/ alternatives to address the reason for the condition. I propose to address each item in turn.

Access

7.10.3. The proposed scheme is provided with three access points along the site's northern boundary with Foster's Avenue. These include the main vehicular entrance in the northeastern corner with an internal roadway connecting to the basement parking level, and for pedestrians and cyclists, entrance points at central and northwestern positions. I have considered the access arrangements as part of the overall design and layout of the scheme in Section 7.5 above and find these to be acceptable. The entrances are legible, distinct, and segregated, allowing for an acceptable degree of accessibility into the site, unobstructed movement in and through the scheme, in a safe and secure manner. The central access is the optimum position for pedestrians accessing the scheme and surface level entrances to the apartment blocks, while similarly, the northwest corner entrance is well positioned for cyclists accessing surface level bicycle parking spaces, the dedicated entrance and cycle lift in Block B, and the majority of bicycle parking spaces at basement level.

7.10.4. Condition 4 of the permission stipulates that the access ramp to the basement level be at a gradient not exceeding 7% (1:14) and that revised plans of the basement and ground floor levels be submitted for agreement with the planning authority. The reason given for the condition is in the interests of traffic safety. The basis for the condition, apparent from the SFI report of the Transportation Section as incorporated into the subsequent planner's report, is to seek satisfactory access/ egress by cyclists from the basement level and for turning movements for refuse trucks at surface level. The applicant requests that Condition 4 be omitted in its entirety,

stating it is unnecessary as the proposal is acceptable in terms of traffic safety for both items.

7.10.5. Firstly, in relation to cycle access in the scheme, the applicant highlights that surface level bicycle spaces are provided, each block has a standard lift providing internal access to the basement level, a cycle store is provided at basement level, and the amendments made at SFI stage of the provision of a dedicated cycle entrance and cycle lift in Block B, to address the planning authority concerns. The applicant highlights that the Transportation Section's SFI report refers to the Council's 'Standards for Cycle Parking and associated Cycling Facilities in New Developments', whereby an alternative access for cyclists to only a cycle lift is required to be provided in the event of a lift failure/ downtime. The applicant submits, however, that the standard has not been fully quoted as the reference to satisfactory 'built-in capacity' (i.e. a scheme having two or more lifts) has been omitted.

7.10.6. I have reviewed the document referred to (January 2018, available on the Council's website) and concur with the applicant. The general principle in respect to lift design does state that where a cycle lift is being provided in a scheme an alternative access arrangement is required and another/ additional lifts can be considered satisfactory. While I concur with the planning authority's approach that a separate roadway access within the scheme would be preferable (i.e. the basement ramp), the inclusion of additional lifts does satisfy the design requirement. Additionally, I accept the applicant's position that as the scheme will be under the control of a management company, the efficient operation of the cycle access arrangements will in practice be ensured through by way of a lift service agreement with a service company.

7.10.7. Secondly, in relation to access for refuse vehicles, the first party appeal includes revised plans and particulars of the surface/ ground floor level of the scheme. The plans indicate the replacement of two small, grassed areas with grasscrete. These areas are located either side of the main entrance and, as indicated in the autotrack analysis, allow refuse vehicles to undertake turning movements without using the basement ramp. The arrangement involves a waste marshalling area, signage, and different hard landscaping finishes. While the appellant's appeal response is critical of the arrangement, citing the adverse impact on open space, residential amenity,

and public safety, I do not concur. The arrangement is appropriately and safely designed, will be conducted/ supervised under the management company, the use of grasscrete is standard for such surfaces and preferable to damaging soft landscaped areas, and the incidental small areas are not included in the open space calculation.

7.10.8. Based on the foregoing, I consider that the scheme as designed (alternative cycle accesses do exist within the scheme) and the proposed amended design (revisions made at surface level whereby refuse trucks do not use the basement ramp for turning movements) represents a reasonable basis for considering the omission of Condition 4. I highlight that no contrary evidence, technical input, or engineering response has been received from the planning authority or a third party that counters the applicant's position. In the absence of same, I am satisfied that the applicant has demonstrated that the arrangement proposed in the first party appeal is acceptable and that the condition is unnecessary and has other consequences (additional underground excavations, closer proximity to site boundaries, redesign of the basement parking level). In the event of a grant of permission, I recommend the omission of Condition 4.

7.10.9. Other access related issues raised by appellants include inadequate sightlines and/ or interference with existing sightlines of adjacent properties due to the front building line of the proposal on Foster's Avenue, which the applicant refutes. I have reviewed engineering plans and the Design Quality Audit as submitted with the application, and the further information in the applicant's appeal response. I concur with the applicant that sufficient sightlines (c.49m both directions) are achieved from the proposed entrance which are DMURS compliant, the front building line does not impede on sightlines from adjacent properties, and note that the Transportation Section did not raise concerns of traffic safety.

7.10.10. As outlined in Section 7.5 above, the design of the scheme allows the northwestern and central entrances (removable bollards, width, construction, paving finishes) to serve as an emergency access arrangement for the scheme. I positively note that such access can also serve as an alternative access in the event of the main entrance not being available. In respect of emergency access, the grounds of appeal include concerns relating to insufficient access for fire tenders. I have reviewed the information submitted with the application and in the appeal response which includes a vehicle swept path analysis demonstrating a such a vehicle can

undertake an internal one-way anti clockwise loop accessing the scheme. I consider this to be acceptable, and note in any event, the proposal would be subject of the relevant Building Regulations legislation.

Parking

- 7.10.11. The scheme is served by a mix of car, bicycle, and motorbike parking at basement and surface levels. The basement level is accessed from Foster's Avenue on the eastern side of Block A, and accommodates 85 car spaces, 135 bicycle spaces and four motorcycle spaces. At surface level, are 2 car spaces (set-down use) and 36 bicycle spaces (three separate stands of 10, 10 and 16 spaces).
- 7.10.12. As outlined in Section 5.4, the application was assessed, and appeals lodged when the 2016 CDP was in effect. A feature of the proposal was the under provision of car parking spaces (87 spaces proposed in total, 97.5 spaces required (I calculate for the as-granted scheme), and the overprovision of bicycle spaces (171 spaces proposed in total, 80 spaces required for the as-granted scheme). The planning authority accepted the under provision having regard to the site's location, proximity to public transport routes, and the requirements of the Apartment Guidelines. The provision of car parking spaces is raised by appellants, described as wholly inadequate and causing illegal and nuisance parking in the surrounding area.
- 7.10.13. Under the 2022 CDP, the site is located within Parking Zone 2: Near Public Transport and the proposal is subject to policy in Section 12.4.5.6, Residential Parking. The parking standards for Zone 2 are one spaces per 1 & 2 bedroom, and 2 spaces per 3 bedroom units, which are reduced from those in the 2016 CDP. I calculate the required car parking for the as-granted scheme to be 70 spaces (see Table 3a), for the revised scheme as per the first party appeal to be 71 spaces (see Table 3b), and for the 2022 CDP compliant scheme to be 82 spaces (see Table 3f). If the Board is minded to grant permission for the scheme with my recommended condition for an increased proportion of 3 bedroom units (20% of the scheme, as per Section 7.7 above), I confirm that the proposed parking provision of 87 spaces meets the associated requirement of 82 spaces and complies with 2022 CDP Section 12.4.5.6.
- 7.10.14. Of the 87 car parking spaces proposed in total, 2 spaces are at surface level, proximate to the main entrance, and 85 spaces are at basement level. The surface

spaces are indicated as serving a set-down purpose, and their use will be controlled by the management company. The basement level is indicated as being secure, with controlled access and operated by the management company, with the 85 spaces are of varied design, including 73 standard spaces, 7 visitor spaces, 1 Go Car/ shared space, and 4 disabled spaces (10 electric vehicles spaces, combination of standard and disabled), thereby complying with other CDP parking policies. In the event of a grant of permission, I recommend that final configuration of the basement level parking and the management of same be agreed with the planning authority.

7.10.15. In respect of cycle parking, 2022 CDP Section 12.4.6 defers to standards in 'Standards for Cycle Parking and associated Cycling Facilities in New Developments'. For assessment purposes, I note that the standards remain the same between Development Plans, and the proposal, providing 171 spaces in total, is significantly in excess of the respective requirements, which I calculate to be 80 spaces in total for the as-granted scheme, 82 spaces for the revised scheme as per the first party appeal, and 82 spaces for the 2022 CDP compliant scheme. Similarly, the requirement for motorcycle provision remains the same between Development Plans at 4 spaces per 100 units, which is achieved in the basement layout.

7.10.16. While I note concerns of appellants, the proposal is in compliance in terms of quantitative and qualitative parking standards in the 2022 CDP. The MMP includes a range of measures for a management strategy (notification of a named mobility manager), walking, cycling, public transport and private car use, and a promotion strategy. In respect of private car use, the measures include formal and informal car sharing arrangements and a parking management strategy (all agreed with the planning authority). Of concerns relating to overflow car parking demands to the surrounding area/ streets, I am satisfied that the provision of the set-down spaces under management company control, ample provision of cycle spaces, close proximity to public transport, and implementation of the measures in the MMP will satisfactorily address any potential albeit minor impact.

Traffic Generation

7.10.17. With regard to traffic generation, appellants raise concerns in respect of the initial construction related impacts (discussed in the following subsection), and also the operational impacts of the scheme. Of the latter, appeal grounds include the

impacts of car-based traffic movements on the adjacent road network (Stillorgan Road, Foster's Avenue, St. Thomas Road). The network, particularly Foster's Avenue, is already busy, will be further congested, future residents will use St. Thomas Road, which has not been surveyed, as an alternative route causing nuisance and risks to local residents. I have reviewed the TTA and the MMP submitted with the application, and further information in the applicant's appeal response. The applicant refutes the grounds, stating the proposal has no material impact on Foster's Avenue.

7.10.18. The TTA establishes the baseline situation through surveys at three junctions along Foster's Avenue, calculates trips generated from the proposal, predicts trip distribution across the local network, and by network analysis assesses the performance of the four-armed junction, inclusive of the site's main entrance, in opening year 2022, and future design years, 2027 and 2037 (while I note that the hypothetical opening year is 2022, the basis of the analysis remains valid). The TTA calculates that there will be 20 two-way trips at the AM peak and 18 in the PM peak and concludes that in 2037 the four-armed junction will operate within and with significant reserve capacity (I note that the TTA is based on 72 units as initially proposed, thus yielding higher traffic generation figures than would be with the revised 68 units). The TTA concludes anticipated levels of traffic generated from the proposal would have a negligible impact on the surrounding road network.

7.10.19. I find the selection of junctions surveyed, the predictions made in respect of the proposal, and the overall methodology used to be acceptable and consistent with applicable guidelines. I note that the Transportation Section of the planning authority noted the content of the TTA and raised no objection in relation to same, for instance in requiring junctions at St. Thomas Road to be surveyed, or other projects in the area to be included. I note and find reasonable the applicant's position with regard to not incorporating development at UCD Campus in the TTA (due to the cap on new parking spaces therein). On balance, I consider the TTA conclusions to be acceptable, and when combined with the targeted measures in the MMP outlined above, I am satisfied that the applicant has demonstrated that the proposal will cause minimal impact on the traffic conditions in the receiving area.

Construction Traffic

7.10.20. In Section 7.8 above, I considered issues of disturbance and disruption to residential amenity associated with the site development works (demolition and construction phases), which included reference to traffic related impacts. Appellants submit that the proposal is without the benefit of finalised/ sufficiently detailed construction and demolition traffic management plan, or measures to address illegal on-street parking by construction workers.

7.10.21. I have reviewed the applicant's relevant reports on the matter, and identify the applicable documents as being the CEMP (as submitted at SFI response) and the DMP (as submitted in the applicant's appeal response, and stated as superseding the ODP which is an appendix in the CEMP). I highlight that there is a high degree of crossover between the CEMP and DMP (table of content, all aspects of the demolition process). The DMP has a demolition related Traffic Management Plan as its Appendix A, while the CEMP has a construction related Traffic Management Plan as its Appendix D.

7.10.22. I have reviewed the traffic management plans submitted in respect of the demolition phase (DMP) and the construction phase (CEMP). Expectedly, there is a high degree of overlap with both plans indicating the same access point (26 Foster's Avenue), the site offices, parking, compound all within the site, traffic managed at public interface, staff sharing lifts/ use public transport, and parking in local area strictly prohibited. In terms of traffic generation, both plans indicate traffic volumes as not being significant, trips being spread out during a working day and not peak hours, with removal of demolition phase material being 2 trips per hour, and for the construction phase deliveries being 1-2 per hour (commitment to avoid three school times peaks). The DMP indicates the demolition phase to be a 12-week programme, with the construction phase adding to this. The CEMP identifies additional HGV trips associated with removal of spoiled material and surplus subsoil from underground excavations, and arrival of construction equipment and materials. The traffic related mitigation measures in both plans include site securely fenced off, signage for other road users, management of traffic generation with use of a traffic marshal, all employees and visitors' parking needs met within the site, street cleaning measures, and final plans to be agreed with the planning authority. I consider the plans to be sufficient in terms of provisions, forecasts, and mitigation measures to address and ameliorate the impacts associated with the proposal.

7.10.23. I consider that the traffic related impacts arising from the site development works will be, in similarity with other demolition and construction impacts, short-term and temporary in nature and I am satisfied that they can be appropriately ameliorated through the mitigation measures outlined above. In the event of a grant of permission, I recommend the matters are addressed by conditions requiring final agreement of plans with the planning authority and protective measures for the amenities of the area.

Summary

7.10.24. In summary, having regard to the infill nature of the site (with only a single interface with a public road), I consider the access arrangements to be acceptable, and the scheme to be well designed with sufficient parking in a managed environment. I am satisfied that a development of the scale proposed can be accommodated at this site within the existing road network, and served by public transport services, cycle, and pedestrian infrastructure. I consider the proposal would not give rise to a traffic hazard or be seriously injurious to the amenity of those in the immediate area of the site. As such, should the Board be minded to grant permission, appropriate and necessary conditions would suffice.

7.11. Water Services and Utilities

7.11.1. In respect of water services and utilities, the proposed development includes the removal/ diversion of existing private water services infrastructure at the site, and the provision of new connections into existing public surface water drainage, wastewater drainage, and watermains infrastructure located in the footpath along Foster's Avenue. The footpath/ grass verge along the public road has been included in the appeal site with an accompanying letter of consent from the planning authority. As a new residential development, the proposal includes for other services and utilities such as waste management and public lighting.

7.11.2. The application is accompanied by a Site Investigation Report, Engineering Services Report, Site Specific Flood Risk Assessment (SSFRA), Phase 2: Hydrogeological Site Assessment, Stage 1: Surface Water Audit, Utilities Report, Site Lighting Report, CDWMP, Operational Waste Management Plan. In the SFI response, an updated SSFRA and Landscape Report (with hydrological/ hydrogeological and basement level structural details) were submitted. In the applicant's appeal

response, further information is provided in respect of flooding and capacity in the water services networks.

7.11.3. The planning authority (Water Services and Environmental Health Officer) accepted the findings and recommendations within these reports, citing no objection to the proposal subject to conditions. Similarly, Irish Water raised no issue in relation to water supply and wastewater infrastructure capacity or other objection to the proposal. Appellants raise concerns relating to surface water and flood risk, groundwater and Trimleston Stream, amendments to the existing private infrastructure, and capacity in the public infrastructure systems. I propose to address each item in turn.

Surface Water Management

7.11.4. For surface water, the proposal involves the removal of existing private infrastructure from the site, and the creation of a sustainable drainage system (SuDs) for the proposal. The SuDs includes filter drains, permeable paving (paths and grasscrete), green roofs on each building, a below-basement level attenuation tank, and a petrol interceptor (for basement run-off). Collected surface water is to be discharged by gravity and pumping to the existing surface water sewer in Foster's Avenue. In the Engineering Services Report, and reiterated in appeal response, the applicant highlights that at present surface water runoff discharges unabated to a combined foul sewer, and that the new system will reduce runoff to greenfield rates, discharge directly to the surface water system, thereby releasing capacity in the foul sewer by a factor of 3. As stated above, the measures were reviewed, accepted by the planning authority, and conditioned accordingly. No issue was raised in respect of removing the existing private infrastructure in the site, or with connecting into the existing public system due to capacity. I consider the proposal to have positive impacts on surface water conditions at the site, for the local area, and to be acceptable.

7.11.5. In the SSFRA, the site's location at a low point in the local topography is noted, as is the existence of an additional surface water overflow pipe in Foster's Avenue to alleviate any flooding/ surcharging in this area. The site is identified as being within Flood Zone C, a suitable location for the proposal, a residential development. The SSFRA, with reference to the Hydrogeological Assessment and site investigations undertaken, outlines that Trimleston Stream is not located at/ under the site (as

submitted by appellants), identifies it to the northeast of the site, being mostly culverted, and finds there is an associated remote low pluvial flood risk. The SSFRA contains four mitigation measures, relating to the design and operation of the surface water drainage system, and concludes that with these in place, a suitable level of protection is afforded to the proposal and the development of the site will not cause an increased risk of flooding to external properties.

7.11.6. While appellants refer to flooding incidents and express concerns about increased risks, there is no evidence provided to counter the applicant's information. As such, I am satisfied that the applicant has demonstrated that the area is not subject to flooding (no evidence of watercourses, no recorded incidents) and the development of the site (site clearance works, removal of existing infrastructure, and installation of new surface water infrastructure to serve the proposal) will not increase runoff from the site beyond the greenfield runoff rate and the proposed development will not pose an increased flood risk to the area or result in displaced waters.

Groundwater Management

7.11.7. The location of Trimleston Stream at the appeal site was cited in third party submissions during the assessment of the application, queried by the Water Services Section, investigated by the applicant, and continued to be disputed by appellants. As outlined in the subsection above and considered previously in Section 7.9 in respect to biodiversity, notwithstanding the positions of appellants, the watercourse has not been located at or adjacent to the site, but c.160m northeast of the site, and groundwater under the site does not appear to drain in the direction of the stream. In the absence of any counter evidence, I consider that the applicant has established this to be the case, which has also been accepted by the planning authority, and that the proposal, subject to mitigation measures contained in relevant reports (including the DMP, the CEMP, the Ecological (Biodiversity Appraisal), and SSFRA) does not constitute a pollution risk to groundwater conditions.

Water and Wastewater Management

7.11.8. For water supply, existing watermain infrastructure within the site will be removed and water supply for the proposed development will be provided through new piped infrastructure connecting to the existing public watermains in Foster's Avenue. For wastewater, the proposal involves the diversion of one of two existing private sewers

around the perimeter of the site, constructing a new slung drainage system for the apartments and communal amenity building at basement level, and a petrol interceptor for contaminated basement run-off, and all collected foul water to be discharged by gravity and pumping to the existing foul sewer in Foster's Avenue.

7.11.9. In similarity with the proposals to remove existing surface water/ water supply infrastructure in the site and install new infrastructure accordingly, no issue was raised by the planning authority in respect of diverting one sewer (serving seven houses), the applicant commits to the sewer remaining live, with no disruption to properties, and undertaking the new works to IW standards. The second private sewer (serving eight houses) will remain live, in its current location (from St. Thomas Road via the rear of the site to The Fosters).

7.11.10. While appellants raise concerns about the amendments to existing infrastructure within the site, and to capacity constraints inferred from Irish Water correspondence, having reviewed the applicant's information, and noted the planning authority and Irish Water reports on the matters, I do not find there to be any substantive issue, instead finding the new works to be improvements to the local infrastructure in the area. Irish Water, as the competent authority, cited no objection subject to standard conditions for connection agreements, relating to available capacity and compliance with codes and practices.

Utilities

7.11.11. In respect of waste management, I have reviewed the CDWMP addressed waste arising from the site development works process in Section 7.8 above. In respect of apartment scheme once occupied, as outlined in the Operational Waste Management Plan, the proposal will be under the control of a management company which will manage communal operational waste management services (recycling, access to areas, signage, annual reporting). The Utilities Report outlines the proposal's access to electricity, gas and telecommunications sources, and removal of existing utilities in the site. As outlined previously in Section 7.7 in respect of future residential amenity and Section 7.9 in respect of biodiversity and bats, I have considered the Site Lighting Report for the proposal and find the scheme to be acceptable.

7.11.12. In summary, I am satisfied the applicant has demonstrated that the site is not liable to flooding, and that there is no potential for groundwater pollution at the site. The applicant has established the authority to remove/ divert existing private infrastructure at the site, and by way of new infrastructure, to connect to the existing public water services systems, within which there is sufficient capacity to serve the proposal. The operational waste and public lighting needs of the proposed development can be adequately met. I consider the proposal complies with the requirements of 2022 CDP 12.9.6 New Developments: Environmental Impacts in respect of addressing impacts arising from climate change, stormwater, SuDS, sediment and water pollution control, construction management (including waste, environmental, and traffic management plans), operational waste management, waste storage facilities, flood prevention of basement levels, and flood risk management. As such, should the Board be minded to grant permission, appropriate and necessary conditions would suffice.

7.12. Procedural Matters

7.12.1. Appellants raise a number of procedural matters for the determination of the appeal case. These include the validity of the appeal due to the existence of the concurrent appeal at the site, the inclusion of public lands/ lands of unknown ownership in the site development boundary, requirement for an EIA, inaccuracies/ inconsistencies in the description of development/ information submitted with the application, and the nature of the conditions attached to the grant of permission. I propose to address each in turn.

Concurrent Appeal

7.12.2. As outlined in Section 4.0 Planning History above, there is a concurrent appeal, ABP 308770-20 (PA Ref. D20A/0406) for development at the site comprising the demolition of existing buildings and site clearance works. At the time of this assessment, both appeal cases are being assessed concurrently, and are due to come before the Board for determination. Appellants state that the two applications are for the same development on the same site, their existence is invalid and has no basis in law, and that under section 37(5) of the Planning and Development Act 2000 there is no jurisdiction to grant permission for the current case due to the existence of the concurrent case.

- 7.12.3. The existence of two applications both comprising demolition phase works is a procedural matter which also features as a key consideration in the assessment of the concurrent appeal case, ABP 308770-20 (PA Ref. D20A/0406). The appellants' claims that the application (current appeal case) is invalid and that the restrictions arising from section 37(5) of the Act should apply in determining same, is refuted by the applicant who states that the concurrent application was not subject of an appeal at the time the current application was lodged with the planning authority.
- 7.12.4. I have reviewed the relevant dates and concur with the applicant as, for clarity for the Board, I highlight that the current proposal was lodged with the planning authority on the 21st September 2020, and the concurrent proposal was granted permission on the 4th November 2020 being subject to third party appeals from the 25th November 2020. Additionally, I note that the planning authority, as the competent authority, validated the application at the time of lodgement. The planning authority provides no comment in its appeal response on the matter.
- 7.12.5. I have reviewed the application and appeal documentation for both appeal cases, and consider the proposed developments to be distinct, standalone applications which are valid in their own rights. In addition to seeking permission for the demolition works, they feature a number of material differences. The current proposal is for demolition and construction works involving, for example, the felling of 63 trees, underground excavations for the basement level, removal/ diversion of subsurface water services infrastructure, construction of three apartment blocks and a communal amenity building, hard and soft landscaping, and boundary treatments with several supporting technical reports. The concurrent application is for demolition and site clearance works involving, for example, the felling of 21 trees, no underground excavation, maintenance of subsurface water services infrastructure, and a DMP with provision only for demolition activities and facilities. I am satisfied that the Board has the necessary jurisdiction to determine both appeal cases.
- 7.12.6. In my opinion, as the proposals are distinct, standalone projects, I also consider them to be mutually exclusive in terms of their implementation. That being, in the event that permissions are granted for the proposed developments, I recommend that each consent be appropriately conditioned to be mutually exclusive of the other. Such conditions are necessary as only one of the proposals comprising the demolition works, which feature material differences in terms of subsurface works,

tree removal, and mitigation measures, can be implemented. This approach can ensure clarity for third parties and effective control for the planning authority of the permissions.

Site Development Boundary

7.12.7. Appellants state that the site development boundary is arbitrary and misleading, and question the applicant's legal entitlement to make the application due to the inclusion of lands, the ownership of which is unknown. The lands, measuring 0.547 ha, comprise a rectangular strip of public footpath and grass verge on the site's northern boundary along Foster's Avenue. The application is accompanied by a letter of consent from the planning authority agreeing to the inclusion of these lands in the site development boundary. From the details submitted, the appellants identify that the lands are stated as not being owned by the planning authority. The applicant states a land registry search of the lands was undertaken which was inconclusive. The planning authority provides no comment in its appeal response on the matter.

7.12.8. I have reviewed the available information, and notwithstanding the lands not being registered, I am satisfied that these are public lands which are under the control of the planning authority (maintained, landscaped, underground services) and that the proposal includes facilitating works (connection to services, tree replanting, completion of boundary wall interface with footpath) which are within the remit of/ subject to approval of the satisfactory completion from same. I note that no alternative information on ownership has been provided by appellants and am satisfied that the planning authority's letter of consent is representative of such instances of works in the public realm, can be relied upon, and the extent of the site development boundary is acceptable.

Environmental Impact Assessment (EIA) Requirement

7.12.9. In the grounds of appeal, the appellants state that an EIA is required to be undertaken for the proposal (due to the destruction of bat roosts and the quantum of asbestos to be removed from the site), the planning authority's decision to screen out an EIA is incorrect, and amending Conditions 2-4 means the EIA (and AA) screening decision(s) has not been based on the final decision. The applicant refers to the EIA Screening Statement undertaken, there being no gap in the EIA screening for the project, the planning authority's screening determinations being valid in their

own rights (the Board will undertake its own as the competent authority), and the amending conditions resulted in a decrease in the number of units. I concur with applicant, particularly that a reduction in the total number of apartments will result in a decrease in the impact of the proposal on its receiving area, further reducing the requirement for an EIA.

7.12.10. As outlined in Section 5.6 of this report above, I have undertaken a Screening Determination for EIA for the current proposal. I have concluded that the proposed development would not be likely to have significant effects on the environment. As the proposals are distinct, standalone projects, I have undertaken a Screening Determination for EIA for the concurrent appeal, ABP 308770-20 (demolition and site clearance works) and I have concluded that the proposed development would not be likely to have significant effects on the environment.

Application Information Inaccuracies

7.12.11. Appellants refer to inaccuracies and inconsistencies in the application, citing details in the description of development, application form, and on certain plans/drawings. These inaccuracies are largely addressed during the assessment of the application by the planning authority. I confirm to the Board that these have not prevented me from me undertaking this assessment.

Nature of Conditions

7.12.12. Appellants raise concerns in respect of the conditions attached to the grant of permission. The planning authority is described as acting ultra vires as Conditions 2-4 have caused material amendments to the proposal that should have been readvertised and that the third parties have been excluded from the process. While I note the concerns of appellants, having reviewed and assessed Conditions 2 and 3, (I recommend the omission of Condition 4) in the report above, I am satisfied that the planning authority's conditions (and amendments made therein) and the conditions I hereby recommend to be attached if the Board are minded to grant permission, are clear, transparent, reducing any potential adverse impact, and within the envelope of the proposed development works (as are understood and reasonably anticipated).

Summary

7.12.13. In summary, I do not find there to be any substantive procedural matter that would prevent the Board from determining the current appeal case and the concurrent case.

7.13. **Appropriate Assessment**

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

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

Background on the Application

7.13.2. The applicant submitted an information for Screening Report for Appropriate Assessment report (SRAA). The SRAA is supported by a range of relevant reports (initially lodged with the application, revised/ updated at SFI response, and supplemented with information in the first party appeal/ third party appeal response). Key among which include the following:

- Site Investigation Report;
- Engineering Services Report;
- SSFRA;
- Phase 2: Hydrological Site Assessment;
- Ecological (Biodiversity) Appraisal (same author as SRAA);
- Landscape Report (same author);
- Arboricultural Assessment;
- Bat Assessment;
- Utilities Report;
- Site Lighting Report;
- CDWMP;
- CEMP; and
- EIA Screening Statement.

- 7.13.3. The applicant's SRAA provides a description of the proposed development, the nature and features of the site, indicates the dates of on-site surveys (20th January, 19th May, and 3rd September 2020), and identifies 18 European Sites that fall within the precautionary 15km radius from the proposed development.
- 7.13.4. There are no mapped watercourses present on or in the immediate vicinity of the site. There are two mapped watercourses identified in proximity to the site, Elm Park Stream (1.1km to the north) and Priory Stream (1.1km to the southeast). These streams flow into Dublin Bay but are not connected to the site. A third watercourse, Trimlestown Stream, is a locally known unmapped watercourse. The engineering, hydrogeological, and ecological investigations undertaken at the site (desk top surveys, review of EPA, OPW and IW sources, site excavations, CCTV surveys and trial pits), did not locate the presence of this or any watercourse. The Phase 2 Hydrogeological Site Assessment states that Trimlestown Stream is located c.160m to the northeast of the site and that groundwater underlying the site does not appear to discharge towards the stream. That being, there is no evidence of a direct connection from the site to the watercourses in the vicinity of the proposal.
- 7.13.5. Of the 18 European sites identified within a 15km radius, only the coastal European sites associated with Dublin Bay are identified as having theoretical indirect hydrological connections to the appeal site. The connections are a potential surface water pathway via the local surface water drainage network and/ or a potential groundwater pathway in the event of a discharge or contamination from the site entering the groundwater.
- 7.13.6. Despite the presence of these theoretical indirect pathways, the risk of contamination of watercourses or groundwater is determined as being extremely low. This is due to the following reasons:
- The nature of the site (site is within a Flood Zone C within which residential development is appropriate, site is served by/ has access to public water services infrastructure, no indication of any watercourse in or under the site, groundwater from the site does not appear to be discharging towards Trimlestown Stream which is located to the northeast of the site);
 - The characteristics of the proposal (demolition and construction works are short in duration with no possibility of long-term impacts arising, basement

level construction has effects on only localised groundwater flow patterns and flow paths, operational use of a GSDSDS compliant surface water management system, operational use of a DLRCC/ OPW compliant SuDS approach to stormwater management, GSDSDS compliant on-site storage for 100 year flooding event, GSDSDS climate change allowance in surface water drainage design, surface water runoff rates restricted to greenfield runoff rates, removal and appropriate upgrade of poor condition/ inefficiently draining surface water infrastructure, new wastewater infrastructure connecting to the public system and discharging to Ringsend WWTP, peak wastewater discharge rate not of significance in terms of capacity); and

- The absence of any known direct or indirect pathway to the European sites via surface water or groundwater (no indication of any watercourse in or under the site, groundwater from the site does not appear to be discharging towards Trimlestown Stream which is located to the northeast of the site, there is certainty of no direct pathways to the two closest European sites (South Dublin Bay and River Tolka Estuary SPA and South Dublin Bay SAC) to the east of the site).

7.13.7. The potential for any other direct, indirect, or secondary impacts on any European site during the construction phase is determined as not being possible. Operational impacts relating to surface or groundwater management, flooding, and wastewater management on European sites are also excluded. Overall, the SRAA concludes that *'In view of best scientific knowledge...the proposed development...individually or in combination with another plan or project, is not likely to have a significant effect on any European sites'*.

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

Screening for Appropriate Assessment

7.13.9. The first test of Article 6(3) is to establish if the project could result in likely significant effects to a European site. This is considered Stage 1 of the appropriate assessment process, that being, screening. The screening stage is intended to be a

preliminary examination. If the possibility of significant effects cannot be excluded on the basis of objective information, without extensive investigation or the application of mitigation, a plan or project should be considered to have a likely significant effect and appropriate assessment carried out.

Test of Likely Significant Effects

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

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

Brief Description of Development

7.13.12. The project is located at Foster's Avenue in Mount Merrion, County Dublin. The site comprises three vacant properties, the industrial buildings of the former Glenville Industrial Estate (26 Foster's Avenue), with two detached residential properties adjacent to the east (24 Foster's Avenue) and west (28 Foster's Avenue). The site contains a number of mature trees and hedgerows associated with the residential properties, boundaries and/ or screening for the industrial buildings.

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

- demolition of existing buildings within the site (total floorspace of c.3,657 sqm);
- felling of 63 trees, removal of three hedgerows and front boundary wall along Foster's Avenue;
- removal and/ or diversion of existing foul water, water supply, and surface water drainage infrastructure from site;
- construction of residential scheme comprising three blocks of apartments (72 apartments applied for, 67 apartments granted by condition, 68 apartments recommended in this assessment) and a communal amenity building;
- soft and hard landscaped open spaces with new/ supplemented boundary treatments (tree/ timber and steel post boundaries);

- new front boundary brick wall with railings with-three vehicular/ pedestrian accesses;
- surface level with 2 set-down car spaces and 36 bicycle spaces;
- basement level with 85 car, 4 motorcycle, and 135 bicycle spaces, and services;
- new piped connections into existing public surface water drainage, wastewater drainage, and watermains infrastructure located in the footpath along Foster's Avenue; and
- all other site development works.

7.13.14. The site is described as not being under any wildlife or conservation designation. The surveys recorded no rare or protected plant species, no protected animal species such as badger, and no habitats of significant biodiversity value. The presence of protected bat species is noted from the surveys, with the use of 26 Foster's Avenue being described as for shelter and occasional roosting, though with no significant roost recorded at the site. Except for the occasional bat roosting activity, and the value of the site for commuting and foraging bats, the site is determined to have no key ecological receptors and no evidence of habitats or species with links to European sites.

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

- Construction phase and/ or operation phase related surface water and groundwater pollution.

Submissions and Observations

7.13.16. The planning authority decision incorporates internal reports from the Water Services Section which express no objection to the proposal, recommending conditions to address items. The planner's report indicates screening for appropriate assessment was undertaken which concludes the proposed development would not significantly impact on a Natura 2000 site. A report was received on the application from Irish Water which raised no objection, recommending standard conditions for connection agreements subject to available capacity and compliance with codes and

practices No submissions were received on the appeal case from any prescribed bodies. While the adverse impact on the natural environment, bat populations, and loss of trees are raised by appellants and observers, the appropriate assessment of the proposed development was not raised specifically as an issue.

European Sites

7.13.17. The site is not located in or immediately adjacent to a European site. There is no watercourse or other such ecological feature that could serve as a hydrological and/ or ecological pathway between the proposed development and any European site.

7.13.18. As outlined above, the SRAA identifies 18 European sites within a precautionary 15km radius from the appeal site. These include (listed in order of proximity, as measured from closest point): South Dublin Bay and River Tolka Estuary SPA (site code 004024) c.1.3km to the east; South Dublin Bay SAC (site code 000210) c.1.4km to the east; North Dublin Bay SAC (site code 000206) c.6.3km to the northeast; North Bull Island SPA (site code 004006) c.6.3km to the northeast; Rockabill to Dalkey Island SAC (site code 003000) c.8.1km to the east; Dalkey Islands SPA (site code 004172) c.8.2km to the southeast; Wicklow Mountains SAC (site code 002122) c.8.6km to the south; Wicklow Mountains SPA (site code 004040) c.8.8km to the south; Knocksink Wood SAC (site code 000725) c.10.0km to the southeast; Howth Head SAC (site code 000202) c.10.7km to the northeast; Ballyman Glen SAC (site code 000713) c.10.9km to the south; Glenasmole Valley SAC (site code 001209) c.11.5km to the southwest; Baldoyle Bay SAC (site code 000199) c.11.9km to the northeast; Baldoyle Bay SPA (site code 004016) c.11.9km to the northeast; Howth Head Coast SPA (site code 004113) c.12.5km to the northeast; Bray Head SAC (site code 000714) c.14.3km to the southeast; Ireland's Eye SPA (site code 004117) c.14.5km to the northeast; and Ireland's Eye SAC (site code 002193) c.14.8km to the northeast.

7.13.19. I have reviewed the information provided in the SRAA, which includes a table containing details of each of the 18 European sites and conclusions of potential impacts based on the principle of source-pathway-receptor. I highlight that the SRAA clearly states that the reason the 18 European sites have been included in the table is '*for completeness*' and that '*only the offshore sites are linked in any way to*

the proposed development site. None of the other listed sites, and no sites further afield, are remotely linked to the proposed development site, by virtue of distance, lack of a pathway and the reasons for their designation'. The basis for this conclusion is apparent as seven of the European sites are found to simply have no pathway link to the proposal and therefore there will be no potential for significant effect, no loss of habitat or species, fragmentation, or disturbance to the qualifying interests of these sites as a result of the proposed development. I concur with the SRAA in this respect and conclude that as these have no hydrological or ecological connection to or with the project there is no possibility of any effect on the sites' conservation objectives.

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

Identification of Likely Effects

7.13.21. As outlined above, the appeal site does not have any habitats that are associated with species or habitats for which SACs or SPAs are designated. Therefore, it is due to construction phase and/ or operation phase related surface water and groundwater pollution that implications for likely significant effects on European sites may arise.

7.13.22. I have identified 11 European sites for consideration in this screening examination. A summary of these European sites including their conservation objectives and qualifying interests, the distance from the proposal, whether there is a connection (source-pathway-receptor), and the possibility of likely significant effects on their conservation objectives are presented in Table 4 below.

7.13.23. During the construction and operation phases of the development, it is anticipated that there will be no significant effects to the SPAs and/ or SACs in

Dublin Bay from pollution or contamination due to the nature of the project (site development works managed and controlled in accordance with the DMP, CEMP and CDWMP, short-term duration of site development works, installation of a drainage layer along the southern site boundary during the construction of the basement level to facilitate the movement of groundwater, removal/ diversion of poor condition/ inefficiently performing private water services infrastructure at the site, replacement with new piped connections into the appropriate public systems which have sufficient capacity, incorporation of attenuation and SuDS measures in the design of the project, including for a climate change allowance), the absence of any known pathway (there is no watercourse at the site, as such a pollution incident at the proposal would be diluted by the time of entering the respective European site, would be further diluted by mix of surface and seawater, and further diluted again by entering the receiving waters which are classified as unpolluted by the EPA), and/ or notable separation distances involved (a pollution incident at the proposal would be imperceptible at the respective European site).

7.13.24. The proposal represents an improvement to current surface water drainage conditions (quantity and quality) as, presently, surface water runoff at the site discharges unabated to a combined foul sewer, while the new system will reduce runoff to greenfield rates, discharge directly to the surface water system, thereby releasing capacity in the foul sewer by a factor of 3. The change in the quantum of surface water and groundwater discharging from the site is therefore considered to be negligible and unlikely to have significant effects on the European sites and their conservation objectives. Additionally, the attenuation and SuDS measures incorporated into the design of the project will ensure that there will be no negative impact on surface water quality arising from the project which will protect the groundwater environment from adverse impacts. Importantly, these measures are standardised and have not been proposed to avoid or reduce an effect to any European Site.

7.13.25. In respect of wastewater associated with the project discharging from Ringsend WWTP to Dublin Bay, I am satisfied that the wastewater system has been suitably designed for the nature and scale of the project. Several reports are provided with the appeal case demonstrating that it will be constructed and operated in accordance with standard environmental features associated with such

developments. The proposed development is likely to result in a negligible increase in the discharge of wastewater to Dublin Bay, and that there is no real risk that pollutants could reach the European Sites in sufficient concentrations to have any likely significant effects on their conservation objectives.

7.13.26. Except for the theoretical indirect hydrological connections outlined above, there is no pathway for loss or disturbance of species or habitats associated with the qualifying interests of these European sites. The appeal site is too far from the protected bird roosting areas of Dublin Bay and the site itself does not contain any habitats suitable for roosting or foraging birds associated with SPAs in Dublin Bay. The project is not likely to affect amenity use at the European sites due to the location of the development and the separation distances involved. While the construction and operational phases of the project will result in additional noise, vibration, and air particles (asbestos and dust), due to the significant separation distances to the European sites these are not likely significant environmental effects.

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

7.13.28. There is a concurrent appeal case at the site, ABP 308770-20, which is under consideration. As is discussed in Section 7.12 of this report above, I consider the current appeal and the concurrent appeal to be mutually exclusive projects, and the concurrent appeal is subject of a separate AA screening determination.

Mitigation Measures

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

Screening Determination

7.13.30. The project was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out screening for appropriate assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on the European sites listed in Table 4 in view of the sites' conservation objectives and qualifying interests, and that a Stage 2 appropriate assessment, and submission of a Natura Impact Statement, is not therefore required.

Table 4: Summary of Screening Matrix

European Site Code/ Conservation Objective	Qualifying Interests/ Special Conservation Interests	Distance from Site/ Connection (source, pathway, receptor)	Likely Significant Effect	Screening Conclusion
<p><u>South Dublin Bay and River Tolka Estuary SPA (site code 004024)</u> To maintain the favourable conservation condition of the species and wetland habitat for which the SPA has been selected.</p>	<p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046] Oystercatcher (<i>Haematopus ostralegus</i>) [A130] Ringed Plover (<i>Charadrius hiaticula</i>) [A137] Grey Plover (<i>Pluvialis squatarola</i>) [A141] Knot (<i>Calidris canutus</i>) [A143] Sanderling (<i>Calidris alba</i>) [A144] Dunlin (<i>Calidris alpina</i>) [A149] Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157] Redshank (<i>Tringa totanus</i>) [A162] Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179] Roseate Tern (<i>Sterna dougallii</i>) [A192] Common Tern (<i>Sterna hirundo</i>) [A193]</p>	<p>c.1.3km Theoretical hydrological connections (at the construction and/ or operation phases) between the project (source) via the local surface water drainage network (surface water pathway) and/ or a pollution incident entering the groundwater at the site (groundwater pathway) to Dublin Bay and the European site (receptor).</p>	<p>None arising due to the nature of the project, the absence of any known pathways to the European site via surface water or groundwater, the notable separation distances between the project and the European site, and/ or the reasons for their designation (i.e. the nature of the conservation objective(s) and qualifying interest(s)).</p>	<p>Screened out for need for AA</p>

	Arctic Tern (<i>Sterna paradisaea</i>) [A194] Wetland and Waterbirds [A999]			
<u>South Dublin Bay SAC (site code 000210)</u> To maintain the favourable conservation condition of the Annex I habitat for which the SAC has been selected.	Mudflats and sandflats not covered by seawater at low tide [1140] (Additional habitats on NPWS website) Annual vegetation of drift lines [1210] Salicornia and other annuals colonising mud and sand [1310] Embryonic shifting dunes [2110]	c.1.4km Theoretical hydrological connections (at the construction and/ or operation phases) between the project (source) via the local surface water drainage network (surface water pathway) and/ or a pollution incident entering the groundwater at the site (groundwater pathway) to Dublin Bay and the European site (receptor).	None arising due to the nature of the project, the absence of any known pathways to the European site via surface water or groundwater, the notable separation distances between the project and the European site, and/ or the reasons for their designation (i.e. the nature of the conservation objective(s) and qualifying interest(s)).	Screened out for need for AA
<u>North Dublin Bay SAC (site code 000206)</u> To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.	Mudflats and sandflats not covered by seawater at low tide [1140] Annual vegetation of drift lines [1210] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows (<i>Glaucopuccinellietalia maritima</i>) [1330] Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410] Embryonic shifting dunes [2110] Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120] Fixed coastal dunes with herbaceous	c.6.3km Theoretical hydrological connections (at the construction and/ or operation phases) between the project (source) via the local surface water drainage network (surface water pathway) and/ or a pollution incident entering the groundwater at the site (groundwater pathway) to Dublin Bay and the European site (receptor).	None arising due to the nature of the project, the absence of any known pathways to the European site via surface water or groundwater, the notable separation distances between the project and the European site, and/ or the reasons for their designation (i.e. the nature of the conservation objective(s) and qualifying interest(s)).	Screened out for need for AA

	vegetation (grey dunes) [2130] Humid dune slacks [2190] Petalophyllum ralfsii (Petalwort) [1395]			
<u>North Bull Island SPA (side code 004006)</u> To maintain the favourable conservation condition will contribute of the species and wetland habitat for which the SPA has been selected.	Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046] Shelduck (<i>Tadorna tadorna</i>) [A048] Teal (<i>Anas crecca</i>) [A052] Pintail (<i>Anas acuta</i>) [A054] Shoveler (<i>Anas clypeata</i>) [A056] Oystercatcher (<i>Haematopus ostralegus</i>) [A130] Golden Plover (<i>Pluvialis apricaria</i>) [A140] Grey Plover (<i>Pluvialis squatarola</i>) [A141] Knot (<i>Calidris canutus</i>) [A143] Sanderling (<i>Calidris alba</i>) [A144] Dunlin (<i>Calidris alpina</i>) [A149] Black-tailed Godwit (<i>Limosa limosa</i>) [A156] Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157] Curlew (<i>Numenius arquata</i>) [A160] Redshank (<i>Tringa totanus</i>) [A162] Turnstone (<i>Arenaria interpres</i>) [A169] Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179] Wetland and Waterbirds [A999]	c.6.3km Theoretical hydrological connections (at the construction and/ or operation phases) between the project (source) via the local surface water drainage network (surface water pathway) and/ or a pollution incident entering the groundwater at the site (groundwater pathway) to Dublin Bay and the European site (receptor).	None arising due to the nature of the project, the absence of any known pathways to the European site via surface water or groundwater, the notable separation distances between the project and the European site, and/ or the reasons for their designation (i.e. the nature of the conservation objective(s) and qualifying interest(s)).	Screened out for need for AA
<u>Rockabill to Dalkey Island SAC (site code 003000)</u> To maintain the favourable conservation condition of the	Reefs [1170] Harbour porpoise (<i>Phocoena phocoena</i>) [1351]	c.8.1km Theoretical hydrological connections (at the construction and/ or operation	None arising due to the nature of the project, the absence of any known pathways to the European site via surface water or	Screened out for need for AA

<p>Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.</p>		<p>phases) between the project (source) via the local surface water drainage network (surface water pathway) and/ or a pollution incident entering the groundwater at the site (groundwater pathway) to Dublin Bay and the European site (receptor).</p>	<p>groundwater, the notable separation distances between the project and the European site, and/ or the reasons for their designation (i.e. the nature of the conservation objective(s) and qualifying interest(s)).</p>	
<p><u>Dalkey Islands SPA (site code 004172)</u> To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.</p>	<p>Roseate Tern (Sterna dougallii) [A192] Common Tern (Sterna hirundo) [A192] Arctic Tern (Sterna paradisaea) [A192]</p>	<p>c.8.2km Theoretical hydrological connections (at the construction and/ or operation phases) between the project (source) via the local surface water drainage network (surface water pathway) and/ or a pollution incident entering the groundwater at the site (groundwater pathway) to Dublin Bay and the European site (receptor).</p>	<p>None arising due to the nature of the project, the absence of any known pathways to the European site via surface water or groundwater, the notable separation distances between the project and the European site, and/ or the reasons for their designation (i.e. the nature of the conservation objective(s) and qualifying interest(s)).</p>	<p>Screened out for need for AA</p>
<p><u>Howth Head SAC (site code 000202)</u> To maintain the favourable conservation condition of the Annex I habitats for which the SAC has been selected.</p>	<p>Vegetated sea cliffs of the Atlantic and Baltic coasts [1230] European dry heaths [4030]</p>	<p>c.10.7km Theoretical hydrological connections (at the construction and/ or operation phases) between the project (source) via the local surface water drainage</p>	<p>None arising due to the nature of the project, the absence of any known pathways to the European site via surface water or groundwater, the notable separation distances between the project and the</p>	<p>Screened out for need for AA</p>

		network (surface water pathway) and/ or a pollution incident entering the groundwater at the site (groundwater pathway) to Dublin Bay and the European site (receptor).	European site, and/ or the reasons for their designation (i.e. the nature of the conservation objective(s) and qualifying interest(s)).	
<p><u>Baldoyle Bay SAC (site code 000199)</u></p> <p>To maintain the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.</p>	<p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Salicornia and other annuals colonizing mud and sand [1310]</p> <p>Atlantic salt meadows (<i>Glaucopuccinellietalia maritima</i>) [1330]</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p>	<p>c.11.9km</p> <p>Theoretical hydrological connections (at the construction and/ or operation phases) between the project (source) via the local surface water drainage network (surface water pathway) and/ or a pollution incident entering the groundwater at the site (groundwater pathway) to Dublin Bay and the European site (receptor).</p>	<p>None arising due to the nature of the project, the absence of any known pathways to the European site via surface water or groundwater, the notable separation distances between the project and the European site, and/ or the reasons for their designation (i.e. the nature of the conservation objective(s) and qualifying interest(s)).</p>	<p>Screened out for need for AA</p>
<p><u>Baldoyle Bay SPA (site code 004016)</u></p> <p>To maintain the favourable conservation condition will contribute of the species and wetland habitat for which the SPA has been selected.</p>	<p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</p> <p>Shelduck (<i>Tadorna tadorna</i>) [A048]</p> <p>Ringed Plover (<i>Charadrius hiaticula</i>) [A137]</p> <p>Golden Plover (<i>Pluvialis apricaria</i>) [A140]</p> <p>Grey Plover (<i>Pluvialis squatarola</i>) [A141]</p> <p>Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]</p> <p>Wetlands [A999]</p>	<p>c.11.9km</p> <p>Theoretical hydrological connections (at the construction and/ or operation phases) between the project (source) via the local surface water drainage network (surface water pathway) and/ or a pollution incident entering the groundwater at</p>	<p>None arising due to the nature of the project, the absence of any known pathways to the European site via surface water or groundwater, the notable separation distances between the project and the European site, and/ or the reasons for their designation (i.e. the nature of the conservation</p>	<p>Screened out for need for AA</p>

		the site (groundwater pathway) to Dublin Bay and the European site (receptor).	objective(s) and qualifying interest(s)).	
<p><u>Howth Head Coast SPA (site code 004113)</u> To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.</p>	Kittiwake (<i>Rissa tridactyla</i>) [A188]	<p>c.12.5km</p> <p>Theoretical hydrological connections (at the construction and/ or operation phases) between the project (source) via the local surface water drainage network (surface water pathway) and/ or a pollution incident entering the groundwater at the site (groundwater pathway) to Dublin Bay and the European site (receptor).</p>	None arising due to the nature of the project, the absence of any known pathways to the European site via surface water or groundwater, the notable separation distances between the project and the European site, and/ or the reasons for their designation (i.e. the nature of the conservation objective(s) and qualifying interest(s)).	Screened out for need for AA
<p><u>Bray Head SAC (site code 000714)</u> To maintain or restore the favourable conservation condition of the Annex I habitats for which the SAC has been selected.</p>	Vegetated sea cliffs of the Atlantic and Baltic coasts [1230] European dry heaths [4030]	<p>c.14.3km</p> <p>Theoretical hydrological connections (at the construction and/ or operation phases) between the project (source) via the local surface water drainage network (surface water pathway) and/ or a pollution incident entering the groundwater at the site (groundwater pathway) to Dublin Bay and the European site (receptor).</p>	None arising due to the nature of the project, the absence of any known pathways to the European site via surface water or groundwater, the notable separation distances between the project and the European site, and/ or the reasons for their designation (i.e. the nature of the conservation objective(s) and qualifying interest(s)).	Screened out for need for AA

8.0 Recommendation

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

9.0 Reasons and Considerations

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

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the significant further information plans and particulars submitted to the planning authority on the 19th day of February 2021, and by the further plans and particulars received by An Bord Pleanála on the 14th day of April 2021 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
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2.	<p>The implementation of this permission is mutually exclusive with that of ABP 308770-20 (PA Ref. D20A/0406).</p> <p>Reason: In the interests of clarity and orderly development.</p>
3.	<p>Permission is hereby granted for 68 apartments, with the reinstatement in Block C of Unit C.0104 as a two bedroom apartment, in accordance with plans and particulars received by An Bord Pleanála on the 14th day of April 2021.</p> <p>Reason: In the interests of clarity and the proper planning and sustainable development of the area.</p>
4.	<p>The proposed development shall be amended/ designed as follows:</p> <p>i) Units A.GF02, A.0102, A.0202, A.0303, B.0102, B.0202, B.0301, B.0306, C.GF02, C.0102, and C.0202 shall be revised in design from two bedroom apartments to three bedroom apartments.</p> <p>ii) The amended apartments shall comply with applicable quantitative standards for three bedroom units.</p> <p>iii) Any windows above ground floor level in the eastern elevation of Block A and/ or the western elevation of Block B that are less than 10m from the boundaries of the respective adjacent properties shall be fitted with permanent obscure glazing/ or be high level in design.</p> <p>Revised plans and particulars showing compliance with the requirements shall be submitted to and agreed in writing with the planning authority prior to commencement of development.</p> <p>Reason: To ensure compliance with policy on residential size and mix in the Dún Laoghaire Rathdown County Development Plan 2022-2028, and to protect the amenities of adjacent properties.</p>
5.	<p>i) The mitigation measures and monitoring commitments outlined in the Ecological (Biodiversity) Appraisal, Bat Assessment, Arboricultural Assessment, Demolition Management Plan, Construction and Environmental Management Plan, Site Specific Flood Risk Assessment, and other plans and particulars submitted with the application and appeal,</p>

	<p>shall be carried out in full, except where otherwise required by conditions attached to this permission.</p> <p>ii) Prior to commencement of development, the developer shall:</p> <ul style="list-style-type: none"> a) submit a schedule of mitigation measures, monitoring commitments and details of a time schedule for implementation of same to the planning authority for its written agreement, b) engage the services of an appropriately qualified consultant with ecological and construction expertise as an environmental manager to ensure that the mitigation measures and monitoring commitments identified in the named reports and other plans and particulars are implemented and undertaken in full, and c) inform the planning authority in writing of the appointment and name of the consultant. <p>iii) Documentary evidence of the satisfactory completion of the mitigation measures and monitoring commitments shall be submitted to the planning authority for its written agreement.</p> <p>Reason: In the interests of wildlife and environmental protection.</p>
6.	<p>Prior to the commencement of development, the developer shall:</p> <ul style="list-style-type: none"> i) engage the services of a qualified arborist as an arboricultural consultant for the entire period of works, ii) inform the planning authority in writing of the appointment and name of the consultant, iii) submit to the planning authority for its written agreement, an updated Arboricultural Assessment prepared by the arboricultural consultant, iv) ensure the implementation of all recommendations in respect of tree removal, retention, protection, pruning, and other measures included in the relevant tree plans and particulars,

	<p>v) ensure all such tree felling, surgery and remedial works are undertaken in accordance with the applicable BS standards, supervised by, and to the satisfaction of the arboricultural consultant, and</p> <p>vi) ensure that the arboricultural consultant:</p> <ul style="list-style-type: none"> a) undertakes a post-demolition tree survey with an assessment of the condition of the retained trees, b) authorises a completion certificate when permitted demolition works are completed in line with the recommendations of the relevant tree plans and particulars, and c) submits the completion certificate to the planning authority for its written agreement. <p>Reason: In the interests of arboricultural and environmental protection.</p>
7.	<p>The demolition of 24, 26, and 28 Foster’s Avenue shall be undertaken in accordance with the terms and conditions of National Parks and Wildlife Service (NPWS) Derogation Licence No.: DER/BAT 2020-93, which may, as necessary, defer to/ be superseded by any changes or clarifications agreed with the NPWS in the event of an amended and/ or new derogation licence issued by the NPWS in respect of the demolition works.</p> <p>In the event of any such amendments to the derogation licence pertaining to the demolition works, the developer shall submit a revised/ updated Bat Assessment, Demolition Management Plan, and/ or Construction and Environmental Management Plan incorporating the amended/ new terms and conditions to the planning authority for its written approval.</p> <p>Reason: In the interests of clarity and wildlife protection.</p>
8.	<p>The proposed development shall be managed in accordance with a Construction and Environmental Management Plan, incorporating applicable provisions of the Demolition Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p>

	<p>This plan shall provide inter alia: details and location of site offices, staff facilities, site compounds, on-site parking facilities, intended construction practice for the development including noise and dust management measures, a traffic management plan with details on access arrangements, storage locations (for plant, machinery, materials), timing and routing details for deliveries and disposal trips, measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network, and directional signage, an invasive species management plan, and off-site disposal of construction/ demolition waste and/ or by products.</p> <p>Reason: In the interests of amenity and public safety.</p>
9.	<p>Construction and demolition waste shall be managed in accordance with a Construction and Demolition Waste Management Plan, which shall be submitted to and agreed in writing with, the planning authority prior to commencement of development. This Plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during demolition and site clearance phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery, and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.</p> <p>Reason: In the interest of sustainable waste management.</p>
10.	<p>Site development and construction works shall be carried out between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the amenities of properties in the vicinity.</p>

11.	<p>The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A scheme providing adequate measures for the future management and maintenance of the communal amenity building, open spaces, communal areas, entrances, roads, and footpaths shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: To provide for the satisfactory future maintenance of this development in the interest of residential amenity.</p>
12.	<p>Proposals for a development name and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all such names and numbering shall be provided in accordance with the agreed scheme.</p> <p>Reason: In the interest of urban legibility.</p>
13.	<p>Details of the materials, colours, and textures of all the external finishes to the proposed buildings shall be as submitted with the application, unless otherwise agreed in writing with, the planning authority prior to commencement of development. In addition, details of a maintenance strategy for materials within the proposal shall also be submitted for the written agreement of the planning authority. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In the interest of visual amenity.</p>
14.	<p>No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas, or equipment, unless authorised by a further grant of planning permission.</p> <p>Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.</p>
15.	<p>Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces. The design</p>

	<p>of the lighting scheme shall be approved by the project's qualified Bat Specialist. The details of the lighting scheme, including written evidence indicating the Bat Specialist's approval, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development/ installation of lighting. The agreed lighting system shall be fully implemented and operational before the proposed development is made available for occupation.</p> <p>Reason: In the interests of amenity and public safety, and wildlife protection.</p>
16.	<p>i) 87 car parking spaces (including two set down spaces) and four motorcycle spaces, and 171 bicycle parking spaces shall be provided within the scheme (surface and basement levels) for use by residents and visitors. Details of the layout, marking demarcation, management of, and security provisions for these spaces shall be agreed in writing with the planning authority prior to commencement of development, and</p> <p>ii) Prior to the occupation of the development, the developer shall submit a Mobility Management Plan, which shall be in line with the Mobility Management Plan (inclusive of mitigation measures) lodged with the application, to the planning authority for written agreement. This plan shall provide for incentives to encourage the use of public transport, cycling, walking, and carpooling by residents/ staff employed in the development, and to reduce and regulate the extent of parking. The Mobility Management Plan shall be implemented by the management company for the development with annual updates of same submitted to the planning authority for written approval.</p> <p>Reason: To ensure that adequate parking facilities are permanently available to serve the residential units, to prevent inappropriate commuter parking, and to encourage the use of sustainable modes of transport.</p>
17.	<p>i) A minimum of 10% of all car parking spaces shall be provided with functioning electric vehicle charging stations/ points, and ducting shall be provided for all remaining car parking spaces, facilitating the installation of electric vehicle charging points/ stations at a later date. Where proposals</p>

	<p>relating to the installation of electric vehicle ducting and charging stations/ points have not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted and agreed in writing with the planning authority prior to the occupation of the development.</p> <p>ii) Electric charging facilities shall be provided for motorbike and bicycle parking, and proposals shall be submitted to and agreed in writing with the planning authority prior to the occupation of the development.</p> <p>Reason: To provide for and/ or future proof the development such as would facilitate the use of electric vehicles.</p>
18.	<p>i) The areas of open space and boundary treatments shown on the lodged plans and particulars shall be landscaped in accordance with the Landscape Report and associated plans submitted with this application and appeal. This work shall be carried out within the first planting season following substantial completion of external construction works.</p> <p>ii) All planting shall be adequately protected from damage until established. Any plants which are removed, damaged, diseased or die within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p>iii) The developer shall retain the services of a suitably qualified Landscape Architect throughout the duration of the site development works. The developer's Landscape Architect shall certify to the planning authority by letter their opinion on compliance with the completed landscape scheme with the approved landscape proposal within six months of substantial completion of the proposed development.</p> <p>Reason: In the interest of visual and residential amenity, and to ensure the satisfactory development and maintenance of the open spaces.</p>
19.	<p>Drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p>

	Reason: In the interest of public health and surface water management.
20.	<p>Prior to commencement of development, the developer shall enter into water and/ or wastewater connection agreement(s) with Irish Water.</p> <p>Reason: In the interest of public health.</p>
21.	<p>All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.</p> <p>Reason: In the interests of visual and residential amenity.</p>
22.	<p>(a) A plan containing details for the management of waste within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities for each apartment unit shall be submitted to, and agreed in writing with, the planning authority not later than 6 months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.</p> <p>(b) This plan shall provide for screened communal bin stores, the locations and designs of which shall be included in the details to be submitted.</p> <p>Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.</p>
23.	<p>Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies)</p>

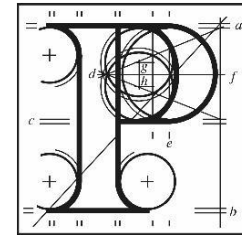
	<p>may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.</p> <p>Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.</p>
24.	<p>Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.</p> <p>Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.</p>
25.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p>

	<p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
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Phillippa Joyce
Senior Planning Inspector

9th June 2022

Appendix A: Environmental Impact Assessment Screening Determination Form



An
Bord
Pleanála

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

B. EXAMINATION	Response: Yes/ No/ Uncertain	Where relevant, briefly describe the characteristics of impacts (i.e. the nature and extent) and any Mitigation Measures proposed to avoid or prevent a significant effect (having regard to the probability, magnitude (including population size affected), complexity, duration, frequency, intensity, and reversibility of impact)	Is this likely to result in significant effects on the environment? Yes/ No/ Uncertain
1. Characteristics of proposed development (including demolition, construction, operation, or decommissioning)			
1.1 Is the project significantly different in character or scale to the existing surrounding or environment?	No	<p>Project comprises the demolition of buildings and site clearance works (vacant dwellings, industrial buildings, hardstanding areas, tree and hedgerow removal, front boundary wall removal) and the construction of a medium density residential scheme (apartment blocks, communal amenity building, hard and soft landscaped open spaces, new/ supplemented screening boundaries, and site services).</p> <p>Project differs from the surrounding residential area, but the difference is not considered to be significant in terms of character (maintenance of residential use, conventional apartment typology, provision of on-site basement parking, landscaped open spaces, formal boundary walls, retention of 20 existing trees (24% of total tree cover), new screening of c.80 trees, or scale (maintenance of detached block forms, moderate increase in building height and density).</p>	No
1.2 Will construction, operation, decommissioning, or demolition works cause physical changes to the locality (topography, land use, waterbodies)?	Yes	<p>Project will cause physical changes to the appearance of the site during the site development works (i.e. demolition and construction phases). The vacant buildings will be demolished, and new blocks constructed, and changes to boundaries including removal of front wall, replacement with new wall and railing with entrances, fencing/ screening on remaining boundaries.</p> <p>Underground excavation works proposed to construct the basement level will cause a change in site topography/ ground levels, which will be managed through implementation of the DMP, CEMP and CDWMP. Physical changes associated with the removal of 63 trees (76% of existing tree cover, 24% of trees retained along western and northern site boundaries) and three hedgerows, and replacement with new soft landscaping (c.80 trees, and landscaped areas with shrubs and plants).</p>	No

		<p>Existing land use is residential with a vacant industrial use, and no change in land use proposed. No watercourses are located at the site, and a drainage layer along the southern site boundary will be installed during the construction of the basement level to facilitate the movement of groundwater.</p> <p>Operational phase of project (i.e. the occupation of the apartments) does not cause physical changes to the locality per se.</p> <p>Accordingly, the physical changes are not considered likely to result in significant effects on the environment in terms of landscape, hydrology, and hydrogeology.</p>	
<p>1.3 Will construction or operation of the project use natural resources such as land, soil, water, materials/ minerals, or energy, especially resources which are non-renewable or in short supply?</p>	<p>No</p>	<p>During the site development works (i.e. demolition and construction phases), project uses standard methods (save for removal and disposal of asbestos containing material) with no significant use of natural resources.</p> <p>Demolition process will be managed through the implementation of the DMP. Project uses standard construction methods, materials and equipment, and the process will be managed through the implementation of the CEMP.</p> <p>Demolition and construction waste will be managed through the implementation of the CDWMP. Estimated total amount of demolition waste produced is c.662 tonnes, of which c.18% is to be reused on site, c.61% recycled/ recovered, and c.21% will be disposed of offsite. Asbestos containing material (63 tonnes) requiring specialist disposal.</p> <p>Operational phase of project (i.e. the occupation of the apartments) does not use natural resources in short supply. Site development uses the land, a finite resource, more efficiently (basement level, provision of medium density, 4 storey high scheme). Project connects into the public water services systems which have sufficient capacity to accommodate demands. Project includes solar panels, energy efficient design, is located close to amenities, and public transport options.</p>	<p>No</p>

<p>1.4 Will the project involve the use, storage, transport, handling, or production of substance which would be harmful to human health or the environment?</p>	<p>Yes</p>	<p>Project produces waste through the demolition of structures within the site. Demolition waste includes 63 tonnes of asbestos containing material (c.10% of total demolition waste). Project involves the removal, transport, and disposal of the asbestos material.</p> <p>Mitigation measures are contained in the DMP and the CDWMP. This is a hazardous waste material which will be removed by a specialist contractor and disposed of offsite in accordance with health and safety, and waste legislation, thereby protecting human health and the environment. Measures also include air monitoring within the site, and the requirement for an authorised site completion certificate.</p> <p>Operational phase of project (i.e. the occupation of the apartments) does not involve the use, storage, or production of any harmful substance. Conventional waste produced from residential activity will be managed through the implementation of the OWMP.</p> <p>Accordingly, this is not considered likely to result in significant effects on the environment in terms of human health or biodiversity.</p>	<p>No</p>
<p>1.5 Will the project produce solid waste, release pollutants or any hazardous/ toxic/ noxious substances?</p>	<p>Yes</p>	<p>Project produces waste through the demolition of structures within the site including asbestos containing material. Mitigation measures to address potential impacts are contained in the DMP and the CDWMP, as outlined above.</p> <p>Conventional waste produced from construction activity will be managed through the implementation of the CDWMP.</p> <p>Operational phase of project (i.e. the occupation of the apartments) does not produce or release any pollutant or hazardous material.</p> <p>Accordingly, this is not considered likely to result in significant effects on the environment in terms of human health or biodiversity.</p>	<p>No</p>
<p>1.6 Will the project lead to risks of contamination of land or water from releases of pollutants onto the ground or into surface waters, groundwater, coastal waters or the sea?</p>	<p>Yes</p>	<p>Project involves underground excavation works with the construction of a basement level, and the removal/ diversion of subsurface water services infrastructure, and installation of new services infrastructure. Demolition process will be managed through the implementation of the</p>	<p>No</p>

		<p>DMP. Project uses standard construction methods, materials and equipment, and the process will be managed through the implementation of the CEMP. The DMP and CEMP have mitigation measures to reduce potential risks in relation to contamination of land/ groundwater.</p> <p>Project includes for surface water and groundwater management systems, designed, and constructed in accordance with GSDSDS. During the operational phase of project (i.e. the occupation of the apartments) surface water will be attenuated within the site, and wastewater and surface water will be discharged to the public systems. There is no watercourse at the site, and at significant distance to coastal waters. The risks of contamination are mitigated, managed, and therefore considered to be negligible.</p>	
<p>1.7 Will the project cause noise and vibration or release of light, heat, energy, or electromagnetic radiation?</p>	Yes	<p>Project causes noise and vibration impacts during the site development (i.e. demolition and construction phases). Mitigation measures to address potential impacts are contained in the DMP and the CEMP. Noise and vibration levels to be to specified BS standards, monitoring to be undertaken by a noise and vibration specialist, levels to be set accordingly, use of good site management practices for noise reduction at source, the appointment of a site liaison officer as a residents' contact point, and specification of working hours. Site development works are short term in duration, impacts arising will be temporary, localised, and addressed by the mitigation measures.</p> <p>Operational phase of project (i.e. the occupation of the apartments) causes noise and light impacts outlined in the Noise Impact Assessment and the Site Lighting Report. The noise increase is associated with residential use and standard activity (vehicle access, normal activity), and lighting plan designed to ameliorate impacts on humans and bats.</p> <p>Accordingly, this is not considered likely to result in significant effects on the environment in terms of air quality (noise, vibration, light pollution).</p>	No
<p>1.8 Will there be any risks to human health, for example due to water contamination or air pollution?</p>	Yes	<p>Project produces waste including asbestos containing material which is a hazardous material with risk to human health. Mitigation measures are contained in the DMP and the CDWMP. The asbestos containing material will be removed by a specialist contractor and disposed of</p>	No

		<p>offsite in accordance with health and safety, and waste legislation. Measures to further protect human health include air monitoring within the site, and the requirement for an authorised site completion certificate.</p> <p>Project causes dust impacts during the demolition and site clearance works. Mitigation measures are contained in the DMP, CEMP and the CDWMP. Dust monitoring to undertaken by main contractor, use of good site management practices for dust prevention and minimisation at source, and road cleaning. Site development works are short term in duration, and impacts arising will be temporary, localised, addressed by the mitigation measures.</p> <p>Operational phase of project (i.e. the occupation of the apartments) does not cause risks to human health through water contamination/ air pollution through design of the scheme, connection to public water services systems, and scale of residential use/ activity arising.</p> <p>Accordingly, this is not considered likely to result in a significant effect on the environment in terms of risks to human health.</p>	
1.9 Will there be any risk of major accidents that could affect human health or the environment?	No	No risk of major accidents given nature of project.	No
1.10 Will the project affect the social environment (population, employment)	Yes	<p>Project increases localised temporary employment activity at the site during site development works (i.e. demolition and construction phases). The site development works are short term in duration and impacts arising will be temporary, localised, addressed by the mitigation measures in the DMP and CEMP.</p> <p>Operational phase of project (i.e. the occupation of the apartments) results in an increase of c.270 in population (as per Section 7.4 above), a moderate population increase.</p> <p>The receiving area is a built-up urban area, close to education, amenities, services, public transport, and has the capacity to accommodate the impacts associated with the population increase.</p>	No

		Accordingly, this is not considered likely to result in a significant effect on the social environment of the area.	
1.11 Is the project part of a wider large scale change that could result in cumulative effects on the environment?	No	<p>Project is not part of a wider large scale change in the area, as the site is an infill site within an established built-up location. Development works are noted in the wider UCD campus and residential schemes in the Mount Merrion area.</p> <p>Site development works (demolition and construction phases) are short term in duration, and impacts arising will be temporary, localised, addressed by the mitigation measures.</p> <p>Operational phase of project (i.e. the occupation of the apartments) moderate increase in population and residential activity, and are not considered likely to result in significant effects on the environment in and of themselves, or in cumulation with development works in the wider area.</p> <p>No cumulative significant effects on the area are reasonably anticipated.</p>	No
2. Location of proposed development			
2.1 Is the proposed development located on, in, adjoining or have the potential to impact on any of the following: a) European site (SAC/ SPA/ pSAC/ pSPA) b) NHA/ pNHA c) Designated Nature Reserve d) Designated refuge for flora or fauna e) Place, site or feature of ecological interest, the preservation/ conservation/ protection of which is an objective of a development plan/ LAP/ draft plan or variation of a plan	No	<p>Project not located in, on, or adjoining any European site, any designated or proposed Natural Heritage Area, or any other listed area of ecological interest or protection.</p> <p>There are no known pathways by or through which surface water, groundwater, waste, or other pollutant could reach these receptors.</p> <p>The AA screening report presents information on potential impacts of the project on European sites, allowing the Board to undertake a screening determination. It is concluded that the project would not be likely to give rise to significant effects on identified European Sites, and that a Stage 2 appropriate assessment, and submission of a Natura Impact Statement, is not required.</p>	No

<p>2.2 Could any protected, important, or sensitive species of flora or fauna which use areas on or around the site, for example: for breeding, nesting, foraging, resting, over-wintering, or migration, be significantly affected by the project?</p>	<p>Yes</p>	<p>Project comprises the demolition of buildings, the felling of trees including one PBR tree, new landscaping (trees, shrubs, plants) and a public lighting scheme.</p> <p>In terms of roosting, the demolition of the buildings in the site has a minor negative impact on three of the four species. In terms of commuting and foraging, the proposed tree removal has a minor negative impact on three of the four species. In terms of foraging, the proposed planting and landscaping has a minor to moderate positive impact on the four species. While in terms of disturbance, the lighting plan has a minor negative impact on brown long eared bat species.</p> <p>Mitigation measures are contained in the Bat Assessment and Ecological (Biodiversity) Appraisal. Alternative roosting sites will be erected (four bat boxes on poles/ trees and four bat tubes), resurveying of all buildings and the single PRB tree prior to demolition and felling being undertaken, seasonal restrictions for undertaking the works, daytime undertaking of works, and all works carried out under the supervision of the bat specialist.</p> <p>Accordingly, this is not considered likely to result in a significant effect on the environment in terms of biodiversity.</p>	<p>No</p>
<p>2.3 Are there any other features of landscape, historic, archaeological, or cultural importance that could be affected?</p>	<p>No</p>	<p>No landscape designations pertain to the site. No archaeological features recorded at the site. No architectural heritage designations (protected structures, architectural conservation area) pertain to the site.</p>	<p>No</p>
<p>2.4 Are there any areas on/ around the location which contain important, high quality or scarce resources which could be affected by the project, for example: forestry, agriculture, water/ coastal, fisheries, minerals?</p>	<p>No</p>	<p>No such resources on or close to the site.</p>	<p>No</p>
<p>2.5 Are there any water resources including surface waters, for example: rivers, lakes/ ponds, coastal or groundwaters which could be affected by the project, particularly in terms of their volume and flood risk?</p>	<p>No</p>	<p>There are no mapped watercourses present on or in the immediate vicinity of the site.</p>	<p>No</p>

		<p>Two mapped proximate watercourses are Elm Park Stream (1.1km to the north) and Priors Stream (1.1km to the southeast) flow into Dublin Bay but are not connected to the site.</p> <p>Trimlestown Stream (unmapped) is located c.160m to the northeast of the site and the groundwater underlying the site does not appear to discharge towards the stream.</p> <p>Site is located within an area designated as Flood Zone C. There are no direct connections to watercourses in the area. The site (connected by theoretical indirect hydrological connections) is at significant distance to coastal waters.</p>	
2.6 Is the location susceptible to subsidence, landslides or erosion?	No	No evidence identified of these risks.	No
2.7 Are there any key transport routes (eg National Primary Roads) on or around the location which are susceptible to congestion or which cause environmental problems, which could be affected by the project?	No	<p>Site served by a local urban road network and is c.250m from the regional Stillorgan Road (R138) dual carriageway and Quality Bus Corridor, and c.1,1km to the N11.</p> <p>During the site development works, the project will result in an increase in traffic activity (HGVs, workers) as principally demolition waste will be removed from site (estimated two HGV outbound trips per hour), and construction equipment, materials, and waste are delivered to/ removed from the site (similar estimations of traffic movements). Due to proximity to public transport, there are sustainable transport options available to workers. Site development works are short term in duration and impacts arising will be temporary, localised, and managed under the traffic management plans in the DMP and/ or CEMP.</p> <p>Operational phase of project (i.e. the occupation of the apartments) results in an increase of c.270 in population with associated rise in traffic movements of all modes of transport modes.</p> <p>The TTA calculates (for 72 apartments) that there will be 20 two-way trips at the AM peak and 18 in the PM peak and concludes that in 2037 (opening year +15 years) the four-armed junction (at the site, UCD entrance, and Foster's Road) will operate within and with significant</p>	No

		reserve capacity. The TTA concludes anticipated levels of traffic generated from the proposal would have a negligible impact on the surrounding road network. Project not anticipated to contribute to congestion or to have a significant effect on the environment in terms of material assets/ transportation.	
2.8 Are there existing sensitive land uses or community facilities (such as hospitals, schools etc) which could be significantly affected by the project?	Yes	<p>There are no sensitive community facilities in proximity. Site adjoins residential development. Site development works will be implemented in accordance with the DMP, CEMP, and CDWMP which include mitigation measures to protect the amenity of adjacent residents.</p> <p>Operational phase of project (i.e. the occupation of the apartments) causes an increase in residential activity at the site (use of open spaces, use of balconies, traffic generation) which are typical of residential schemes in residential areas, such as the receiving area. The Noise Impact Assessment and Daylight and Sunlight Assessment have demonstrated that the residential amenity of adjacent properties will not be unduly affected. Accordingly, this is not considered to result in a significant effect on the environment in terms of material assets/ human health.</p>	No
3. Any other factors that should be considered which could lead to environmental impacts			
3.1 Cumulative Effects: Could this project together with existing and/ or approved development result in cumulative effects during the construction/ operation phase?	No	<p>Development works are noted in the wider UCD campus, and residential development (apartment scheme) in Mount Merion area. No developments have been identified in the vicinity which would give rise to significant cumulative environmental effects. No cumulative significant effects on the area are reasonably anticipated.</p> <p>There is a concurrent appeal case at the site, ABP 308770-20. The current appeal and the concurrent appeal are mutually exclusive projects, and therefore with no cumulative effects arising with the current appeal. The concurrent appeal is subject of a separate EIA Screening Determination.</p>	No
3.2 Transboundary Effects: Is the project likely to lead to transboundary effects?	No	No transboundary considerations effects arising.	No

3.3 Are there any other relevant considerations?	No	No	No
C.CONCLUSION			
No real likelihood of significant effects on the environment.	X	EIAR Not Required	
Real likelihood of significant effects on the environment.		EIAR Required	
D. MAIN REASONS AND CONSIDERATIONS			
<p>Having regard to:</p> <p>(a) The nature and scale of the proposed development, which is significantly under the thresholds in respect of Class 10(b)(i), Class 10(b)(iv), Class 14, and Class 15 of the Planning and Development Regulations 2001, as amended,</p> <p>(b) The location of the site on lands that are zoned for residential use under the provisions of the Dún Laoghaire Rathdown County Development Plan 2022-2028 and the results of the strategic environmental assessment of this Plan undertaken in accordance with the SEA Directive (2001/42/EC),</p> <p>(c) The location of the site in an established residential area served by public infrastructure and the existing pattern of development in the vicinity,</p> <p>(d) The location of the site outside of any sensitive location specified in article 109(4)(a) of the Planning and Development Regulations 2001, as amended and the absence of any relevant connectivity to any sensitive location,</p> <p>(e) The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003), and</p> <p>(f) The criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as amended,</p> <p>it is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an environmental impact assessment report is not therefore required.</p>			

Inspector _____ **Phillippa Joyce**

Date _____