



## **Development**

Construct an extension to the existing NIBRT facility. The subject site contains the walls of the former walled garden associated with Merville House, which (along with the associated gate posts and piers) is a Protected Structure outside the Application site (no works are proposed to the walls of the former walled garden through the Application, not to the Protected Structures). The proposed development will consist of: the removal of the existing pre-fabricated structures (total of 49.5 sq m) and associated access ramp; and the construction of a two storey extension to the existing Research and Training facility building to provide an additional 1,500 sq m of laboratory floorspace and ancillary facilities. The resulting total gross floor area of the building will be 7,985 sq m. The development will also consist of: alterations to the elevations, roof and internal layouts of the existing

building; hard and soft landscaping (including the removal of the existing berm); surface car parking, including re-configurations to the existing car park and new car parking spaces to provide an additional 58 No. spaces, resulting in an overall total of 80 No. car parking spaces (including 4 No. wheelchair accessible spaces); 2 No. bicycle parking shelters (total of 81.1 sq m); an additional servicing and delivery bay; plant and services (mechanical and electrical, water supply, sewage disposal and surface water disposal) and; all other site development works above and below ground.

**Location**

On a site of c. 1.4892 ha at Belfield, Foster's Avenue, Blackrock, A94 X099.

**Planning Authority**

Dún Laoghaire Rathdown County Council

**Planning Authority Reg. Ref.**

D20A/0794

**Applicant(s)**

National Institute for Bioprocessing Research and Training (NIBRT)

**Type of Application**

Permission

**Planning Authority Decision**

Grant subject to conditions

<b>Type of Appeal</b>	Third Party v. Decision
<b>Appellant(s)</b>	Daniel Brennan
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	16 <sup>th</sup> November, 2021
<b>Inspector</b>	Robert Speer

## 1.0 Site Location and Description

- 1.1. The proposed development site encompasses the grounds of the National Institute for Bioprocessing Research and Training and is located within the south-eastern confines of the UCD (Belfield) campus (although the NIBRT operates as an independent facility to the wider university) with access obtained from Foster's Avenue via the wider campus road network. It is set within a former walled garden originally associated with Merville House (a protected structure) and is enclosed to the northeast, northwest, southwest and partially to the southeast, by a high stone / brick wall. The existing facility comprises a contemporary, two-storey building with associated surface car parking to the rear and a grassed berm / mound to the southwest.
- 1.2. The site has a stated site area of 1.4892 hectares, is rectangular in shape, and is surrounded by the UCD Belfield campus with student accommodation to the northeast, northwest & southwest, and an area of woodland to the south / southeast. NOVA, which is part of the UCD Research and Innovation unit and the hub of innovation-related activities at the university, is located a short distance away to the northeast. The wider college campus includes various academic buildings and supporting services etc. while the National Virus Reference Laboratory occupies a position close to the main campus entrance from the R138 Stillorgan Road.
- 1.3. The NIBRT provides training and research solutions for the biopharmaceutical manufacturing industry and comprises a purpose-built facility that closely replicates a modern bioprocessing plant with state-of-the-art equipment. Its operations are research and training based only and its production of products or therapies are not for consumption or use by humans or animals.

## 2.0 Proposed Development

- 2.1. The proposed development consists of the construction of a two-storey extension to the rear (northwest) of the existing NIBRT facility building to provide an additional 1,500m<sup>2</sup> of laboratory floorspace and ancillary facilities resulting in a total gross building floor area of 7,985m<sup>2</sup> (although the development description refers to the removal of 2 No. prefabricated structures to the rear of the site (identified as a 'portacabin' and a container on the 'existing' site layout plan), these were not evident

on the day of my site inspection and would appear to have been removed from the property). The development will also involve alterations to the elevations, roof and internal layouts of the existing building; hard and soft landscaping works (including the removal of the existing berm); the re-configuration of the existing car park and the provision of additional car parking resulting in an overall total of 80 No. car parking spaces; 2 No. bicycle parking shelters; an additional servicing and delivery bay; plant and services (mechanical and electrical, water supply, sewage disposal and surface water disposal); and all other associated site development works.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

- 3.1.1. Following the receipt of a response to a request for further information, on 21<sup>st</sup> April, 2021 the Planning Authority issued a notification of a decision to grant permission for the proposed development, subject to 14 No. conditions. These conditions are generally of a standardised format and relate to issues including the control of emissions (including noise, vibration, malodours, gas, dust & fumes), external finishes, surface water drainage, landscaping, waste management, construction management, and development contributions, however, the following conditions are of note:

*Condition No. 2* – Prohibits any use of the proposed development for the production of pharmaceutical / biopharmaceutical substances on an industrial scale.

*Condition No. 8* – Requires the submission of a revised and updated mobility management plan for the written agreement of the Planning Authority prior to the operation of the development.

*Condition No. 9* – Refers to the car parking provision (including a requirement that all the parking spaces be capable of accommodating future electric charging points) and states that 50 No. of the spaces permitted as part of the development are to be decommissioned in the future within 3 months of the expiry of the current tenant's licence, unless permission is granted for their continued use.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

An initial report details the site context, planning history, and the applicable policy considerations, including the relevant land use zoning ('*TLI: To facilitate, support and enhance the development of third level education institutions*'), Policy E4: '*Further and Higher Institutions*', and Specific Local Objective No. 1 which aims '*to facilitate, support and enhance the development of University College Dublin including all associated and supporting facilities*' with a range of uses to be facilitated on the Belfield campus '*to encourage and foster strong links between education, community and the business sector in the County*'. It proceeds to state that the proposed development is acceptable in principal and will provide for an expansion of the established use on site.

The report continues by considering the wider merits of the proposal, including the proposed car parking arrangements and adherence to the campus parking cap of 3,600 No. spaces as agreed with the National Transport Authority. It also notes that the development will not require an Industrial Emissions or Integrated Pollution Licence (as it does not fall within any of the listed activities set out in the First Schedule of the Environmental Protection Agency Act, 1992), although clarity is required as to whether the application relates to a development which comprises, or is for the purposes of, an activity requiring a waste licence. It subsequently recommends that further information be sought in respect of a number of items, including the need (or not) for a waste licence, adherence to the agreed campus parking cap, bicycle parking, and the surface water drainage proposals.

Following consideration of the applicant's response to a request for additional information, a final report was prepared which recommended a grant of permission, subject to conditions.

### 3.2.2. Other Technical Reports

*Environmental Health Officer:* No objection, subject to conditions.

*Municipal Services Dept., Drainage Planning:* An initial report recommended that further information be sought in relation to the surface water drainage proposals.

Following the receipt of a response to a request for further information, a subsequent report indicated that there was no objection to the proposal, subject to conditions.

*Transportation Planning:* An initial report recommended that further information be sought in relation to permeability links, pedestrian footpaths, cycle parking & associated facilities, and car parking provision. In specific reference to the proposal to provide 80 No. car parking spaces within the confines of the site, it was recommended that the applicant be required to demonstrate how the increase in car parking would align with the cap of 3,600 No. spaces applicable within UCD's Belfield campus as previously agreed with the National Transport Authority or, alternatively, to submit a letter of acknowledgment from UCD stating that the car parking provision at the NIBRT will be offset from upcoming developments in the wider campus thereby maintaining the agreed parking space cap.

Following the receipt of a response to a request for further information, a subsequent report indicated that there was no objection to the proposal, subject to conditions, including a requirement that a temporary grant of permission be considered in respect of the 50 No. additional car parking spaces in case the site reverts to the Belfield campus management and the omission of the spaces would be necessary to comply with existing / future car parking caps.

### **3.3. Prescribed Bodies**

None.

### **3.4. Third Party Observations**

3.4.1. A total of 2 No. submissions were received from an interested third party (the appellant) and the principal grounds of objection / areas of concern raised therein can be summarised as follows:

- The description of the development is deficient in that the proposal does not amount to an expansion of the activities conducted from within the existing NIBRT facility but rather involves a significant change of use (e.g. the research of hazardous viruses) that poses a bio-risk. The application should therefore have been declared invalid.
- Concerns as regards the biosafety levels to be provided on site and the risk to public health given the nature of the uses proposed.

- The adequacy and regulation of the safety protocols to be employed on site.
- The need for the relevant registration, licensing, regulation and monitoring of the activities proposed.
- The unauthorised car parking already in place on site.
- The proposed car parking provision breaches the cap of 3,600 No. spaces applicable within UCD's Belfield campus as agreed with the National Transport Authority.
- The unsustainability of surface level parking when compared to the more efficient use of land through the provision of multi-storey car parking.
- Condition No. 10 of ABP Ref No. ABP-307514-20 is unambiguous in stating that the total quantum of car parking for any purposes throughout the UCD Belfield campus is not to exceed 3,600 No. spaces.

## 4.0 Planning History

### 4.1. On Site:

- 4.1.1. PA Ref. No. D07A/1395. Was granted on 27<sup>th</sup> February, 2008 permitting NIBRT Limited permission for modifications and alterations to the existing approved development for the National Institute for Bioprocessing Research and Training (NIBRT) ABP Ref. No. PL.06D.220758 dated 30<sup>th</sup> May 2007 (PA Ref. D06A/0036) as follows: Proposed modifications and alterations:- Revised phasing from the existing 4 phases (in the Research / Training area) to 6 phases. The two additional phases are in respect of the 3-storey residential / library area (proposed phase 5) and the 3-storey Administration / Canteen area (proposed phase 6) Revised elevations to all the proposed facades, both the proposed initial construction phase and all subsequent phases (2 to 6). These elevations include a change of both materials and external design treatment, the addition of porticos and screened structures c. 3m off the face of all the permitted facades including both main entrances as an integral part of the revised elevations. Revised landscape treatment to include the following:- Landscaping of the existing bermed structure, proposed removal of the permitted landscape pond to the south of the facility, minor modifications to the car parking and access paving, landscaping and the like. The permitted scope, use and functions of



the facility remain unchanged as follows:- No additional increase in floor area, no increase in height of the facility including items of external plant or equipment, no change in location of the facility, no changes to the permitted uses of the facility, no changes to the external servicing or utility requirements of the facility, no increase in any of the predicted external or environmental impacts of the proposed facility. The existing permitted NIBRT development requires access via an existing protected structure to the Nova Facility (Merville House) off Fosters Avenue.

- 4.1.2. PA Ref. No. D06A/1136 / ABP Ref. No. PL06D.220758. Was granted on appeal on 30<sup>th</sup> May, 2005 permitting the National Institute for Bioprocessing Research and Training permission for the phased development of a biopharmaceutical research and training facility comprising c. 13,257m<sup>2</sup> of development consisting of: 1 No. two-storey building over basement (c. 11.25m high) with a gross floor area of c. 11,857m<sup>2</sup>, accommodating research and training laboratories, and ancillary uses with roof mounted plant and equipment, and 1 No. three-storey administration building (c. 18.5m high) with a gross floor area of 709m<sup>2</sup> accommodating offices, one number three-storey trainee residential accommodation building (approximately 11.25m high) with a gross floor area of 691m<sup>2</sup> and ancillary development and works including the provision of 30 car parking spaces (solely for use of users of the facility), loading docks and bays, associated signage, landscaping works including planting and a decorative pond, the creation of revised internal access roads and pedestrian routes and other miscellaneous site works including the demolition of existing sports ground structures, stands, changing rooms, TV tower and the like. Access to the site will be provided via the existing entrance (a Protected Structure) to the Nova Facility (Merville House), off Foster's Avenue. The facility is to be built on a phased basis up to a maximum size of c. 13,257m<sup>2</sup>.

#### 4.2. **Other Relevant Files:**

- 4.2.1. PA Ref. No. D20A/0030 / ABP Ref. No. ABP-307514-20. Was granted on appeal on 30<sup>th</sup> March, 2021 permitting University College Dublin permission for landscaping and infrastructure enabling works as part of the Future Campus Phase 1 proposals all on a site of circa 7.56 hectares at University College Dublin Campus, Belfield, Dublin.

## 5.0 Policy and Context

### 5.1. Dún Laoghaire Rathdown County Development Plan, 2016-2022:

#### 5.1.1. Land Use Zoning:

The proposed development site is zoned as 'TLI' with the stated land use zoning objective 'To facilitate, support and enhance the development of third level education institutions'.

#### 5.1.2. Other Relevant Sections / Policies:

*Chapter 2: Sustainable Communities Strategy:*

*Section 2.2: Sustainable Travel and Transportation:*

*Section 2.2.7: Walking and Cycling*

*Section 2.2.10: Roads:*

*Policy ST25: Roads:*

It is Council policy, in conjunction and co-operation with other transport bodies and authorities such as the TII and the NTA, to secure improvements to the County road network – including improved pedestrian and cycle facilities.

*Table 2.2.6: 'Long Term Road Objectives':*

- Dublin Eastern Bypass (as identified in the Dublin Eastern Bypass Corridor Protection Study, TII 2011)

*Chapter 3: Enterprise and Employment Strategy:*

*Policy E2: Knowledge Economy:*

It is Council policy to promote the development of knowledge-based enterprise in the County.

*Policy E4: Further and Higher Education Institutions:*

It is Council policy to work in conjunction with Further and Higher Institutions in the creation and fostering of enterprise through research, innovation and development activities and the commercialisation of such activities.

*Chapter 6: Built Heritage Strategy:*

*Section 6.1: Archaeological and Architectural Heritage*

*Section 6.1.3: Architectural Heritage:*

**Policy AR1: Record of Protected Structures:**

It is Council policy to:

- i. Include those structures that are considered in the opinion of the Planning Authority to be of special architectural, historical, archaeological, artistic, cultural, scientific, technical or social interest in the Record of Protected Structures (RPS).
- ii. Protect structures included on the RPS from any works that would negatively impact their special character and appearance.
- iii. Ensure that any development proposals to Protected Structures, their curtilage and setting shall have regard to the Department of the Arts, Heritage and the Gaeltacht 'Architectural Heritage Protection Guidelines for Planning Authorities' (2011).
- iv. Ensure that new and adapted uses are compatible with the character and special interest of the Protected Structure.

The NIBRT is located within the former walled garden of 'Merville House' with that latter building having been designated as a protected structure by reason of its inclusion in the Record of Protected Structures contained in Appendix 4 of the County Development Plan (RPS No. 94).

*Chapter 7: Community Strategy:*

**Policy SIC9: *Further and Higher Education Facilities:***

It is Council policy to support the development and ongoing provision of Further and Higher Level Institutions in the County including University College Dublin (Belfield and Blackrock campuses), Dún Laoghaire Institute of Art, Design and

Technology and Blackrock Further Education Institute (Formerly Senior College Dún Laoghaire) Dún Laoghaire Further Education Institute (formerly Dún Laoghaire College of Further Education), Sallynoggin College of Further Education, Stillorgan College of Further Education, Dundrum College of Further Education and any new Further and Higher Level Institutions – including Irish colleges or major overseas universities whether within established campuses or in new campuses.

Section 7.1.3.4(i): *University College Dublin (UCD):*

University College Dublin occupies a 132-hectare site and is only 4km south of the city centre. The affiliated Michael Smurfit Graduate School of Business, located in Blackrock, is Ireland's leading business education and research centre.

UCD is Ireland's largest and most diverse university. The current population of UCD for the 2013/2014 academic year is circa 26,750 and 4,000 direct employees. There are approximately 6,580 international students drawn from approximately 127 countries.

The County Council recognises the significant role that UCD plays in the County and the contribution its education, and research and development activities make to the attractiveness of the County for investment. In addition, the Council recognises the strategic importance of UCD for employment creation at Regional and National level, as evidenced by the UCD-TCD Innovation Alliance to create the National Innovation Zone.

The UCD Campus Development Plan 2005-2010-2015 (which is currently under review) sets out aims and priorities for the future direction of the University. This Plan includes a vision for world-class architecture, a network of greened pedestrian walkways and a transformation of the academic infrastructure to reflect the ambitions of a leading European university.

The primary aspiration of the Campus Development Plan is the advancement and promotion of UCD as a modern university, one that excels in both academic achievement and the built environment. UCD seeks to promote itself as a sustainable, healthy and living campus through the development of both academic

and non-academic facilities, increased on-campus residencies and the promotion of knowledge-based industry-linked research facilities.

The Planning Authority will continue to work closely with UCD in relation to advancing campus development in accordance with both County Development Plan and National policies and guidance.

*Chapter 8: Principles of Development:*

*Section 8.1: Urban Design*

*Section 8.2: Development Management*

*Chapter 9: Specific Local Objectives:*

*Map 1: Clonskeagh / Dundrum:* It is an objective of the Council:

- SLO 1 - To facilitate, support and enhance the development of University College Dublin including all associated and supporting facilities. A range of uses will be facilitated on Belfield campus lands to encourage and foster strong links between education, community and the business sector in the County.
- SLO6 - To promote potential additional future uses of the Dublin Eastern Bypass reservation corridor, including a greenway/cycleway, a pedestrian walkway, biodiversity projects, recreational opportunities - inclusive of playing pitches - and public transport provision such as Bus Rapid Transit services, pending a decision from Transport Infrastructure Ireland/Central Government in relation to the future status of the Bypass. Any potential additional future short-term uses of the reservation corridor will be subject to a joint feasibility study to be undertaken by TII and the NTA.
- SLO 146 - To prepare a Local Area Plan for Clonskeagh/UCD.
- SLO 148 - To identify and address the on-going car parking issues within and surrounding UCD Campus. In particular, the Council will support and facilitate the on-going process of Mobility Management Planning for UCD, involving the University and the NTA, in order to achieve more sustainable travel patterns to and from the University and to work towards the development of a Campus Travel Plan.

## 5.2. Natural Heritage Designations

5.2.1. The following natural heritage designations are located in the general vicinity of the proposed development site:

- The Booterstown Marsh Proposed Natural Heritage Area (Site Code: 001205), approximately 1.3km northeast of the site.
- The South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), approximately 1.3km northeast of the site.
- The South Dublin Bay Special Area of Conservation (Site Code: 000210), approximately 1.4km northeast of the site.
- The South Dublin Bay Proposed Natural Heritage Area (Site Code: 000210), approximately 1.4km northeast of the site.

## 5.3. EIA Screening

5.3.1. Having regard to the nature, scale and extent of the development proposed, the contents of the 'Environmental Impact Assessment Screening Report' included as Attachment 1 of the 'Environmental Report' provided with the planning application, the site location in a built-up urban area outside of any protected site, the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest sensitive location, and the proposal to adhere to common construction management practices, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- The proposed development involves a significant and material change of use in the nature of the activities conducted on site as a result of the proposal to

install two new virus laboratories under the guise of an 'extension' to the existing facility.

- The newspaper and site notices fail to reference the construction and operation of virus laboratories as part of the proposed development and thereby conceal a critically important part of the proposal from the public. To describe the development as “an extension to the existing NIBRT facility” when the extension itself involves a material change of use in the form of virus laboratories does not amount to an accurate or comprehensive brief description of the nature and extent of the proposed development as required by the Planning and Development Regulations, 2001, as amended.
- It is a requirement of the Planning and Development Regulations, 2001, as amended, that the site notice must state if the development requires an Integrated Pollution Control Licence or a Waste Licence, however, no such statement is included in the site notice despite the planning application form stating that a Waste Licence is required. The planning application is therefore invalid.
- The responses to the following questions in the planning application form are incorrect:
  - Question No. 13:

The applicant has failed to reference the material change of use arising from the development of virus laboratories and has not referred to the proposal to retain (and increase) the unauthorised car parking spaces on site.
  - Question No. 15(6):

The assertion that the development does not require an Integrated Pollution Control Licence is questionable and should be confirmed by the EPA.
  - Question No. 15(7):

The response to this question states that a Waste Licence will be required, however, this has not been indicated in the site notice.

- The deficiencies identified in the public notices (i.e. the failure to provide for an adequate description of the proposed development and to reference the need for an IPC licence and a Waste Licence) render the planning application invalid as it does not comply with the statutory requirements of the Planning and Development Regulations.
- In light of the threat to public health from viruses, and having regard to the general principles set out in the World Health Organisation's '*Guidelines on Establishment of Virology Laboratory in Developing Countries*', it is questionable whether the proposed virus laboratories can be safely included as part of an extension to the existing NIBRT facility or if they should be accommodated in a separate standalone building.
- Virus laboratories involve a high level of biorisk and should only be operated in an appropriately regulated and monitored environment. In light of the lack of information as regards the adequacy of the safeguards to be provided and the range of virus research proposed, it is considered that the development represents a significant risk to public health.
- There are radical differences between the existing NIBRT facility and the proposed laboratories in terms of the need for the specialised treatment of contaminated effluent, emissions & waste etc. The submitted particulars do not sufficiently specify the measures required to protect public health from viral emissions and contaminated waste.
- No independent regulation, licencing or monitoring of the development has been proposed and, therefore, the application should be refused in the interests of public health.
- The proposed development includes laboratory space for unspecified start-up companies, gene-therapy (viral) research, cell therapy research and 'fallow space' for unspecified future technology. These are all significant new and material uses which are not carried out in the existing NIBRT facility.
- The open-ended identification of viral types / viruses included in the Environmental Report provided with the planning application could potentially allow for the unrestricted use of all virus types in the laboratories.



- The use of viruses and other genetically modified valuable biological materials (VBMs) in the proposed development involves 'biorisk' (defined by the WHO as the probability or chance that a particular adverse event – accidental infection, or unauthorised access, loss, theft, misuse, diversion or intentional release possible leading to harm will occur). Therefore, the use of such material must be conducted in a secure environment by a responsible body subject to appropriate licensing, regulation, monitoring & enforcement.

The original NIBRT facility as approved under PA Ref. No. D06A/1136 was primarily aimed at bioprocessing involving fermentation, however, the subject proposal involves a significant change of use that will include unspecified and potentially hazardous virus research. It is not considered that the NIBRT has established itself as a suitable body for such activities.

- The submitted particulars reference the use of Lentivirus, the best known of which is HIV. The WHO Guidelines classify HIV as Biosafety Level 3 while the proposed laboratories will be Biosafety Level 2. This is a further ground for refusal given the potential risk to public health.
- It is unclear whether the applicant has consulted with the Environmental Protection Agency to confirm that Containment Level 2 as regards biosafety will be adequate for the uses proposed.
- The Environmental Report fails to adequately consider the specific public health concerns and biorisks associated with the proposed laboratories.
- No details have been submitted to support the assertion that the proposed development does not require Environmental Impact Assessment.
- It is unclear whether the GMO Certificate of Registration from the Department of Agriculture, Food and the Marine for diagnostic, educational and research purposes held by the NIBRT will allow for gene therapy research involving viruses.
- While the applicant has stated that the existing facility does not require an Integrated Pollution Control / Industrial Emissions Licence and that the proposed development does not fall into any of the activities listed in the First Schedule of the Environmental Protection Agency Act, 1992, as amended,

there are concerns that the uses proposed in the new 'extension' are significantly different from past activities on site and that an IPC licence may be required for the new laboratories.

- The National Virus Reference Laboratory (also on the UCD Belfield campus) has been accredited as compliant with ISO/IEC 15189:2012 3<sup>rd</sup> Edition – 'Medical Laboratories – Requirements for quality and competence'. No reference had been made to any such accreditation for the proposed development.
- Concerns arise as regards the safety and oversight of any virus research undertaken by start-up companies in the proposed laboratories.
- There are already 36 No. unauthorised car parking spaces on site and, when taken in combination with the wider college campus, the applicant is proposing to substantially breach the cap of 3,600 No. spaces "for any purpose" on the Belfield campus (as was recently clarified by Condition No. 10 of ABP Ref. No. ABP-307514-20).
- In the past year there have been two other planning applications which have impacted on car parking numbers and the cap of 3,600 No. spaces within the UCD Belfield Campus:

- PA Ref. No. D20A/0030 / ABP Ref. No. ABP-307514-20:

Condition No. 10 of the Board's Order is of particular significance as it states that the total quantum of car parking for any purposes throughout the UCD Belfield campus is not to exceed 3,600 No. spaces so as to ensure compliance with the UCD Campus Travel Plan, 2016-2026 in the interest of sustainable transport.

Condition No. 8 of the same order also reduced the permitted car parking in order to comply with the campus cap of 3,600 No. spaces.

- PA Ref. No. D20A/0328:

In its assessment of this application, the Planning Authority sought the submission of an audit of all existing and planned car parking spaces on campus, including at the NIBRT. In response to a request for further information, an audit prepared by SYSTRA consultants strongly argued

that it was not relevant to take the NIBRT car parking spaces into account for the UCD Campus Parking Strategy, car parking cap, or annual car parking audit. In effect, it was the view of UCD in November, 2020 that all of the NIBRT's existing car parking (comprising 32 No. permitted and 36 No. unauthorised spaces) was outside of the campus cap of 3,600 No. spaces.

On the basis of the foregoing, permission was granted under PA Ref. No. D20A/0328 for a period of three years for the development of 239 No. car parking spaces, subject to conditions, including a requirement that 15 No. spaces be omitted to ensure that the total amount of existing and planned parking on campus would accord with the National Transport Authority's cap of 3,600 No. spaces.

It is also of relevance to note that the 200 No. temporary construction spaces were not included in the SYSTRA audit for the purposes of compliance with the campus parking cap as the spaces in question would be not available to UCD staff or the student community.

In the subject application, the applicant has sought to reiterate that the 80 No. parking spaces proposed on site are not subject to the campus parking cap as the NIBRT is a separate entity to UCD. This claim was disputed in an earlier observation lodged by the appellant which also noted that the NIBRT had developed 36 No. unauthorised spaces on site in the absence of any intervention by UCD or the Planning Authority. In response to a request for further information which sought to clarify whether the NIBRT parking spaces were included or excluded from the parking cap, letters from UCD and the NTA were submitted which can be summarised as follows:

- The UCD letter confirms that the 30 No. spaces approved as part of the original NIBRT development are included in the 3,600 No. parking cap (noting that these spaces are for the use of the NIBRT only and are not controlled by UCD). However, the letter goes on to say that while the planned additional 50 No. spaces will similarly be for the use of the NIBRT and will not be controlled by UCD, those spaces "are not included in the campus cap of 3,600 spaces". It is unclear on what authority that UCD has

come to this conclusion given that the cap was set by the NTA and that it which should determine what parking falls within the cap. In addition, it is entirely illogical that the original 30 No. spaces are within the cap whereas the 50 No. additional spaces are not.

- The NTA letter agrees with the correspondence from UCD without any explanation. The parking cap was originally set as part of the Commuting Strategies and Campus Development Plan for Belfield to reduce private car commuting and to promote public transport. For the NTA to agree to increase the level of parking on campus above the cap at a time when the Government is introducing a Climate Action Bill is unacceptable and inexplicable.

The decision of the Planning Authority to grant permission for the subject proposal serves to provide an additional 58 No. car parking spaces on the UCD Belfield Campus and results in a total of 80 No. spaces on the NIBRT site. This serves to increase the total quantum of existing and approved parking spaces 'for any purpose' on campus by 80 No. spaces in breach of Condition No. 10 of ABP Ref. No. ABP-307514-20. Therefore, the subject proposal does not accord with the Campus Travel Plan and is contrary to the promotion of sustainable transport and the proper planning and sustainable development of the area.

## 6.2. Applicant Response

- The proposed development finds policy support at a national, regional and local level.
- Having regard to the nature and operation of the existing NIBRT research and training facility as approved under PA Ref. Nos. D06A/1136 (ABP Ref. No. PL06D.220758) & D07A/1395, it can be confirmed that the proposed development will not result in a material change of use. This finds support in the report of the case planner which states the following:

*' . . . the existing NIBRT facility provides training to bioprocessing students in bioprocessing methods and technologies and provides facilities for research and development opportunities. The facility does not manufacture on an*

*industrial scale. The proposed development would provide for the expansion of the facility's research and training operations.*

*. . . it is considered that the proposed development is in accordance with the existing established use of the site and the TLI zoning objective . . .*

*With respect to the proposed activities related to Genetically Modified Organisms, it is considered that the provision of research and training facilities in this field would not give rise to a material change of use that would require planning permission. The development description as set out in the public notices is therefore acceptable'.*

It is considered that the description of the proposal in the statutory notices provides an accurate overview of the nature and extent of the proposed development and fulfils the requirements of the Planning and Development Regulations. It is further submitted that Question No. 13 of the application form was answered correctly.

- In response to the request for further information, it was confirmed that a clerical error had been made on the application form and that a Waste Licence is not required for the proposed development. In this regard, the proposal does not relate to a development which comprises, or is for the purposes of, an activity requiring a waste licence under Part V of the Waste Management Act, 1996, as amended, and, therefore, the public notices are correct.
- While the NIBRT temporarily (for a period not exceeding 6 months) stores both hazardous & non-hazardous waste at its facility pending collection and recovery / recycling / disposal by an appropriately licensed waste service provider (and will continue to do so with the proposed extension in place), no licence or other form of authorisation is required under the Waste Management Act for such temporary storage on the premises.
- The NIBRT is, and will be, exempt from the requirement to hold a waste licence / permit or a Certificate of Registration under Part V of the Waste Management Act, 1996, as amended.

- The further information was deemed to be 'significant' and was readvertised accordingly. In this regard, and noting that the appellant lodged a second submission objecting to the development, it is considered that the public consultation process was effective in providing the appellant with sufficient information surrounding the clerical error, including a clear explanation as to why a waste licence is not required for the proposed development.
- The proposed development does not require an Integrated Pollution Prevention and Control Licence as expanded upon in Section 2.6.3 of the Environmental Report submitted with the application which states the following:

*'The NIBRT facility does not currently hold an IPC/IE licence. To date there has been no EPA licensing requirements. A review taking consideration of the First Schedule to the EPA Act, 1992, as amended, has been conducted. The proposed development does not fall into any of the listed activities 1 to 13 of the First Schedule of the Act'.*

Therefore, the public notices as submitted are correct and valid.

- It is acknowledged that there are a number of temporary car parking spaces on site which do not have the benefit of planning permission, however, the location of these corresponds with where the proposed extension will be built and therefore they will be entirely displaced i.e. the temporary parking and the proposed extension cannot exist in parallel thereby obviating the need to obtain permission for retention. In any event, the retention of parking spaces ancillary to the permitted use of the site would not result in a material change of use.
- The additional car parking spaces proposed are located in different parts of the site and have been designed to expand upon the existing formal parking arrangements permitted by the parent grant of permission.
- The plans and particulars lodged with the initial application, together with the further information submission, have enabled the Planning Authority to undertake a full and detailed assessment of the planning issues arising from the proposed development and the relevant planning policy and material considerations.

- With regard to the applicability of the car parking cap pertaining to the UCD Belfield campus (as agreed between UCD and the National Transport Authority), considering the independence of the NIBRT from the university, and as the only connection between UCD and the NIBRT is the geographical location and UCD's ownership of the lands in question (NIBRT's lease runs until 2041 with an option to extend by 14 years), the development site is not subject to the parking cap. This is further justified in traffic and transportation terms on the basis that the travel patterns associated with the NIBRT facility are not akin to those of UCD. In addition, the Mobility Management Plan provided with the application demonstrates that the proposed development, including the quantum of car parking, complies in full with the Development Plan.
- In response to the request for further information, the applicant liaised with both UCD and the NTA, along with the Local Authority, in setting and maintaining the parking cap. The NTA and UCD subsequently agreed that as the NIBRT is a separate legal entity to the university the additional car parking spaces proposed would fall outside the terms of the agreed parking cap. It was further agreed that the existing permitted parking on site (30 No. spaces) would continue to be maintained as part of the parking cap (3,600 No. spaces). The NTA also stated that any spaces in excess of the permitted parking would require decommissioning in the event of the site reverting back to UCD. Letters from UCD and the NTA which provide a record of this agreement were appended to the response for further information and the report of the case planner confirms their agreement with the position stated.
- With respect to the reference by the appellant to PA Ref. Nos. D20A/0030 & D20A/0328, both of those applications relate directly to the university and were submitted by UCD itself. They are distinctly different to the subject proposal which was submitted by the NIBRT and relates to an independent facility on lands owned by UCD. In addition, both those decisions precede the consideration and determination of the subject application and, therefore, it can be contended that the Planning Authority determined the acceptability of the proposed development in the knowledge of the earlier planning history and related considerations.

- The assertions in the grounds of appeal in relation to the nature of NIBRT's activities within the proposed extension as regards public health and environmental issues are inaccurate and not aligned to the facility's biopharmaceutical manufacturing research.
- The 'public health risks' referenced by the appellant go beyond the realm of planning or environmental issues normally considered during the planning process. The NIBRT's current and future research activities are highly regulated under various non-planning regulatory frameworks to which the applicant is fully compliant.
- The submitted plans and particulars, including the detailed Environmental Report, demonstrate that the proposed development, subject to the implementation of mitigation measures, will not give rise to an unacceptable impact on the environment. The environmental aspects considered in respect of the proposed development accord with the best practice guidelines prepared by the Environmental Protection Agency.
- The EIA Screening Report provided with the application and the report of the Planning Authority confirm that there is no real likelihood of significant effects on the environment arising from the proposed development.
- Neither the case planner nor the Environmental Enforcement Officer raise any concerns from a public health or environmental impact perspective.
- The proposed expansion will enable the NIBRT to increase its works in biopharmaceutical manufacturing research and to strengthen its capacity in a broad class of biological medicines known as advanced therapy medicinal products (ATMPs), which include cell-based, gene-based and nucleic acid-based therapies and novel-modality vaccines. The technologies and equipment used to conduct research on ATMPs are an extension of those already used by the NIBRT to conduct research on existing biological medicines. Furthermore, the applicant currently utilises viral vector technologies, including AAV and LV, in its research projects, and plans to use these same technologies in its future research on ATMPs (AAV & LV viral vectors are genetically engineered to be non-replicative and non-pathogenic and do not represent a significant biosafety risk).



- The NIBRT, in working with AAV & LV is fully compliant with national regulations for their use, as follows:
  - It holds GMO licences from the EPA to work with both these viral vectors.
  - The EPA licences specifically permit the NIBRT to conduct its GMO-based research with AAV & LV vectors at Biological Safety Level 2 (the appropriate level of containment for working with low-risk GMOs such as AAV & LV vectors).
- The research to be conducted from the proposed extension will not differ significantly from that already taking place on site and there will be no change in usage in terms of the technologies used or the biorisks involved.
- The assertion that the applicant is seeking to establish ‘two viral research laboratories’ that involve a ‘high level of biorisk’ is incorrect.
  - AAV & LV viral vectors are used by NIBRT researchers as tools for delivering genetic code as part of their research. This research is focused on improving the efficiency and quality of the manufacturing process for gene therapies and is entirely different from ‘viral research’.
  - Viral research focuses on diagnosing viral disease, defining the aetiology of pathogenic, wild-type viruses and finding treatments or preventions for the disease that they cause. An example of a laboratory which can be defined as a ‘viral research’ lab is the National Virus Reference Laboratory (NVRL) which conducts diagnostic works on clinical samples derived from patients and conducts associated research on isolated wild-type pathogenic viruses. This type of work carries significant risk to both research staff and the environment and as such, the NVRL, in line with WHO guidance, operates as a Biosafety Level 3+ facility.
  - The NIBRT conducts biopharmaceutical manufacturing research using viral vectors that do not pose a significant biosafety risk. Due to the low-risk nature of this research, the NIBRT is licenced by the EPA to operate at BSL2 and is fully adherent to national, and aligned with international, best practice.

The applicant will not be establishing a viral research lab as part of the proposed development and will not be conducting research on live pathogenic viruses.

- The proposed development does not pose a significant risk to public health given the existing and planned nature of its research. The risk to public health from the facility's current and future research activities is negligible.
- Given the fast-moving pace of scientific discovery, it is likely that new improved viral vector technologies will emerge in the future. In the Environmental Report provided with the application, reference is made to 'Lab space' for gene therapy research (AAV, LV etc.). For clarity, the term 'etc' was intended to refer to potential future viral vectors for gene therapy or vaccine purposes, and not to a full gamut of wild-type and pathogenic viruses (as suggested by the appellant). In the event that the NIBRT has the opportunity to work with new viral vector technology in the future, it will fully adhere to the same licensing processes previously followed for AAV & LV vectors. In addition, the introduction of any such technology will be overseen by the applicant's Biological Safety Committee. Expert contributions on biosafety are also made by an independent non-executive Scientific Advisory Board which meets biannually.
- It is reiterated that the NIBRT is not required to hold an Integrated Pollution Control or Industrial Emissions licence. Additionally, the facility does not require an air pollution licence as it does not (and will not) fall under any of the activities listed in Schedule 3 of the Air Pollution Acts, 1987-2011.
- The proposed expansion will not impact on compliance with the facility's Trade Effluent Discharge Licence and wastewater discharge will remain within the limit values defined in that licence.

### 6.3. Planning Authority Response

None.

#### 6.4. **Observations**

None.

#### 6.5. **Further Responses**

None.

### 7.0 **Assessment**

7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues relevant to the appeal are:

- The principal of the proposed development
- Procedural issues
- Public health considerations
- The proposed car parking arrangements
- Appropriate assessment

These are assessed as follows

#### 7.2. **The Principal of the Proposed Development:**

7.2.1. The National Institute for Bioprocessing Research and Training (NIBRT) arose from a collaboration between University College Dublin, Trinity College Dublin, Dublin City University and the Institute of Technology, Sligo, and was primarily funded by the Government of Ireland through the Industrial Development Agency, which is responsible for the attraction and development of foreign investment in Ireland. It is described as a world-class institute that provides training and research solutions for the bioprocessing / biopharmaceutical manufacturing industry and its principal operations are conducted from the existing purpose-built, multi-functional facility on site which was originally granted on appeal under ABP Ref. No. PL06D.220758 (PA Ref. No. D06A/1136) as subsequently modified pursuant to PA Ref. No. D07A/1395. Although located within the wider campus of University College Dublin (Belfield) on lands leased from the college, the NIBRT operates as a separate legal entity from a standalone facility independent of the university. Its activities replicate the most

modern industrial bioprocessing facilities and are solely for research and training purposes with the research facility focussing on delivering practical solutions to meet specific client requirements within the biopharmaceutical industry – these solutions encompass contract research, consultancy and collaborative research projects. In this regard, and for the purposes of further clarity, the facility's operations are bound by Condition No. 2 of ABP Ref. No. PL06D.220758 which states that *'the proposed development shall not be used for the production on an industrial scale of pharmaceutical/biopharmaceutical substances'*. At the heart of the NIBRT building is the bioprocessing pilot plant, consisting of extensive upstream, downstream, fill-finish and associated analytical facilities, which are all operated in a realistic Good Manufacturing Practice (GMP) simulated, operational manufacturing environment. Current bioprocesses on site are based on genetically modified mammalian cell lines and include the preparation of growth media solutions or buffers, the sterilisation of the solutions, harvest / separation and purification. In terms of regulation, while the existing facility does not require an Integrated Pollution Control / Industrial Emissions Licence, it presently holds a Certificate of Registration under the European Union (Animal By-Products) Regulations, 2014 (S.I. No. 187 of 2014) and Authorisation to Use Animal By-Products for Research Purposes in accordance with Regulation (EC) No. 1069 of 2009 and Regulation (EU) No. 142 of 2011.

7.2.2. The proposed development involves the extension of the existing building to provide for additional laboratory space, a pilot plant area, and fallow space, in addition to associated services / facilities with a view to expanding the facility's operations. The new laboratory floorspace and ancillary facilities will be arranged over both floors of the proposed extension and will include:

- 5 No. laboratories:
  - Collaborative lab space / incubator space for start-up company support.
  - 2 No. labs for Principal Investigators (PIs)
  - Lab space for gene therapy research (Adeno Associated Virus (AAV), Lenti Virus (LV) etc.)
  - Lab space for Cell Therapy research
- Pilot Plant areas for the delivery of cell and gene therapy (CGT) training.

- Allow space for future technology developments.

7.2.3. It is anticipated that the laboratory space will be flexible to allow for fitting out / repurposing while the labs themselves will be for research only and will not require full Good Manufacturing Practice room finishes. The Biosafety Level (BSL) will be containment level 2.

7.2.4. Section 2.4 of the Environmental Report submitted with the application outlines the typical process systems and functions associated with the existing facility which will be similar to that of the proposed development:

- Upstream Systems – Solution / media preparation, inoculum preparation, cell culture, separation and clarification
- Downstream Systems - Purification viral inactivation and filtration
- Support Systems and Areas – Wash, Cleaning Out of Place (COP), laboratory, waste treatment, Cleaning in Place (CIP).

7.2.5. It has been further stated by the applicant in response to the grounds of appeal that the proposed expansion will enable the NIBRT to increase its works in biopharmaceutical manufacturing research and to strengthen its capacity in a broad class of biological medicines known as advanced therapy medicinal products (ATMPs), which include cell-based, gene-based and nucleic acid-based therapies and novel-modality vaccines. Notably, it has also been clarified that the technologies and equipment used to conduct research on ATMPs form an extension of those already utilised by the applicant to conduct research on existing biological medicines. In addition, it is stated that the applicant currently utilises viral vector technologies, including AAV and LV, in its research projects, and plans to use these same technologies in its future research. In effect, the case has been put forward that the research / functioning of the proposed extension will not differ significantly from that already taking place on site.

7.2.6. Within the grounds of appeal, it has been suggested that the nature of the research to be conducted as a result of the proposed development will differ significantly from that already undertaken on site and thus the proposal involves a material change of use which has not been adequately detailed / described in the application particulars. In this regard, reference has been made to the provision of 'virus laboratories' as part of the extension works with various assertions also being made in relation to the

nature of the processes / activities involved and the associated biorisks / risks to public health.

7.2.7. Having reviewed the available information, it is my opinion that the proposed development amounts to an extension of the established use of the existing building as a research and training facility and that the nature of the activities to be accommodated as part of the planned expansion are compatible with the said use. Moreover, the nature of the existing and proposed development as a training and research centre with close links to the bioprocessing / biopharmaceutical industry would not be incomparable to 'Education' and 'Science and Technology' services which are permitted in principle on lands zoned as 'TLI' with the stated land use zoning objective '*To facilitate, support and enhance the development of third level education institutions*'. Further support is lent to the proposal by reference to the broader provisions of Policy E2: '*Knowledge Economy*' & Policy E4: '*Further and Higher Education Institutions*' of the County Development Plan while the UCD Campus Development Plan 2005-2010-2015 (currently under review) also aims to promote the university as a sustainable, healthy and living campus through the development of both academic and non-academic facilities, increased on-campus residencies and '*the promotion of knowledge-based industry-linked research facilities*'. Therefore, I am satisfied that the principle of the proposed development in land use planning terms is acceptable.

7.2.8. With respect to the appellant's specific assertion that the proposed extension gives rise to a material change of use through its inclusion of 'virus laboratories', I am unconvinced by the merits of any such arguments and would caution against several of the statements / insinuations contained in the grounds of appeal as to the actual intended use of the development. The applicant has provided a general overview of the nature of its research projects, including its current use of viral vector technologies and its plans to use these same technologies in future research, to demonstrate that any research conducted from the proposed extension will not differ significantly from that already taking place on site. In my opinion, the appellant's own description of the proposal as including 'virus laboratories' (and the connotations associated with same) serves to misrepresent the true nature of the development and the research activities to be undertaken from therein. A more accurate description would be the inclusion of laboratories that use viral vector technologies and, in this

respect, the submitted particulars, as supplemented by the applicant's response to the grounds of appeal, provide for a sufficiently detailed and transparent description of the proposed development. Therefore, on balance, I am satisfied that the subject proposal amounts to a complementary expansion of the established research activities on site and does not involve a material change of use.

### **7.3. Procedural Issues:**

7.3.1. In relation to the suggestion that the description of the proposed development as set out in the public notices is deficient on the basis that it includes no reference to the material change of use arising from the proposed development of 'virus laboratories' or the need for an Integrated Pollution Control or Waste Licence (with corresponding inaccuracies in the planning application form), it is my opinion that procedural matters, such as a determination as to the adequacy (or otherwise) of the public notices and the subsequent validation (or not) of a planning application, are generally the responsibility of the Planning Authority which in this instance took the view that the submitted documentation satisfied the minimum regulatory requirements. It should also be noted that the Board is not empowered to correct any procedural irregularity which may have arisen during the Planning Authority's assessment of the subject application. Notwithstanding, I propose to consider the issues arising as follows:

#### *7.3.2. The 'Material Change of Use':*

It has already been established that the proposed development amounts to an extension of the research activities conducted at the existing NIBRT facility and, therefore, does not involve a material change of use. Moreover, I would advise the Board that Article 18(1)(d) of the Planning and Development Regulations, 2001, as amended, requires a newspaper notice to provide '*a brief description of the nature and extent of the development*' and, in this regard, it is my opinion that the reference to the provision of '*an additional 1,500 sq m of laboratory floorspace and ancillary facilities*' in the public notices satisfies the minimum regulatory requirements.

#### *7.3.3. The Retention of Unauthorised Car Parking Spaces:*

The original grant of permission issued in respect of ABP Ref. No. PL06D.220758 (PA Ref. No. D06A/1136) approved a total of 30 No. car parking spaces as part of

the research facility, although this was subsequently reduced to 26 No. spaces pursuant to PA Ref. No. D07A/1395.

- 7.3.4. From a review of available information, it is apparent that a hardcore / gravelled area to the rear of the site is presently being used to accommodate additional 'overflow' parking. In this regard, the applicant has acknowledged that there are a number of temporary car parking spaces on site which do not have the benefit of planning permission, however, it has been submitted that these will be displaced owing to the construction of the proposed extension thereby obviating the need to obtain permission for their retention.
- 7.3.5. Given that the unauthorised parking is not to be retained as part of the subject application and cannot exist in tandem with the proposed development (should the works proceed to construction), in my opinion, it is entirely reasonable that the public notices should not refer to its retention. Accordingly, I am satisfied that subject proposal must be assessed on its merits.

(For clarity purposes, the Board has no function in terms of enforcement and the pursuit of such matters is generally the responsibility of the Planning Authority).

- 7.3.6. *The Requirement for an Integrated Pollution Licence:*

Article 18(1)(d)(iv) of the Planning and Development Regulations, 2001, as amended, requires the description of the nature and extent of the development in the newspaper notice to include '*where the application relates to development which comprises or is for the purposes of an activity requiring an integrated pollution prevention and control licence . . . , an indication of that fact*'.

- 7.3.7. The proposed development does not require an Integrated Pollution Control licence as it does not fall within any of the classes of activity listed in the First Schedule of the Environmental Protection Agency Act, 1992, as amended (incl. the Protection of the Environment Act, 2003). Similarly, the existing NIBRT similarly does not require an Integrated Pollution Control / Industrial Emissions licence.

- 7.3.8. It is of further relevance to note that during the assessment of ABP Ref. No. PL06D.220758 (i.e. the parent permission for the existing NIBRT facility), the need for an IPC licence was given consideration with the first party supplying an opinion from the EPA in response to a request from the Board that the development then proposed did not fall within the scope of the First Schedule of the EPA Acts and was



not therefore liable to IPPC licensing. This was accepted by the Board with further clarity provided through the imposition of Condition No. 2 which stated that the development was not to be used for the production on an industrial scale of pharmaceutical/biopharmaceutical substances (thereby ensuring the facility would not involve an activity listed under Class 5 of the First Schedule of the EPA Act, 1992, as amended i.e. the production, for the purposes of the activities mentioned in paragraph 5.12 to 5.17, (means the production on an industrial scale by chemical or biological processing) of substances or groups of substances mentioned in any of those paragraphs e.g. the production of pharmaceutical products including intermediates).

7.3.9. Therefore, on the basis that the subject proposal does not require an Integrated Pollution Control licence, the public notices as submitted are correct.

7.3.10. *The Requirement for Waste Licence:*

Article 18(1)(d)(iv) of the Planning and Development Regulations, 2001, as amended, also requires the description of the nature and extent of the development in the newspaper notice to include *'where the application relates to development which comprises or is for the purposes of an activity requiring . . . a waste licence, an indication of that fact'*.

7.3.11. In responding to the request for further information issued by the Planning Authority, the applicant has confirmed that the affirmative response given to Question No. 15(7) of the application form (as to whether the proposed development comprised or was for the purposes of an activity requiring a waste licence) is incorrect and that a clerical error was made in this respect. It has been further clarified that the subject application does not relate to a development which comprises, or is for the purposes of, an activity requiring a waste licence under Part V of the Waste Management Act, 1996, as amended, and thus the public notices do not include any such reference.

7.3.12. Accordingly, on the basis that the subject proposal does not require a waste licence, I am satisfied that the public notices as submitted are correct.

7.4. *Public Health Considerations:*

7.4.1. Considerable concerns have been raised in the appeal as regards the potential risk to public health / biorisk posed by the research / training activities intended to be conducted from the NIBRT facility as a result of the proposed development, with a

particular focus on the inclusion of what the appellant has described as ‘virus laboratories’. In this respect, I would reiterate my earlier comments that the description of the proposal as providing for ‘virus laboratories’ misrepresents the development and the nature of its research activities.

- 7.4.2. In response to the grounds of appeal, the applicant has sought to distance itself from the subtexts associated with ‘viral research’ by confirming that the proposed expansion is not a viral research laboratory. It has been emphasised that the NIBRT conducts biopharmaceutical manufacturing research using AAV & LV viral vectors that do not pose a significant biosafety risk (the viral vectors have been genetically engineered to be non-replicative and non-pathogenic). This research is focused on improving the efficiency and quality of the manufacturing process for gene therapies. Accordingly, due to the low-risk nature of the research, the existing facility is licenced by the EPA to operate at Biosafety Level 2 and is fully adherent to, and aligned with, national & international best practice. Moreover, any research conducted from the proposed extension will not differ significantly from that taking place elsewhere in the facility, however, should the NIBRT have the opportunity to work with new improved viral vector technologies in the future, it has been confirmed that it will adhere fully to the same licensing processes previously followed for AAV and LV vectors and will conduct an advance risk assessment to ensure that BSL2 is the appropriate containment level.
- 7.4.3. By way of further differentiating the nature of the applicant’s research, it has been submitted that viral research focuses on diagnosing viral disease, defining the aetiology of pathogenic, wild-type viruses and finding treatments or preventions for the disease that they cause. Notably, an example of a laboratory which can be defined as a ‘viral research’ lab is the National Virus Reference Laboratory (NVRL) located elsewhere on the UCD campus which conducts diagnostic works on clinical samples derived from patients and conducts associated research on isolated wild-type pathogenic viruses. This type of work carries a greater risk to research staff and the environment and as such, the NVRL, in line with WHO guidance, operates as a Biosafety Level 3+ facility.
- 7.4.4. Having established the broader nature of the research to be conducted from the proposed development and, perhaps more importantly, what it will not entail, any risk to public health will must be considered accordingly. Neither the existing facility nor

the proposed extension will require an Integrated Pollution Control / Industrial Emission licence nor is the site classified as a 'Seveso' site pursuant to EU Directive 2012/18/EU on the Control of Major Accident Hazards Involving Dangerous Substances (as transposed into Irish law). Similarly, there will be no requirement for a Green House Gas Emissions Permit and the EU (Medium Combustion Plant) Regulations will not apply to the proposed low pressure hot water boiler and domestic boiler to be installed as part of the development.

- 7.4.5. Oversight and licensing of various aspects of the research to be undertaken at the extended facility (as proposed) will be subject to regulatory controls outside of the planning code. For example, these will include adherence to the Genetically Modified Organisms (Contained Use) Regulations, 2001, as amended, with the Environmental Protection Agency being the competent authority in the assessment and issuing of GMM Permits sought by users of Genetically Modified Organisms or Genetically Modified Microorganisms. The NIBRT, in working with AAV & LV, presently holds GMO licences from the EPA and these licences specifically permit the facility to conduct its GMO-based research at Biological Safety Level 2 (the appropriate level of containment for working with low-risk GMOs such as AAV & LV vectors). In the event of any additional GMOs being used in the proposed 'fallow' space, the applicant has confirmed that the relevant registration request to the competent authority will be made prior to the introduction of any new material. In addition, the use of any new viral vector technology will fully adhere to the licensing process with oversight by the applicant's Biological Safety Committee. The existing facility also holds a GMO certificate of registration from the Department of Agriculture, Food and the Marine for diagnostic, educational and research purposes, and expert contributions on its biosafety operations are made by an independent non-executive Scientific Advisory Board which meets biannually.
- 7.4.6. On the basis of the foregoing, it is my opinion that the future operation of the proposed development will be comparable to the activities already undertaken on site and will not pose a risk to public health in light of the stringent requirements to adhere to all applicable licensing, oversight and regulatory protocols.

## 7.5. The Proposed Car Parking Arrangements:

- 7.5.1. Concerns arise as regards the quantum of car parking proposed to be provided on site in light of the limitations on overall parking provision within the UCD Belfield campus as agreed with the National Transport Authority and the commitment to the promotion of sustainable transport to, from and within the Belfield Campus referenced in the UCD Strategic Campus Development Plan 2016-2021-2026, including the implementation of a Campus Travel Plan.
- 7.5.2. At the outset, I would advise the Board that Specific Local Objective 148 of the Dún Laoghaire Rathdown County Development Plan, 2016-2022 aims to *'identify and address the on-going car parking issues within and surrounding UCD Campus'* and further states that *'the Council will support and facilitate the on-going process of Mobility Management Planning for UCD, involving the University and the NTA, in order to achieve more sustainable travel patterns to and from the University and to work towards the development of a Campus Travel Plan'*. By way of achieving this objective, the UCD Travel Plan, 2016-2021-2026 was developed in conjunction with the National Transport Authority and Dún Laoghaire-Rathdown County Council (i.e. the Commuting Review Group) and it has been agreed as part of this plan that the overall quantum of car parking provided on the Belfield campus, including all staff and student permit parking, visitors 'pay & display' parking, disabled spaces, and electric vehicle parking, would be capped at a limit of 3,600 No. spaces with regular audits to be undertaken as part of the ongoing management of the Campus Travel Plan. It is in reference to this cap that the appellant has sought to suggest that the proposed development is attempting to circumvent the principles of the wider campus sustainable travel & transportation strategy by exceeding the level of on-campus parking permissible.
- 7.5.3. From a review of the available information, it can be established that the original grant of permission issued under ABP Ref. No. PL06D.220758 (PA Ref. No. D06A/1136) approved a total of 30 No. car parking spaces on site, although this was subsequently reduced to 26 No. spaces pursuant to PA Ref. No. D07A/1395. The subject proposal seeks to reconfigure the existing parking provision (described as totalling 22 No. spaces despite the 'existing' layout plan showing 24 No. spaces) while removing the existing unauthorised 'overflow' parking area and providing an

additional 58 No. car parking spaces. This will result in an overall total of 80 No. spaces (including 4 No. wheelchair accessible spaces) on site.

- 7.5.4. Within the Mobility Management Plan provided with the application, the case has been put forward that the provision of 80 No. car parking spaces would accord with Table 8.2.4: '*Non-Residential Land Use – Maximum Car Parking Standards*' of the Development Plan. In this respect, it has been submitted that '*Offices – Business, Professional*' is the most representative land use while the accessibility of the site by public transport would warrant the application of the reduced parking standard of 1 No. space per 100m<sup>2</sup> gross floor area. Therefore, the parking requirement of the extended facility has been calculated as follows:

GFA: c. 8,000m<sup>2</sup> @ 1 No. space per 100m<sup>2</sup> = 80 No. parking spaces

- 7.5.5. In my opinion, '*Science and Technology Based Industry*' is perhaps a better fit in terms of applying a land use to the proposed development, however, the parking requirement would remain the same and thus I would concur with the applicant's calculation of a maximum car parking requirement of 80 No. spaces.
- 7.5.6. The issues therefore arise as to whether it is appropriate to develop the parking proposed in light of the broader provisions of the UCD Campus Travel Plan as regards encouraging sustainable transport patterns, and if the campus parking cap of 3,600 No. spaces agreed with the NTA is applicable in this instance.
- 7.5.7. With regard to the applicability of the agreed parking cap, the applicant has provided correspondence from both University College Dublin and the National Transport Authority that the 30 No. parking spaces approved as part of the original development of the NIBRT facility are included within the agreed parking cap. In relation to the additional 50 No. spaces proposed, it has been submitted that these spaces fall outside the terms of the agreed cap on the basis that the NIBRT is an independent entity separate from UCD (in effect stating that the parking cap does not apply to the subject site in any event).
- 7.5.8. In my opinion, there are reasonable grounds to conclude that there is at least some degree of doubt as to whether or not the subject proposal would result in a breach of the campus parking cap. In this respect, I am inclined to concur with the appellant's suggestion that it would seem somewhat illogical to seek to apply the agreed parking cap to only some of the parking spaces on site. To interpret the agreed cap as

proposed by the applicant (i.e. it doesn't apply to the entirety of the lands within the wider UCD campus) would undermine the purpose of the cap in the first instance given its aim of encouraging more sustainable transport patterns. However, this is not to say that the provision of additional parking within the agreed cap would not be permissible on site, although the continually evolving development of the wider campus, particularly as certain permissions are implemented / not implemented whilst other temporary permissions for on-site car parking expire (in combination with other factors such as the unavailability of existing parking during construction works and the use of temporary construction / replacement parking etc.), causes broader campus parking to be in a state of flux resulting in difficulties as regards overall parking provision at any given time.

7.5.9. Notwithstanding the applicability of the campus parking cap, the proposed development must also be assessed against the principles of proper planning and sustainable development, including the broader provisions of the UCD Campus Travel Plan as regards encouraging sustainable transport patterns. In this respect, it is of relevance to note that the NIBRT facility as originally approved on appeal under ABP Ref. No. PL06D.220758 provided for the construction of a 13,257m<sup>2</sup> building (including research and training laboratories, offices, residential units, and associated facilities) to be served by only 30 No. car parking spaces. Moreover, in assessing that application, the reporting inspector noted that the existing access arrangement to the site from Foster's Avenue was not suitable for large volumes of traffic while reference was also made to the availability of parking on the wider campus and the accessibility by public transport. It was subsequently concluded that, in light of the level of services available and the location of the site within the overall UCD campus, the provision of extensive parking on site (and the associated additional vehicle-turning movements at the Foster's Avenue entrance) would be inappropriate.

7.5.10. Therefore, on the basis that the extended facility as proposed will only amount to c. 8,000m<sup>2</sup> (when compared to 13,257m<sup>2</sup> as originally approved), the wider improvements in public transport in the area (including the future roll-out of the NTA's 'BusConnects' programme), the focus of the UCD Travel Plan 2016-2021-2026 in terms of encouraging more sustainable transport patterns, and the availability of parking facilities a short distance away on campus, it is my opinion that

it would be inappropriate to allow for the increased parking provision proposed (and the associated turning movements to / from Foster's Avenue). Accordingly, the proposed parking provision should be limited to 30 No. spaces in the interests of traffic safety and sustainable transport.

#### **7.6. Appropriate Assessment:**

- 7.6.1. From a review of the available mapping, including the data maps from the website of the National Parks and Wildlife Service, it is apparent that while the proposed development site is not located within any Natura 2000 designation, there are a number of Natura 2000 sites within the wider area with the most proximate being the South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024) and the South Dublin Bay Special Area of Conservation (Site Code: 000210), approximately 1.3km and 1.4km to the northeast respectively. In this respect, it is of relevance to note that it is the policy of the Planning Authority, as set out in Chapter 4: '*Green County Strategy*' of the Dún Laoghaire Rathdown County Development Plan, 2016-2022, to ensure the protection of natural heritage and biodiversity, including European sites that form part of the Natura 2000 network, in accordance with relevant EU Environmental Directives and applicable National Legislation, Policies, Plans and Guidelines.
- 7.6.2. In effect, it is apparent from the foregoing provisions that any development likely to have a serious adverse effect on a Natura 2000 site will not normally be permitted and that any development proposal in the vicinity of, or affecting in any way, the designated site should be accompanied by such sufficient information as to show how the proposal will impact on the designated site. Therefore, a proposed development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive. Accordingly, it is necessary to screen the subject proposal for the purposes of 'appropriate assessment'.
- 7.6.3. Having reviewed the available information, including the 'Appropriate Assessment Screening Report' submitted with the application and the screening exercise undertaken by the Planning Authority, and following consideration of the 'source-pathway-receptor' model, it is my opinion, given the nature, design and scale of the

proposed development, the site location outside of any Natura 2000 designation, the limited ecological value of the lands in question, the absence of any pollution pathways between the development and any Natura 2000 sites, the separation distances involved between the project site and nearby Natura 2000 designations, the built-up nature of the intervening lands, and the availability of public services, that the proposal is unlikely to have any significant effect in terms of the disturbance, displacement or loss of habitats or species on the ecology of the aforementioned Natura 2000 sites.

- 7.6.4. Accordingly, it is reasonable to conclude on the basis of the information available, which I consider adequate in order to issue a screening determination, that the proposed development, individually and in combination with other plans or projects, would not be likely to have a significant effect on any European site, in particular, specific Site Codes 004024 & 000210, in view of the relevant conservation objectives and that a Stage 2 appropriate assessment (and the submission of a NIS) is not therefore required.

## **8.0 Recommendation**

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be granted for the proposed development for the reasons and considerations, and subject to the conditions, set out below:

## **9.0 Reasons and Considerations**

- 9.1. Having regard to:
- a) the established use of the site and its relationship with the wider University College Dublin Belfield campus;
  - b) the site location at the UCD Belfield campus on lands with a zoning objective TLI "To facilitate, support and enhance the development of third level education institutions" under the Dún Laoghaire-Rathdown County Development Plan 2016 - 2022;



- c) the provisions of the UCD Strategic Campus Development Plan 2016-2021-2026 and of the UCD Campus Travel Plan 2016-2021-2026;
- d) the nature, scale and design of the proposed development;
- e) the pattern of existing and permitted development in the area, with particular reference to planning register reference numbers D06A/1136 (ABP Ref. No. PL06D.220758) & D07A/1395.
- f) the submissions and observations submitted with the application and the appeal;

it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an appropriate form of development at this location, would not be prejudicial to public health, would be acceptable in terms of traffic safety and convenience, and would not have significant adverse effects on the environment. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 25<sup>th</sup> day of March, 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.

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

2. The proposed development shall not be used for the production on an industrial scale of pharmaceutical/biopharmaceutical substances.

**Reason:** In the interest of public health and the proper planning and sustainable development of the area.

3. The proposed development shall be amended to omit 50 No. of the surface car parking spaces proposed. Revised drawings showing compliance with this

requirement shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development.

**Reason:** To ensure that the development complies with the UCD Campus Travel Plan 2016-2021-2026 and in the interests of sustainable transport.

4. Prior to commencement of development, details of the materials, colours and textures of all the external finishes to the development shall be submitted to the planning authority for agreement.

**Reason:** In the interest of orderly development and the visual amenities of the area.

5. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. Details in this regard shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

6. Prior to opening of the development, a Mobility Management Strategy shall be submitted to, and agreed in writing with, the planning authority. This shall provide for incentives to encourage the use of public transport, cycling, walking and car-pooling by staff employed in the development and to reduce and regulate the extent of staff parking. The mobility strategy shall be prepared and implemented by the management of the company for the development.

**Reason:** In the interest of encouraging the use of sustainable modes of transport.

7. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

- a) A plan to scale of not less than 1:500 showing –

- i. The species, variety, number, size and locations of all trees to be removed and those to be retained, indicating species, heights, crown spread and condition,
  - ii. the species and setting of all new planting,
- b) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment
- c) A timescale for implementation, including details of phasing

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

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

8. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interests of public safety and residential amenity

9. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of 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 site clearance and construction 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.

**Reason:** In the interest of sustainable waste management

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

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

11. A detailed construction traffic management plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The plan shall include details of arrangements for routes for construction traffic, parking during the construction phase, the location of the compound for storage of plant and machinery and the location for storage of deliveries to the site.

**Reason:** In the interests of public safety and residential amenity.

12. The existing walls of the Walled Garden shall be fully protected throughout the construction phase of the development.

**Reason:** In order to protect the architectural heritage of the area.

13. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -

- a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
- b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and

- c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

14. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

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Robert Speer  
Planning Inspector

22<sup>nd</sup> December, 2021