



An  
Bord  
Pleanála

## Inspector's Report ABP-310204-21

### Development

Demolition of structures on site and construction of a twelve-storey mixed development including 64 apartments.

### Location

lands (c 0.11 Ha) at the junction of Donnybrook Road and Brookvale Road, Donnybrook, Dublin 4, D04 K3T8

### Planning Authority

Dublin City Council South

### Planning Authority Reg. Ref.

2244/21

### Applicant(s)

Red Rock Donnybrook Ltd.,

### Type of Application

Permission

### Planning Authority Decision

Refuse

### Type of Appeal

First Party

### Appellant(s)

Red Rock Donnybrook Ltd.,

### Observer(s)

1. Donnybrook Lawn Tennis Club
2. Michele Ferguson
3. David & Valerie Clarke
4. Robin Mandal

5. Eglinton Residents Association

**Date of Site Inspection**

11 Feb 2022

**Inspector**

Gillian Kane

**DECISION QUASHED**

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**DECISION QUASHED**

## 1.0 Site Location and Description

- 1.1.1. The subject site is located at the junction of Donnybrook Road and Brookvale Road, in the south Dublin suburb Of Donnybrook, Dublin 4.
- 1.1.2. The irregular, almost triangular shaped site currently comprises a fuel service station which has access from both the Brookvale and the Donnybrook Road. To the immediate south, forming the southern boundary is a car repair unit (1.5 storeys high). Further south is a site currently under construction (ABP-307267-20). To the east of the subject site is the Energia Park Rugby stadium. To the west are two large land uses – Donnybrook Lawn Tennis Club and the Religious Sisters of Charity Convent (a protected structure).
- 1.1.3. Further north of the subject site is a parade of two-storey shops and other neighbourhood uses.
- 1.1.4. Donnybrook Road is a heavily trafficked carriage way leading from Stillorgan Road to Donnybrook Village. Brookvale Road is less intensively used, notwithstanding its junction further south with Eglinton Road.

## 2.0 Proposed Development

- 2.1. On the 18<sup>th</sup> February 2020 planning permission was sought for a development comprising the following:
  - Demolition of existing petrol station (58sq.m.)
  - Construction of a 12-storey development of 84 no. Build-to-Rent units(1 no. studio, 51 no. one bed and 32 no. two-bed). Each unit to have a balcony / terrace. Communal terrace on 1<sup>st</sup>, 2<sup>nd</sup>, 8<sup>th</sup> and 11<sup>th</sup> floor
  - 1 no. retail unit and 1 no. café / restaurant unit at ground floor 570sq.m.
  - 6 no. car spaces, 190 bicycle spaces, 2 motorbike spaces
- 2.1.1. Details provided in the application form include:
  - Site area: 1,100sq.m.
  - Proposed area of demolition: 58sq.m.
  - Proposed new build: 8,930sq.m.
  - Proposed plot ratio: 1:5.42
  - Proposed site coverage 70.6%

- Proposed residential floor space: 5385.5sq.m.
- Proposed commercial floor space: 570sq.m.

2.1.2. In addition to required plans and particulars, the application was accompanied by the following:

- Planning Report
- Design Statement and Architectural Drawings
- Townscape and Visual Impact Assessment
- CGI and Photomontages
- Building Life Cycle Report
- Energy and Sustainability Statement
- Arboricultural Assessment
- Engineering Drawings
- Site Specific Flood Risk Assessment
- Operational Traffic and Travel Plan
- Water Services Report
- Microclimate Assessment
- Noise Impact Assessment
- Operational Management Plan
- Archaeology Assessment
- Outline Construction Management Plan
- Landscape Design Report and Drawings
- AA Screening Report
- Preliminary Energy Assessment Report

### 3.0 Planning Authority Decision

#### 3.1. Decision

3.1.1. On the 14<sup>th</sup> April 2021 the Planning Authority issued a notification of their intention to REFUSE permission for the following three reasons:

1. Having regard to the excessive height, scale, and mass of the proposal within the village of Donnybrook, it is considered that the proposed development would constitute overdevelopment of the site given its excessive plot ratio and



density and would have an unreasonable overbearing, overshadowing and overlooking effect on adjoining sites. The proposed development with its unjustifiable height and density fails to integrate or be compatible with the village of Donnybrook and as a result, would seriously injure the visual amenities of the streetscape and would have an adverse impact on the character of the area and is therefore contrary to Section 16.2.1.1 of the Dublin City Development Plan 2016-2022. The proposed development would, therefore, by itself and by the precedent it would set for other development, seriously injure the amenities of property in the vicinity, would be contrary to the provisions of the Development Plan and would be contrary to the proper planning and sustainable development of the area

2. The development is located on a heavily trafficked road which is a Quality Bus Corridor and planned BusConnects Core Bus Corridor route and in an area where there are limited on street loading facilities and car parking available. The proposed development by virtue of inadequate provision for servicing and car parking within the site would generate overspill parking and servicing activity onto the adjacent Donnybrook Road, Brookvale Road and footpaths thereby causing an obstruction to pedestrians, bus operations and road users. The development is considered contrary to the Dublin City Development Plan Section 16.38 and the Design Standards for New Apartments, Section 4.23, and would endanger public safety by reason of traffic hazard. The development would therefore be contrary to the proper planning and sustainable development of the area, and would set an undesirable precedent for similar developments in the area.
3. The development is directly affected by a strategic transportation proposal, the BusConnects Core Bus Corridor (CBC) no. 13, as provided for in the NTA Transport Strategy for the Greater Dublin Area. The development has not demonstrated that the NTA's requirements for bus priority and cycle provision as part of BusConnects can be accommodated at this location and as such may prejudice the future provision of public transport infrastructure. The development is therefore considered contrary to the Transport Strategy for the Greater Dublin Area, and also contrary to the proper planning and sustainable development of the area and would set an undesirable precedent.

### 3.2. Planning Authority Reports

3.2.1. **Drainage Division:** No objection subject to standard conditions.

3.2.2. **City Archaeologist:** Applicants Archaeological Assessment concludes that the site has been disturbed by subsurface petrol tanks, back up by cartographic evidence, therefore site is of low archaeological potential. Recommends condition to attach to any grant.

3.2.3. **Transportation Planning:** Recommends planning permission be refused for two reasons:

- 1 location on a heavily trafficked QBC and planned BusConnects core route, with inadequate provision for servicing and car parking would generate overspill parking, would endanger public safety by reason of traffic hazard
- 2 directly affected by a strategic transportation proposal: BusConnects Core Bus Corridor (CBC) no. 13, development has not demonstrated bus priority and cycle provision, development may prejudice future provision of public transport infrastructure

3.2.4. **Planning Report:** Proposed block has maximum of 12 stories at 39m. Notes that the proposal exceeds the development plan 'Outer City' height restriction of 16m. Notwithstanding the applicants submission, the Planning Authority do not consider the site to be a suitable landmark site and that justification for additional height on this basis is not considered appropriate. The site is located within the village of Donnybrook and not at the entrance to the village. Visual prominence of the site is an issue, the potential for the development to dominate the streetscape was raised as an area of concern. Plot ratio of 1:5.42 and site coverage of 70% noted on application form appear to be incorrect. Correct plot ratio is 8.1 and correct site coverage is 96%. Quantum of proposed development is a serious concern. Regarding residential quality standards, the report notes that 77% of the proposed units exceed the minimum floor area by 10%. Proposed development complies with dwelling mix requirements. All units assessed comply with ADF, but not all floors assessed. Notes that the two-bed apartments do not comply with storage but that there is some flexibility as the development is BTR. Proposed development complies with the requisite standards for private open space, communal open space, and cycle parking. In relation to the impact on neighbouring properties, the report notes that 79 no. windows were assessed for VSC with all impacts being imperceptible, not



significant or slight. Impacts on 28 no. windows of surrounding properties were found to be imperceptible. The proposed design of the building is considered to be acceptable but given the scale, there are concerns over visual dominance.

Regarding the impact on the existing context, the report notes that the Planning Authority have serious concerns, that the height is excessive. The report refers to the VIA and draws attention to image 11, where the additional 39m height is not appropriate and contrary to many policies in the development plan – SC13, SC14, SC25, SC26, QH7, QH8, GI13 and section 16.2.11. The proposed development is stated to be a gross over development of the site, without consideration for the prevailing heights in Donnybrook Village. The report notes that no public open space is proposed. Recommendation to refuse for three reasons relating to: excessive height, scale and mass, traffic impacts and the BusConnects Core Bus Corridor.

### 3.3. Prescribed Bodies

- 3.3.1. **National Transport Authority:** It is not clear from the material submitted if the proposed development accommodates the NTA's requirements for bus priority and cycle provision at this location. It is recommended that the applicant be required to confirm the compatibility of the proposed development with BusConnects and to liaise with the NTA in this regard.

### 3.4. Third Party Observations

- 3.4.1. A large number of objections to the proposed development were submitted by residents, members of Donnybrook Lawn Tennis Club, and elected representatives. The issues raised refer to excessive height, scale and mass, impact on Donnybrook Village and surrounding residential areas, impact on the road network and impact on the tennis club. The issues raised can be collectively summarised as follows:
- Excessive height, scale, bulk and massing causing injury to the residential, visual and social amenity of the area,
  - Privacy concerns for adjoining land uses
  - Over development of the site in terms of site coverage, plot ratio and density.
  - Site is not close to employment hubs, public transport or the city centre as claimed by the applicant

- Inappropriate location for the proposed height, given the wider context
- Insufficient car parking proposed
- Previous Board refusal on the Jefferson House site, on grounds of height, scale and massing,
- Insufficient open space, public or private
- No justification for built-to-rent

## 4.0 Planning History

4.1.1. **PL29S.233611** (Planning Authority reg. ref. 2352/09): Planning permission was REFUSED for the construction of a mixed use office, retail and residential scheme in 2 no. blocks of 2-7 storeys. Permission was refused for the following reasons:

- 1 It is considered that the proposed development, by reason of its design and scale, would be out of character with the pattern of development in the area and would not relate satisfactorily to existing development in the immediate vicinity. The proposed development would, therefore, be visually obtrusive, would seriously injure the amenities of the area and would be contrary to the proper planning and sustainable development of the area.
- 2 The proposed development is located in an area zoned Z4 'To provide for and improve mixed services facilities' in the Dublin City Development Plan 2005-2011, wherein (Section 14.4.4.) it is stipulated that office (maximum 600 square metres) is a permissible use, while warehousing and office (maximum 1,200 square metres) is a use which is open for consideration in this Zoning objective. The proposed development, by reason of the total office gross floor area proposed would contravene materially the development objective as set out in the development plan and would, therefore, be contrary to the proper planning and sustainable development of the area.
3. It is considered that the proposed development, by reason of its size and height, would seriously injure the amenities of residential and recreational property in the vicinity by reason of overshadowing and would, therefore, be contrary to the proper planning and sustainable development of the area.

4. Adequate service and loading bay areas have not been provided within the curtilage of the site. The proposed development would, therefore, tend to create serious traffic congestion on the adjoining narrow road network of Brookvale Road.

4.1.2. **PL29S.229275** (Planning Authority reg. ref. 1746/08) : permission refused for the construction of a mixed use scheme in 2 no. blocks at the junction of Donnybrook Road and Brookvale Road. The scheme consisted of Block O, a part 3, 5, 7 and 11-storey building (overall height +60.85 OD) comprising of office and retail units. Block A comprised a part 3, 4 and 6 storey building raised over ground and first floor levels (8 storeys overall with an overall height +36.20 OD) comprising 22 no. apartment units. The reasons for refusal were that the size, height bulk and mass would result in overlooking and loss of privacy, that the design and scale would be out of character in the area, would not relate satisfactorily to existing development in the immediate vicinity and would seriously injure the amenities of the area, and a deficiency in the open space standards.

4.1.3. **PL 29S.127940** (1761/01): Permission was REFUSED for the demolition of all existing buildings at Ever Ready Centre, bounded by Donnybrook Road and Brookvale Road, Dublin and replacement with 4 ground floor car related commercial units, 28 apartments at first, second and third floor levels, 4 penthouses at fourth floor level and 37 basement car spaces. The reasons for refusal were as follows:

- 1 It is considered that the proposed development, by reason of its size, height and proximity to site boundaries, would be out of character with the pattern of development in the area, would seriously injure the amenities and depreciate the value of residential property in the vicinity, by reason of overlooking and loss of privacy and would, therefore, be contrary to the proper planning and development of the area.
- 2 Having regard to the deficiency in the open space provision, it is considered that the proposal would constitute substandard development and would seriously injure the amenities of future occupants of the proposed apartments. The proposed development would, therefore, be contrary to the proper planning and development of the area.

- 3 It is considered that the proposed development on a prominent site would, by reason of its design and scale, be out of character in the area and would not relate satisfactorily to existing development in the immediate vicinity. The proposed development would, therefore, be visually obtrusive, would seriously injure the amenities of the area and would be contrary to the proper planning and development of the area.

## 5.0 Policy Context

### 5.1. Project Ireland 2040: National Planning Framework

- 5.1.1. This national policy seeks to support the future growth and success of Dublin as Ireland's leading global city of scale, by better managing Dublin's growth to ensure that more of it can be accommodated within and close to the city. Enabling significant population and jobs growth in the Dublin metropolitan area, together with better management of the trend towards overspill into surrounding counties.
- 5.1.2. The NPF recognises that at a metropolitan scale, this will require focus on a number of large regeneration and redevelopment projects, particularly with regard to underutilised land within the canals and the M50 ring and a more compact urban form, facilitated through well designed higher density development.
- 5.1.3. National Strategic Outcome 1, Compact Growth, recognises the need to deliver a greater proportion of residential development within existing built-up areas. Activating these strategic areas and achieving effective density and consolidation, rather than sprawl of urban development, is a top priority.
- 5.1.4. Of relevance to the subject application are the following:
- **National Policy Objective 2a:** A target of half (50%) of future population and employment growth will be focused in the existing five cities and their suburbs
  - **National Policy Objective 5:** Develop cities and towns of sufficient scale and quality to compete internationally and to be drivers of national and regional growth, investment and prosperity.
  - **National Policy Objective 6:** Regenerate and rejuvenate cities, towns and villages of all types and scale as environmental assets, that can accommodate changing roles and functions, increased residential population and employment



activity and enhanced levels of amenity and design quality, in order to sustainably influence and support their surrounding area.

- **National Policy Objective 13:** In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.
- **National Policy Objective 33:** Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.
- **National Policy Objective 35:** Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-base regeneration and increased building heights.
- **National Policy Objective 27:** seeks to ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments, and integrating physical activity facilities for all ages.
- **National Policy Objective 33:** seeks to prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.

## 5.2. **Urban Development and Building Heights, Guidelines for Planning Authorities, December 2018**

- 5.2.1. Reflecting the National Planning Framework strategic outcomes in relation to compact urban growth, the Government considers that there is significant scope to accommodate anticipated population growth and development needs, whether for housing, employment or other purposes, by building up and consolidating the development of our existing urban areas.



- 5.2.2. The first of the 10 National Strategic Outcomes in the National Planning Framework that the Government is seeking to secure relates to compact urban growth. Securing compact and sustainable urban growth means focusing on reusing previously developed 'brownfield' land, building up infill sites and either reusing or redeveloping existing sites and buildings, in well serviced urban locations, particularly those served by good public transport and supporting services, including employment opportunities.
- 5.2.3. While achieving higher density does not automatically and constantly imply taller buildings alone, increased building height is a significant component in making optimal use of the capacity of sites in urban locations where transport, employment, services or retail development can achieve a requisite level of intensity for sustainability. Accordingly, the development plan must include the positive disposition towards appropriate assessment criteria that will enable proper consideration of development proposals for increased building height linked to the achievement of a greater density of development.
- 5.2.4. **SPPR1:** In accordance with Government policy to support increased building height in locations with good public transport accessibility, particularly town / city cores, planning authorities shall explicitly identify through their statutory plans, areas where increased building height will be actively pursued for both redevelopment and infill development to secure the objectives of the National Planning Framework and Regional Spatial and Economic Strategies and shall not provide for blanket numerical limitations on building height.
- 5.2.5. **SPPR3:** It is a specific planning policy requirement that where;
- (A) 1. an applicant for planning permission sets out how a development proposal complies with the criteria above; and 2. the assessment of the planning authority concurs, taking account of the wider strategic and national policy parameters set out in the National Planning Framework and these guidelines;
- then the planning authority may approve such development, even where specific objectives of the relevant development plan or local area plan may indicate otherwise.
- (B) In the case of an adopted planning scheme the Development Agency in conjunction with the relevant planning authority ( where different) shall, upon the coming into force of these guidelines, undertake a review of the planning scheme,

utilising the relevant mechanisms as set out in the Planning and Development Act 2000 (as amended) to ensure that the criteria above are fully reflected in the planning scheme. In particular the Government policy that building heights be generally increased in appropriate urban locations shall be articulated in any amendment(s) to the planning scheme

(C) In respect of planning schemes approved after the coming into force of these guidelines these are not required to be reviewed.

**5.3. Rebuilding Ireland – Action Plan for Housing and Homelessness 2016**

- 5.3.1. **Pillar 4:** Improve the Rental Sector. The key objective is to address obstacles to greater private rented sector deliver and improving the supply of units at affordable rents. Key actions include encouraging the “build to rent” sector

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

- 5.4.1. MASP Housing and Regeneration policy object **RPO 5.4** states that “Future development of strategic residential development areas within the Dublin Metropolitan area shall provide for higher densities and qualitative standards as set out in the ‘Sustainable Residential Development in Urban Areas’, ‘Sustainable Urban Housing; Design Standards for New Apartments’ Guidelines, and ‘Urban Development and Building Heights Guidelines for Planning Authorities”
- 5.4.2. **RPO 5.5** goes on to identify that “Future residential development supporting the right housing and tenure mix within the Dublin Metropolitan Area shall follow a clear sequential approach, with a primary focus on the consolidation of Dublin and suburbs, and the development of Key Metropolitan Towns, as set out in the Metropolitan Area Strategic Plan (MASP) and in line with the overall Settlement Strategy for the RSES. Identification of suitable residential development sites shall be supported by a quality site selection process that addresses environmental concerns”
- 5.4.3. **RPO 3.3:** Local authorities shall, in their core strategies, identify regeneration areas within existing urban settlements and set out specific objectives relating to the delivery of development on urban infill and brownfield regeneration sites in line with the Guiding Principles set out in the RSES and to provide for increased densities as

set out in the 'Sustainable Residential Development in Urban Areas', 'Sustainable Urban Housing; Design Standards for new Apartments Guidelines' and the 'Urban Development and Building Heights Guidelines for Planning Authorities'.

5.4.4. **RPO 4.3** seeks to "support the consolidation and re-intensification of infill / brownfield sites to provide high density and people intensive uses within the existing built up area of Dublin City and suburbs and ensure that the development of future development areas is co-ordinated with the delivery of key water infrastructure and public transport projects."

5.4.5. **Section 5.3** identifies guiding principles for development of the metropolitan area which include:

Compact sustainable growth and accelerated housing delivery - To promote sustainable consolidated growth of the Metropolitan Area, including brownfield and infill development, to achieve a target to 50% of all new homes within or contiguous to the built-up area of Dublin City and suburbs, and at least 30% in other settlements. To support a steady supply of sites and to accelerate housing supply, in order to achieve higher densities in urban built up areas, supported by improved services and public transport.

#### 5.5. **Dublin City Development Plan 2016-2022**

5.5.1. The subject site is zoned Z4 District Centres, which has the stated objective 'To provide for and improve mixed-services facilities'.

5.5.2. Indicative site coverage is 80% for lands zoned Z4 and indicative plot ratio for is 2.0.

5.5.3. The site is also located within a Zone of Archaeological Interest and also within the Zone of Archaeological Constraint for the Recorded Monument DU018-060 / DU022-082 (settlement) which is listed on the Record of Monuments and Places (RMP) and which is subject to statutory protection under Section 12 of the National Monuments (Amendment) Act 1994.

5.5.4. Policies of relevance include:

**QH1:** To have regard to the DEHLG Guidelines on 'Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities' (2007), 'Delivering Homes Sustaining Communities – Statement on Housing Policy' (2007), 'Sustainable Urban Housing: Design Standards for New



Apartment's' (2015) and 'Sustainable Residential Development in Urban Areas' and the accompanying 'Urban Design Manual: A Best Practice Guide' (2009).

**QH6:** To encourage and foster the creation of attractive mixed-use sustainable neighbourhoods which contain a variety of housing types and tenures with supporting community facilities, public realm and residential amenities, and which are socially mixed in order to achieve a socially inclusive city.

**QH7:** To promote residential development at sustainable urban densities throughout the city in accordance with the core strategy, having regard to the need for high standards of urban design and architecture and to successfully integrate with the character of the surrounding area.

**QH18:** To promote the provision of high-quality apartments within sustainable neighbourhoods by achieving suitable levels of amenity within individual apartments, and within each apartment development, and ensuring that suitable social infrastructure and other support facilities are available in the neighbourhood, in accordance with the standards for residential accommodation.

**SC16:** To recognise that Dublin City is fundamentally a low-rise city and that the intrinsic quality associated with this feature is protected whilst also recognising the potential and need for taller buildings in a limited number of locations subject to the provisions of a relevant LAP, SDZ or within the designated strategic development regeneration area (SDRA).

**SC18:** To promote a co-ordinated approach to the provision of tall buildings through local area plans, strategic development zones and the strategic development and regeneration areas principles, in order to prevent visual clutter or cumulative negative visual disruption of the skyline.

## **5.6. Natural Heritage Designations**

- 5.6.1. South Dublin Bay SAC (site code 00210) is located approx. 2km east of the site and the South Dublin Bay and River Tolka Estuary SPA (site code 004024) is located approx. 2km east of the site.

## **5.7. EIA Screening**

- 5.7.1. The subject proposal refers to a brownfield site of 0.11ha, which is zoned Z4 'To provide for and improve mixed-services facilities'. Permission is sought for the demolition of all structures on site and the construction of a 12-storey building with commercial uses at ground level and 84 no. Build-To-Rent apartments on the upper floors.
- 5.7.2. The development is within the class of development described at 10(b) of Part 2 of Schedule 5 of the planning regulations. An environmental impact assessment would be mandatory if the development exceeded the specified threshold of 500 dwelling units or 10 hectares, or 2ha if the site is regarded as being within a business district.
- 5.7.3. The proposal is below the mandatory threshold for EIA. The nature and the size of the proposed development is well below the applicable thresholds for EIA. I note that the uses proposed are similar to predominant land uses in the area and that the development would not give rise to significant use of natural resources, production of waste, pollution, nuisance, or a risk of accidents. The site is not subject to a nature conservation designation and does not contain habitats or species of conservation significance.
- 5.7.4. Having regard to nature and scale of the development and the built-up urban location of the site 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**

- 6.1.1. An agent for the first party have submitted an appeal against the decision of the Planning Authority to refuse permission. The agent states that while the appeal demonstrates that the site can provide for a 12-storey building, should the Board have any concerns about the appropriateness of 12 stories, a ten-storey alternative has been designed and included with the appeal. This would involve the omission of two floors as applied of, by condition.



6.1.2. The appeal is accompanied by 11 no. appendices, as following:

- Copy of Planning Authority decision
- Revised Architectural Drawings
- Revised Architectural Design Report
- Revised Daylight and Sunlight Report
- Revised Photomontages and CGI's
- Revised Townscape and VIA
- Revised Landscaping proposals
- Note on Sustainability and Building Lifecycle Report
- Engineering Note
- Revised Operational Management Plan
- Traffic Report

6.1.3. The appeal details the site location and description, the proposed development and then lists the reasons for refusal. The response to the reasons for refusal can be summarised as follows:

**Reason for Refusal no. 1**

- The subject site is not in the heart of Donnybrook, it forms part of a strip of low intensity commercial uses on the edge of the village – an unsatisfactory transition from the village. The proposed development on under-used land, will respond to the under construction 12-storey SHD building (ABP-307267-20) further south.
- The site is not in an ACA. Surrounding buildings comprise 2/3 storeys. The height of the proposed building has been carefully considered.
- The Townscape and Visual Impacts Assessment (TVIA) highlights the significant beneficial visual impact that will arise from the proposed development. Regarding the cumulative impact, the TVIA finds that the proposed development will provide a prominent new urban focus, altering the overall perception of the neighbourhood. The height of the proposed building will respond to all site

boundaries, introducing modulation to the façade and mass as it relates to adjoining features.

- The massing of blocks responds to the existing scale of buildings – higher elements where the street preforms a public transport role. Marking the transition between the suburbs and the city is appropriate at this location.
- The application site should be read in the context of its surrounds. The Architectural Design Statement finds that the village core of Donnybrook retains its character, whilst amenity value and sustainability are increased.
- The Architectural Design Statement explains: The building form responds to the east with a setback at the 8<sup>th</sup> floor, and deep recessed wintergardens. The west, along Brookvale Road, with predominantly one-bedroomed units provides private open space in sheltered guarded balconies. The southern façade responds to the low-rise central context, mirroring the stepped form of the Richmond Homes development. the northern vertex of the triangular site is uninterrupted and clean to form a slender, elegant tower. It is carved at the base to create a sheltered entrance.
- The submitted photomontages demonstrate the high quality of the architectural design and how it successfully integrates into the area.
- Whilst the plot ratio and density are relatively high, they are acceptable given the proximity to high capacity, high frequency public transport. The development plan standards are indicative and should not be the key determinant of densities.
- While the proposed building is higher than the existing neighbouring building, it does not overly dominate the streetscape. The proposed building will read as a continuation of the built form along Donnybrook Road, which will anchor the building within the urban context. the development will generate visual change but it will not alter the established character. The magnitude of change is high, with moderate beneficial significance.
- The proposed development has been modulated to minimise its impact. The clearly recognisable landmark building will create a new metropolitan character with a high magnitude of change a very significant beneficial significance.
- Balconies have oblique views to avoid direct overlooking.

- The Sunlight & Daylight report concluded that the revised / modified on appeal proposal will have no overshadowing on the sensitive properties to the north-west after 11am.
- The reduction in height and scale provides a step-down / transition in scale from the Eglinton Road onward to the village. The 6-storey setback to Donnybrook Road mirrors the 6-storey recently granted Kiely's re-development (ABP-309378-21). The pattern is 12 storeys at Eglinton Road, ten storeys on the subject site and 6 storeys on the Kiely's site, closer to the village. This addresses the Planning Authority's visual impact concerns.
- The revised design complies with all of the standards of the Apartment Guidelines 2020. The revised layout provides for 1 no. studio, 40 no. one-beds and 26 no. two-beds of which 4 no. are three person units. The proposed communal open space of 3975.2sq.m. exceeds the required 382sq.m. Internal communal facilities (365.4sq.m.) include a co-working area, library, screening room and lounge.
- The revised Townscape VIA re-evaluates all 14 no. viewpoints and finds that the proposed development generally improves the view or has a neutral impact. The appeal submission provides extracts from the revised VIA for view 2, 3, 8, 12 and 14. It is submitted that this demonstrates that the proposed development does not seriously injure the visual amenities of the area.
- The proposed development meets all required site standards. While the plot ratio and the density are relatively high, this is a function of a small site rather than being problematic per se. The concerns of over development of the site, in terms of plot ratio and density do not translate into any loss of amenity.
- While there is overshadowing in comparison to the baseline, the orientation of the site results in shadowing falling over the convent in the morning and over the rugby grounds in the afternoon. This does not give rise to any significant loss of amenity.
- The report on the revised proposal states that for properties to the north, the area that can receive more than 2 hours of sunlight on March 21<sup>st</sup>, is reduced by less than 1%. It is submitted that the Planning Authority's concerns regarding overshadowing are not proportionate.

- Regarding overlooking, the windows facing the convent are secondary windows. Fenestration has been reduced in size by 50%. the revised Sunlight / Daylight report shows that the rooms affected in A-08 increase to 5.97% for the LKD and reduce to 4.12% for the bedroom on the second floor. If apartment A-04 is of concern, the window is secondary and enjoys an ADF of 7.93%. Roof terraces are well screened and no overlooking should occur.
- The amendments to the proposed development are considered to fully address the concerns of the Planning Authority.

## **Reason for Refusal no. 2**

- The existing use of the subject site facilitates the crossing of the public path by vehicles. The proposed use has no vehicular access and therefore is inherently safer. This will have a positive impact on traffic management and safety for roads users and pedestrians.
- A loading bay is proposed on the minimally used Brookvale Road. This will ensure the bus corridor and cycle lane will not be obstructed. The commercial element of the proposed development will generate a handful of car vehicle movements, a small number of taxi / car hire / van deliveries per day.
- Brookvale Road is marked with double yellow lines so no car parking can occur.
- The subject site is not in zone 1 (no minimum requirement for car parking) but it bears the attributes of a Zone 1 location, namely high frequency bus services, proximity to hospitals, third level institutions and large-scale employment centres.
- On-street car parking is €2.70 an hour. This will discourage car-owners from renting in this development. the absence of on-site car parking will not materially impact the surrounding properties as there are no opportunities for free car parking.
- The amendments made to Brookvale Road comply with the requirements of the Apartment Guidelines 2020 (section 4.23 and 4.24 refer).
- 158 no. cycle spaces are proposed, in excess of the 127 no. spaces required by the development plan. The Board is invited to include a condition enabling DCC to



determine the quantity of non-standard cycle provision both at basement and surface level.

- The car free nature of the development will be communicated as part of the Build-To-Rent leasing arrangements. SPPR 8 provides for minimal or significantly reduced car parking in BTR developments in central locations or in proximity to public transport services.
- The amendments to the proposed development address the Planning Authority concerns regarding taking in charge of the footpath over the basement

### **Reason for Refusal no. 3**

- The applicants agents have engaged with the NTA to discuss their requirements for BusConnects CBC no. 13.
- The NTA require a 2m width at ground level to provide for pedestrian footpath inside a cycle lane. The revised proposal provides for a setback of 2.5m on both sides. The Board is requested to grant permission in accordance with the revised plans and drawings.
- The applicants are willing to accept a condition requiring the detailed design of the loading bay, parking spaces and footpaths along Brookvale Road. Any works to the public realm outside the site boundary would be subject to agreement with DCC.
- In conclusion, the Board is requested to grant permission for the development as revised at appeal submission.

### **Appendix 2 Supplementary Design Report**

- In consideration of the issues raised by DCC, the amended proposal submitted for consideration by the Board has the following principal design changes:
  - reduction in height of two stories: ten storey building over basement with a GFA of 6,363sq.m. 6m reduction in overall height
  - change in massing and a reduction in built volume with further articulation, additional setbacks on the 8<sup>th</sup> and 8<sup>th</sup> floors,
  - reduction in no. of apartments from 84 no. to 67 no. with corresponding impact on communal facilities,



- reconfiguration of the ground floor to fully accommodate BusConnects CBC13 scheme
- reconfiguration of ground floor Brookvale Road – clear delineation between protected footpath and a delivery / collection zone, loading, set down car sharing and accessible parking.
- Removal of car parking,
- Change in fenestration, north-west corner elevation, to reduce overlooking to convent lodge.
- Plot ratio reduced from 7.41 to 5.86

## 6.2. Planning Authority Response

6.2.1. None on file.

## 6.3. Observations

### 6.3.1. Donnybrook Lawn Tennis Club

- DLTC are the neighbours most affected by the proposed development. The clubs original objection grounds are equally applicable to the amended proposal.
- Notwithstanding the applicants assertion that the size and scale of the proposal is appropriate in the context of the Eglington Road development, all of the metrics of the proposed development significantly exceed the permitted scheme. The plot ratio alone is 67% greater than the Eglington Road scheme.
- It is submitted that the 2018 Ministerial Height Guidelines were never intended to permit this extent of development.
- DLTC has a reasonable expectation not to be excessively overlooked. It is not a public park. It has a right to enjoy the amenity it has for over 100 years.
- No screening could overcome the overlooking that will arise from the proposed development. the south-west facing façade, include outdoor spaces of the proposed building directly overlooks all of the outdoor courts, but particularly courts 5,6 and 7.
- The proposed development will be only 14m from the nearest court.

- There are 450 no. junior members in the club (5-16 years). There are strict protocols for child protection. Surveillance and supervision are taken very seriously. The excessive overlooking created by the proposed development would compromise those protocols.
- DLTC will suffer a serious diminution in amenity.
- The subject site does not warrant a landmark building.
- The Board is requested to refuse permission for the proposed development.

### 6.3.2. Michele Ferguson, 24 Home Villas

- The design submitted at appeal is drastically different to that submitted at application stage. The public is being deprived of due process, not having the right to comment on the revised design. It is submitted that the applicant is using the appeal stage to seek approval for an entirely different design, rather than the correct channel of making a new application.
- The proposed development lacks a variety of housing types and tenures. The BTR model will attract a transient occupant.
- There are an inappropriate mix of unit sizes and styles. The proposed units are not suitable for households.
- The proposed design is inflexible, which is not sustainable.
- There has been no justification for the proposed BTR scheme. There are no major employers in this area.
- There is a lack of housing for sale in the area. The location is unsuitable.
- BTR represents poor value for money. There is evidence of stock hoarding in order to push up values.
- The precedents submitted by the appellant demonstrate that there is sufficient BTR in the area.
- There is precedent for planning refusal based on excessive height / scale.
- The proposed development breaches section 4.5.4.1 of the Dublin City Development Plan which seeks to protect the low-rise city. The subject site is not in an SDR and therefore not suitable for medium or tall buildings.

- The subject site is categorised as 'low-rise, outer-city' and therefore should be a maximum of four storeys according to section 16.7 of the development plan.
- The subject site does not meet any of the criteria for a taller building – close to areas of activity, important street junctions, public spaces and transport interchanges, or an area designated for height.
- Due regard has not been had to the ACA in Donnybrook. The area is architectural sensitive.
- The setbacks are inadequate, resulting in the 12-storey element appearing as a monolithic block. As there is no public space at ground level, there is no buffer.
- The Planning report notes that this was brought to the applicants' attention at pre-planning stage. The planning report notes that the site is not suitable for a landmark building, that is not comparable to the nearby Eglinton Road development in terms of location and that the Planning Authority have serious concerns about the visual dominance of the proposed scheme.
- The appeal confirms that the subject site is in the village. Accordingly, the height is inappropriate.
- The appellants' distances to the Dart and Luas are as the crow flies rather than a 20-minute walking distance.
- The revised proposal is still excessively high and bulky, making for a visually dominant and overbearing structure.
- No justification for the gross over development in terms of plot ratio, site coverage and density has been submitted.
- The proximity to Herbert Park and the provision of terraces does not justify the 0% open space provision. The proposed development is not child friendly or suitable for less mobile occupants.
- There is no contribution to the public realm. The design cannot create a spatial identity or a coherent urban structure.
- The proposed rooftop terraces will lead to undue noise / nuisance, anti-social behaviour, and light pollution.

- The proposed development will not integrate well with the receiving environment. There is no mention of the adjoining protected structure at the Convent.
- The applicants arguments for no car parking are moot.
- The planning report shares the Observers concerns regarding the impact on public transport. The first party appeal has not addressed these concerns.
- The proposed development is in breach of the 2007 Quality Housing for Sustainable Communities.
- The DCC planning report expresses concerns over the design quality of the proposed development.
- The Board is requested to refuse permission.

#### 6.3.3. **David & Valerie Clarke**

- Observers cannot see any positive enhancement of the character of Donnybrook. The proposed development is excessively high and of bland monolithic presentation.
- There is no attempt at integration. There are nearby buildings, including protected structures, that will be compromised by the proposed development.
- The proposed building is a self-contained object. Yet the applicant states that it will be integrated into the surrounding area.
- Donnybrook Village will be destroyed by the proposed 10-storey building.
- Images demonstrate the inappropriateness of the structure.
- The Observer has drawn up an alternative proposal, that is more appropriate for the subject site. there is a transition from the 12-storey block on the south-east corner to 5-storeys on the subject site, respecting the village core. On Brookvale Road 3/4 storeys with a fifth floor recessed. The scale reduces to 3-storeys adjacent to Convent Lodge, compatible with Eglinton Square, with Donnybrook Lodge Tennis Club, Convent Lodge and the development approved in Brookfield. It respects the significance of St Marys Convent Chapel.
- It is submitted that the entire area needs a carefully considered Local Area Plan.



- The Board is requested to refuse permission.

#### 6.3.4. **Robin Mandel, Vergemount Park**

- The Board is referred to their decision on Jefferson House ABP-305777-19 where permission has been refused on the grounds of height, scale and massing.
- The applicants alternative offers no mitigation to plot ratio, site coverage and density.
- The proposed development would seriously injure the visual, environmental and social amenities of the area due to its height, bulk and density. It would constitute over-development of the site, would be out of character with the pattern of development in the vicinity and would be contrary to the proper planning and sustainable development of the area.
- The Board is requested to refuse permission in line with the decision made on Jefferson House.

#### 6.3.5. **Eglinton Road Residents Association**

- Fully supports the NPF national policy objectives 1,2 and 3.
- Supports the development at Donnybrook Crescent 2412/19 as providing high density without overbearing height – 160 units per ha, site coverage of 53% and a plot ratio of 1.77. In contrast to the subject proposal of 96% site coverage, plot ratio of 7.4 and density of 763 units per hectare.
- The proposed development does not comply with NPO 4 or the quality criteria of NPO 5. The proposed development is a random application, undermining the City Development plan. The proposed development also does not comply with NPO 8, any of the core principles of the national planning framework, objectives 32 34 and 37. No housing need demand assessment has been submitted.
- The proposed development does not comply with the requirements of SPPR 1,2 or 3.
- The proposal to remove two floors will not mitigate the damage caused by the proposed development. The core statistics of the proposed over-development



remain the same – excessive site coverage, excessive plot ratio, compromising public transport and lack of open space.

- The Board is requested to refuse permission for the proposed development.

**6.3.6. National Transport Authority:**

6.3.7. The NTA is in receipt of material which illustrates the interface between the proposed development and the Bray to City Centre CBC scheme on Donnybrook Road. The NTA are satisfied that the proposed development as amended and set out in drawing no. 2002-DBH-PROPOSED GF & BASEMENT PLAN 07.05.21) would not prejudice the delivery of the CBC, subject to four items being addressed to the satisfaction of the NTA.

- The development interface with the BusConnects proposals should be clearly depicted within the developers planning application documentation and the design made available in ITM coordinates
- The developer should demonstrate how the building construction, operation and maintenance will be managed in relation to the overhang along Donnybrook Road with consideration towards safety and any proposed disruption to public space, bus, cycle and pedestrian movements,
- Maintenance of the footpath under the overhang shall be free from all obstruction, such as advertising, seating, signs etc,
- Adequate public lighting shall be provided
- The NTA as part of the Bray to City Centre Scheme intend to CPO the substratum under the proposed overhang, therefore there should be no construction in this area such as underground services, columns, pillars or any other obstruction.

## 7.0 Assessment

7.1.1. I have examined the file and the planning history, considered national and local policies and guidance, the submissions of all parties and inspected the site. I have assessed the proposed development and I am satisfied that the issues raised adequately identify the key potential impacts and I will address each in turn as follows:

- Principle of development
- Height, Density, Plot Ratio, Site Coverage
- Residential Amenity
- Impact on Public Transport
- Appropriate Assessment

### 7.2. Principle of the Proposed Development

- 7.2.1. The subject site is zoned for residential development and is located in a prime location with regards to public transport, social and community facilities. The subject site is currently under-used; the existing buildings fail to maximise the opportunities presented by the site in terms of visual amenity and use of zoned and serviced residential land. The proposed residential development is an appropriate and efficient use of zoned and serviced lands. Subject to all other planning considerations, the proposed development is considered acceptable in principle
- 7.2.2. In their appeal, the applicants have submitted a revised proposal, which they say will address the concerns of the Planning Authority. The alternative proposal submitted can be summarised as follows:

	Original submitted to the Planning Authority	Alternative Proposal submitted to ABP
Floors	12	10
Overall height	39.5m	33.50m
GFA	8053.3sq.m.	6372.7sq.m.
Units	84 no	67
Commercial	483.7sq.m.	367sq.m

Car parking spaces	6 no with 1 no. accessible and 2 no. car sharing at basement level	5 no. ground level spaces: 1 no. loading / delivery for the commercial units, 1 no. loading / delivery for the residential units, 2 no. car sharing, 1 no. accessible
Bicycle spaces	190	134
Density	763 units p.h	609 units p.h
Plot Ratio	7.41	5.86
Site Coverage	95.9%	95.4%

- 7.2.3. A number of the observers have raised the alternative proposal, stating that it should have been the subject of a new proposal and / or that it circumvents the planning process.
- 7.2.4. The proposed amendments to the subject building are not considered significant. They mirror the sort of amendments that frequently form the basis of conditions attached to Planning Authority and An Bord Pleanála grants of permission. With the exception of car parking provision, all of the proposed amendments result in lesser and fewer impacts on the receiving environment. Further, given the extent of public participation at both application and appeal stage, I am satisfied that notice of the proposed development and any amendments thereto has been sufficient.
- 7.2.5. One of the Observers has submitted that the proposed development does not comply with the policy objectives of the National Planning Framework (NPF). The Eglinton Residents Association, submitted that the proposed development does not accord with NPO 4, 5, 8, 32, 34 and 37. The Board will note that the ultimate objectives of the NPF are to guide the future development of Ireland, taking into account the projected increase in population of one million, to secure 660,000 additional jobs and to provide an additional 550,000 new homes by 2040. 25% of this growth is planned for Dublin City. I am satisfied that the proposed development complies with the over-arching objectives of the NPF. Compliance with objectives regarding residential amenity are addressed in detail below.

7.2.6. In terms of regional development, I am satisfied that the proposed development complies with the following policy objectives of the Dublin Metropolitan Area Strategic Plan (MASP).

- RPO 3.2: Promote compact urban growth - targets of at least 50% of all new homes to be built, to be within or contiguous to the existing built up area of Dublin city and suburbs and a target of at least 30% for other urban areas.
- RPO 4.3: Support the consolidation and re-intensification of infill/brownfield sites to provide high density and people intensive uses within the existing built up area of Dublin City and suburbs and ensure that the development of future development areas is co-ordinated with the delivery of key water infrastructure and public transport projects.
- RPO 5.3: Future development in the Dublin Metropolitan Area shall be planned and designed in a manner that facilitates sustainable travel patterns, with a particular focus on increasing the share of active modes (walking and cycling) and public transport use and creating a safe attractive street environment for pedestrians and cyclists.
- RPO 5.4: Future development of strategic residential development areas within the Dublin Metropolitan area shall provide for higher densities and qualitative standards as set out in the 'Sustainable Residential Development in Urban Areas', 'Sustainable Urban Housing: Design Standards for New Apartments' Guidelines and 'Urban Development and Building Heights Guidelines for Planning Authorities'.

7.2.7. I am satisfied that subject to other planning considerations the proposed development is acceptable in principle.

### 7.3. **Build To Rent**

7.3.1. The proposed development comprises 84 apartments in a build to rent (BTR) format, and as such the Sustainable Urban Housing: Design Standards for New Apartments 2020 has a bearing on design and the minimum floor areas associated with the apartments. In this context, the guidelines set out Specific Planning Policy Requirements (SPPRs) that must be complied with. The Dublin City Development Plan has no policies in relation to BTR.



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- 7.3.2. Conventional build to sell apartments must comply with a wide range of SPPRs, however, BTR schemes do not have to meet all Apartment Guideline criteria and have a different set of requirements in the interests of accelerating the delivery of new housing at a significantly greater scale than at present.
- 7.3.3. Specific Planning Policy Requirement 7 (SPPR 7) requires that the proposed development is advertised as such in public notices, this has been done by the applicant. SPPR 7 requires restrictions in relation to ownership, operation and sale for a period of 15 years, this can be conditioned if permission is granted. The second part of SPPR 7 refers to detailed proposals for supporting communal and recreational amenities. These elements are split in to two categories, as follows:
- (i) Resident Support Facilities - comprising of facilities related to the operation of the development for residents such as laundry facilities, concierge and management facilities, maintenance/repair services, waste management facilities, etc.
  - (ii) Resident Services and Amenities – comprising of facilities for communal recreational and other activities by residents including sports facilities, shared TV/lounge areas, work/study spaces, function rooms for use as private dining and kitchen facilities, etc.
- 7.3.4. The supporting documentation submitted with the application states that the applicant will comply with the management structure which will remain in place for a minimum of 15 no. years. The applicants agent has states that should the Board grant permission, they are willing to accept a 15-year covenant agreement. A draft of such a covenant was stated to be submitted with the planning application but is not within the documents before the Board. Should the Board decide to grant permission, this can be requested by way of condition.
- 7.3.5. According to the applicants planning report, regarding residential support facilities, the proposed development includes a concierge and a central management office, central waste management facilities and bike storage areas. Laundry facilities will be provided in each apartment. For residents services and amenities, communal areas will comprise both internal and external spaces (4 no. roof terraces and 2 no. internal amenity areas). Internally, it is proposed to provide a concierge space, games room, co-working space, library, multifunction rooms, entertaining space and cinema

rooms. The total communal space is 367sq.m. in the amended scheme, having been reduced from the originally proposed 483.7sq.m.

7.3.6. I am satisfied that the requirements of SPPR7 are fulfilled.

7.3.7. Section 5.14 of the 2020 guidelines states that when the requirements of SPPR 7 are fulfilled, the proposed BTR development will qualify for assessment by the planning authority as a specific BTR scheme, where a number of distinct planning criteria may be applied. SPPR 8 relaxes certain requirements that build to sell apartments must meet, as follows:

- No restrictions on dwelling mix
- Flexibility in relation to storage, private amenity space and communal amenity space; on the basis of the provision of alternative, compensatory communal support facilities and amenities within the development
- Minimal or significantly reduced car parking provision and a strong central management regime to establish and operate shared mobility measures.
- The requirement that the majority of all apartments in a proposed scheme exceed the minimum floor area standards by a minimum of 10% shall not apply.
- The requirement for a maximum of 12 apartments per floor per core shall not apply, subject to overall design quality and compliance with building regulations.

7.3.8. Some of the Observers have raised the concern that a BTR rather than a convention 'to-sell' development will introduce a transitory population, that it will not accommodate families and that there is no justification for such a development in the area. The Board will note section (i) of SPPR8 which specifically states that there are no restrictions on dwelling mix in BTR developments. The prevailing housing stock in the area provides for mostly three and four bedroom housing units, with newer developments largely catering to the apartment for sale market. The introduction of an alternative form of development (one and two bedroom units specifically for rent) provides more choice for would-be residents.

7.3.9. As originally submitted to the Planning Authority, the proposed development comprises 84 no. units – 1 no. studio unit, 51 no. one-bed units, and 32 no. two-bed units. The amended proposal submitted to the Board comprises 1 no. studio, 40 no. one bedroom units, 4 no. two bedroom / three person units and 22 no. two bedroom

four person units. The original proposal provide for 44% dual aspect units. The amended proposal increased that to 46.30%. This exceeds the one-third minimum required.

- 7.3.10. All of the proposed BTR units meet and in some cases, exceed the standards set out in relation to storage and private amenity space. All units will have a maximum of 3.5 sqm of storage space. The Planning Authority noted in their planning report that the wardrobes in the two-bedroom units were included in the calculation for storage space. The housing quality assessment submitted with the application and amended on appeal confirms that all units comply with the required storage space requirements. The HQA does not address the concern of the Planning Authority regarding wardrobe space as storage space. I note that there is a degree of flexibility regarding BTR units and I am satisfied that the overall scheme complies with the guidance.
- 7.3.11. All of the proposed apartments in the scheme have their own private amenity space in the form of balconies. All balconies meet or exceed the minimum requirements of the guidelines and development plan.
- 7.3.12. The applicant states that all apartments meet the minimum floor standards, and in some cases exceed the minimum floor area by 10%, the latter is not a criteria of BTR. The applicant has submitted a Schedule of Areas and Housing Quality Assessment (section 5.3 of the Design Report). In summary, of all the apartment units proposed, it is stated that the majority of units (77.40% in the original scheme and 71.60% in the amended scheme) are larger than the 10% required by the guidelines.
- 7.3.13. Regarding SPPR2(iii), the original proposal provided 6 no. car parking spaces at basement level. The amended proposal, with a reduced footprint at basement and ground level provides 5 no. spaces along the Brookvale Road side. 1 no. set down / loading space for the commercial units, 1 no. set down for the residential units and 2 no. car sharing spaces. The Transportation Planning report of DCC accepts that, for the purposes of assessment, the subject site is considered to be in area 2 – i.e., a minimum of 1 car parking space per dwelling.
- 7.3.14. Section 16.38 of the development plan states that where a subject site falls on the boundary of two or more parking zones, the appropriate level of car parking must be



assessed having regard to the location of the site and its accessibility to public transport facilities. A relaxation of parking standards is facilitated in Zone 1 but the development plan is silent on same for zone 2 and zone 3. Section 16.38 of the development plan provides for a parking provision below the maximum where it does not impact negatively on the amenities of surrounding properties or areas and there is no potential negative impact on traffic safety.

7.3.15. The accessibility of the subject site, its proximity to public transport services and the proposed management regime are such that the lack of on-site car parking is in compliance with SPPR8(iii) and the development plan. The aim for such a well serviced site should be to actively encourage the use of the many public transport, walking and cycling options available.

7.3.16. In summary, the subject site is considered suitable for the proposed Build to Rent model of residential development, being in accordance with both national and local policy.

#### **7.4. Visual Impact**

7.4.1. A Townscape and Visual Impact Assessment was submitted with the Planning Authority. A revised 2021 TVIA was submitted to the Board at appeal.

7.4.2. The TVIA assesses the proposed development from 14 no. viewpoints, each accompanied by a photomontage at baseline, at the application stage and for the amended proposal. The assessment of each viewpoint also includes the cumulative impact of the proposed development and the permitted Eglinton Road development.

7.4.3. The views examined are as follows:

- 1 Brookvale Road / Donnybrook Road junction
- 2 & 3 Donnybrook Road
- 4 Brookvale Road
- 5 Brookvale Road / Eglinton Road
- 6 Eglinton Road / Eglinton Park
- 7 Beech Hill Avenue
- 8 Stillorgan Road Church



- 9 Ailesbury Road
- 10 Anglesea Road
- 11 Eglinton Terrace
- 12 Donnybrook Road / Donnybrook House
- 13 Donnybrook Road / the Crescent junction
- 14 Donnybrook Road

- 7.4.4. Within Donnybrook (view 1 and 2), the report finds that the proposed development will create a dominant feature, introducing a new scale and creating a new centrepiece. This is considered to be a very significant beneficial impact. The improvement of the subject site at street level is welcomed, however I am not convinced it can be classified as a very significant beneficial impact. Using the accepted methodology of VIA, I consider the impact to be moderate – ‘an effect that alters the townscape in a manner that is consistent with existing and emerging baseline trends.
- 7.4.5. For view 3, also within Donnybrook, the TVIA finds that there will be a noticeable change in this view. While the proposed development will introduce a new scale, the existing trees will retain a sense of scale along the road. The report states that a new gateway will be created with the subject building and the Eglinton Road building creating a sense of enclosure. The local setting will be altered and so the magnitude of change is classified as high. The resultant significance is significant beneficial.
- 7.4.6. View no. 4, the TVIA acknowledges that the proposed building will become a new focus in the view. It says that while the new building will stand in contrast to the surrounding settings, it will reflect the intention of the development plan to develop these parts of Donnybrook.
- 7.4.7. I do not agree with the assessment of view no.s 2, 3 and 4. I consider the visual impact to be significant and the magnitude of that change to be very high, namely – the development will cause significant changes in the existing view over a wide area or a change which will dominate over a limited area. It is considered that the visual impact of the proposed building – be it 12 or 10 storey, on the streetscape is very significant. The low-rise nature of the area will be dominated by the insertion of a string vertical element, one that will read as an incongruous element. The proposed

significant and abrupt change in height will dominate the visual experience of the street. This noticeable change will affect many of the key characteristics of the area. I consider this view to have an adverse / negative visual effect – i.e. one that will reduce the quality of the existing townscape.

- 7.4.8. View no. 5, is from Eglinton Road and will be largely dominated by the granted SHD rather than the subject proposal. The TVIA states that the proposed development will create a new urban landmark in the distance and that the significance is significantly beneficial. View no. 6 is from further along Eglinton Road, at the junction with Eglinton Park. I concur with the TVIA finding that the magnitude of cumulative change is low with a slight neutral significance.
- 7.4.9. From view no. 7, from Beech Hill Avenue the upper floors of the proposed development will be visible. The TVIA finds that this view will provide further context and justification of the scale of development permitted by the Eglinton Road development. A similar conclusion is found by the TVIA for view 8 – from Stillorgan Road, outside the Church. The proposed development serves to intensify the townscape character created by the permitted development. A 'gateway effect' is created along the road, as larger scale buildings and stadium infrastructure define a new sense of threshold at the edge of the city. As with many of the other assessments, the finding for view no. 7 and 8 relies heavily on the permitted development at Eglinton Road. Whilst the cumulative impact cannot be ignored, the visual impact of the proposed development must also be assessed on its own merits. Image VVM7 and VVM8 shows the subject building as a stand-alone entity, one which in my view reads as a discordant and obtrusive element. I do not agree that the significance is neutral.
- 7.4.10. The proposed building is not visible from views 9 and 10. View no. 11 is from Eglinton Terrace, adjoining the open club grounds. The upper section of the proposed building will be visible, becoming a new vertical structure in the view. The magnitude of change is medium-high and the significance is moderate -adverse. I concur with this finding and agree that the visual impact of the proposed development will be adverse.
- 7.4.11. View no. 12 is from the centre of Donnybrook Village. The significance of the change according to the TVIA is moderate beneficial. The report finds that the new landmark

building will read as a continuation of the built form along Donnybrook Road, anchoring the building into the urban context. The TVIA states that while the instruction of a taller building will generate visual change it will not alter the established townscape character in this view. I do not agree with this conclusion. The proposed building (both the 12 and the 10 storey versions) create an abrupt jump in building height. While the pointed form of the building lessens the scale and bulk, it notwithstanding dominates the view. The prevailing height, namely the landscape character is 3 storeys. The proposed building entirely disregards that pattern and seeks to create an entirely new skyline. The townscape has a low tolerance and a high sensitivity for change at this location. The proposed building draws no reference to the receiving environment and reads as a discordant new element that does not integrate well. The proposed development will introduce a new element in the low-profile landscape, one that breaks the skyline with a considerable height differential.

- 7.4.12. View nos. 13 and 14 are from further north on Donnybrook Road. The proposed development will be clearly visible in view no. 13 but it will read as similar in scale and style to Donnybrook House. In view no. 14, the proposed building will be partially visible according to the TVIA. It will become a new focus point in the distance with a slight – moderate neutral significance.
- 7.4.13. Throughout the application and the appeal the appellant makes much of the recently permitted SHD development further south of the subject site. It is submitted that the wider area is evolving to one that more readily absorbs high buildings. I agree with this assessment. The pattern of development is changing, for the better. Valuable zoned and serviced land is being maximised. This is to be welcomed. I do not accept that the 12-storey Eglinton Road building creates a precedent for the subject proposal however. On the simplest of levels, the Eglinton Road SHD occupies a much larger site, at a wide and expansive junction that can absorb a taller building. The subject site, being more constrained by size, is also constrained by its context within the village.
- 7.4.14. The appellant submits that the subject site is not within the village centre of Donnybrook, that it lies on the outbound stretch of the village, as one moves to the suburbs. That the urban grain of the village should not constrain the subject site. I can see the merit in this reasoning and I agree, to a point. The extent to which the



site belongs 'in' or 'on-the-edge' of the village, however, is not definitive. Viewers of the building will accept the context as they see it, at different points along their approach.

- 7.4.15. There is also merit in the 'island block' argument submitted by the appellant. The triangular plot that starts with the subject site and ends with the Eglinton Road site is ripe for redevelopment at a higher density and at a greater height. I, however, consider the island plot too small to accommodate two landmark buildings. If one accepts that the prevailing height of the village increases as one moves southbound (as the Board has accepted in granting the Eglinton Road SHD), then by all logic, height should rise towards the highest point of Eglinton Road. Not compete with it.
- 7.4.16. I do not accept the applicants submission that the subject site is worthy of a landmark building, nor that the proposed building is 'landmark'. The city development plan recognises that there are a 'very limited number of locations' for taller buildings, at a scale appropriate for Dublin. The wider area is a 'district centre', not a 'key district centre'. As noted above, the development plan does not identify the subject site as suitable for a landmark building. I consider that position reasonable. It is considered that the subject site is capable of accommodating a building that is higher, but not one of 12 or 10-storeys. To that end I note policy SC16 of the development plan which recognises and seeks to protect the fundamental low-rise nature of Dublin City whilst recognising the potential of the limited number of locations that can accommodate taller buildings.
- 7.4.17. I am not satisfied that the proposed building will have a positive, or even a neutral impact on the Dennybrook area. Having closely examined each of the views examined and having carried out a comprehensive and wide-scale site inspection of my own, I am of the view that, on balance, the visual impact of the proposed development will be negative. Further, one cannot ignore the significant excess in density and plot ratio. On simple metrics, those calculations suggest an over development of the site. This is addressed in greater detail in section 7.5 below.
- 7.4.18. I am satisfied that the proposed development does not comply with policies SC16 and SC18 of the development plan.



## **7.5. Urban Design - Height, Density, Plot Ratio, Site Coverage**

- 7.5.1. The height of the proposed building and the consequent density, plot ratio and site coverage form the first of the Planning Authority's three reasons for refusal. Each of the observers have also raised the height, scale and massing of the proposed building as a concern.
- 7.5.2. At initial application stage, it was proposed to construct a 12-storey building with an overall height of 39.5m, a plot ratio of 7.41, and a density of 763 units per hectare. In the amended proposal, the proposed building is reduced to 10-storeys (33.5m height) with a consequent reduction in plot ratio to 5.86 and density of 609.09 units per hectare.
- 7.5.3. The applicant submitted a Design Report with the application and a Supplementary Design Report with the appeal. The report states that it is proposed to create a landmark building that will provide a marker between the city and the south. The report references the varying permissions in the wider area, specifically the SHD (ABP-307267-20) to the south of the site, on Eglinton Road. The applicants submit that the proposed building on the subject site will 'bookend' the island site of the two plots. The design statement submits that it is not intended that the subject site would continue the scale and grain of the 'village' of Donnybrook but rather it would sit alongside and integrate with the village centre as a new and contemporary addition. The statement refers to the precedent being set by the Eglinton Road 12-storey development to the south - that it is a stimulus for densification. The subject proposal will ensure that the Eglinton Road development is not in isolation but consolidates the scale and height transitions to the lower scale of the village, notably the 6-storey development of Kiely's.
- 7.5.4. That the subject site is under-used is accepted. While service stations are necessary, the subject site provides an excellent opportunity to maximise zoned and serviced land. A residential development with street-level commercial uses that create a lively and dynamic streetscape is the appropriate response to the subject site. The question therefore becomes solely about the quantum of development and how that is represented on site.
- 7.5.5. SPPR1 of the Building Height Guidelines (2018) provides for increased height and density in locations with good public transport accessibility, particularly town/ city

cores. The applicant states (section 5.73 of the Planning Report, submitted to the Planning Authority dated February 2021) that the subject site is two kilometres from the city centre, is along a significant bus corridor and has access to a wide array of services. The report submits that the proposed development therefore complies with SPPR1.

- 7.5.6. As noted by one of the Observers, the subject site is significantly more than 2km from the city centre. It is closer to 4km as the crow flies, considerably farther, along actual routes. Whilst the subject site is undoubtedly located on a significant bus corridor and has access to services, it has not been identified in the DCC development plan as being suitable for taller buildings. The development plan indicates a maximum height of 16m for the subject area. The subject location is not with an SDRA.
- 7.5.7. SPPR 3 provides criteria against which proposals for taller buildings are to be assessed; namely at the town scale, district / neighbourhood / street scale and last at the scale of the site / building.

#### Scale of the city / town

- 7.5.8. There are three elements to the town scale assessment: public transport, the character and public realm of the area and on larger urban redevelopment sites: place making. The subjects proposal is not a large urban redevelopment scheme. Regarding public transport, the subject site is proximate to the new CBC route no. 13 and approx. 1.5km from two Dart stations (Sandymount and Sydney Parade). I am satisfied that two elements of this section of the SPPR have been fulfilled .
- 7.5.9. The scale of the district / neighbourhood / street there are 5 no. criteria. The first, is that the proposed building makes a positive contribution to the urban neighbourhood and streetscape. As outlined in section 7.4 above, I consider the visual impact of the proposed development on a neighbourhood scale to be adverse.
- 7.5.10. The second criteria refers to the design of the building. The proposed development is not monolithic, avoids long uninterrupted walls of building and is well considered. The third criteria refers to flood risk. The application was accompanied by a Site Specific Flood Risk Assessment, the conclusion of which is that the proposed development passes the development plan justification test. I am satisfied that the FRA is both robust and accurate. The fourth criteria is that the proposed

development makes a positive contribution to the legibility of the wider area and integrates in a cohesive manner. As above, I am not satisfied that the proposed development makes a positive contribution to the neighbourhood. Lastly, it is required that the proposal positively contributes to the mix of uses and / or building typologies in the neighbourhood. The proposed introduction of BTR units in this area accords with this criteria.

7.5.11. At the scale of the site / building, it is required that the proposed development is carefully modulated to maximise access to natural daylight / ventilation and views and minimises overshadowing and loss of light. The proposed development succeeds on this requirement. Likewise, daylight provision is compliant with the BRE Guidelines.

7.5.12. In summary, I consider that the proposed development has not demonstrated compliance with SPPR3, namely that the proposed development will not successfully integrate with existing development in the vicinity and would therefore be contrary to the advice given by section 3.2 of the Urban Development and Building Heights – Guidelines for Planning Authorities.

#### Development Management Standards

7.5.13. The proposed development has a plot ratio of between 7.41 and 5.86 according to the applicant. The Planning Authority and many of the parties dispute this figure, stating the ratio is likely to be over 8. Regardless, the plot ratio is significantly in excess of the indicative standard of 2.0, as outlined in section 16.5 of the development plan. The development plan provides for flexibility in certain circumstances: public transport corridors, areas in need of comprehensive re-development, existing streetscape profiles, an existing higher plot ratio and strategic institutions. With the exception of the first, none of the criteria apply to the proposed development. The area is not in need of urban renewal, the existing streetscape profile and plot ratio are not worthy of retention and there is no strategic element at play. There is no reason why a plot ratio of almost four times the recommended standard would be appropriate and would not result in over development of the site.

7.5.14. Likewise, there is no compelling reason to exceed the recommended site coverage of 80%. The proposed site coverage of 96% indicates that the subject site has been over developed. The proposed density of between 763 units per hectare and 693



units per hectare is extremely high, by any measure. For comparison, I note that the recently permitted SHD on Eglinton Road, to which the applicant makes much reference, has a density of 385 units per hectare. The subject brownfield site certainly has the opportunity to increase the prevailing density, but it must be compliant with national and local policy on same.

## **7.6. Sunlight and Daylight**

- 7.6.1. Section 6.6 of the Apartment Guidelines and Section 3.2 criteria under the Building Height Guidelines (SPPR 3) refers to considerations on daylight and overshadowing. When taking into account sunlight and daylight analysis the guidelines refer to the Building Research Establishments (BRE) and BS standards/criteria for daylight, sunlight and overshadowing. The City Development Plan states that development shall be guided by the principles of Site Layout Planning for Daylight and Sunlight, A guide to good practice (Building Research Establishment Report, 2011).
- 7.6.2. A Daylight and Sunlight Assessment Report was submitted with the application at Planning Authority stage. This was revised at appeal stage and a Daylight and Sunlight Assessment Appeal Response was submitted to the Board. The report notes that all analysis carried out has considered the cumulative effect the proposed development would have in conjunction with that development permitted on Eglinton Road.
- 7.6.3. According to the report, prior to the publication of the apartment guidelines in December 2020 a European Standard had been published EN 17037 Daylight in Buildings. EN 17037 is not referenced in the 2020 apartment guidelines and is not referenced in any planning guidance document issued by Irish planning authorities. The BRE Guidelines have not been withdrawn. The applicant states that until official guidance or instruction is published by a relevant authority on this matter, the applicant's sunlight/daylight consultants will continue to reference the BRE Guidelines in daylight and sunlight assessments.
- 7.6.4. The neighbourhood properties that are assessed are
- no.s 55-61 Donnybrook Road (VSC),
  - 1-2 St. Mary's Convnet (VSC and APSH)
  - Convent Lodge (VSC, APSH & Sunlighting)



- 10-14 Eglinton Square (VSC)
- Granted SHD development at Eglinton Road (VSC).

- 7.6.5. The results show that the effect on the VSC at no.s 55-61 Donnybrook Road are imperceptible and that each of the windows are BRE compliant and the effect of the proposed development is imperceptible. For no.s 1 and 2 St. Marys Convent, each of the windows assessed for VSC are BRE compliant and the effect is imperceptible. Convent Lodge, the property closest to the subject site has 6 no. windows assessed for VSC, all of which are BRE compliant and the effect ranges from imperceptible to slight with one window (Cld1) experiencing a moderate effect. The VSC assessment for no.s 10,11 and 12 Eglinton Square shows that most of the windows are BRE compliant and that the effect are imperceptible, not significant and slight. The ground level windows in no. 11 are 92.57% and 94.91% compliant with the BRE guidelines. Window on. 12a, a ground level extension window in no.12 has a slight effect and is 88.3% compliant with the BRE guidelines.
- 7.6.6. No.s 13 and 14 Eglinton square had 6 no. windows in each property assessed for VSC. Four of the windows (no.s 13a, 13b, 14a and 1b) were found to have not significant or slight effects and were between 82.69% - 90.75% complaint with the BRE guidelines. The remaining windows in no.s 13 and 14 were BRE compliant and had imperceptible effects. The report compares the assessments for these seven windows against the effect arising from the SHD permission granted on Eglinton Road. It finds that one window (2p) would incur a perceptible level of effect but it would not be significant. The report assesses the proposed development on the permitted SHD development on Eglinton Road and finds that the each of the assessed windows is BRE compliant and the effect is imperceptible.
- 7.6.7. The report then moves to an assessment of the effect from the proposed development on the annual probable sunlight hours (APSH) on the windows in no.s 1 and 2 St. Marys Convent and the Convent Lodge, both annually and in winter. All of the windows assessed are found to be BRE compliant with an imperceptible effect. Section 6.3 of the report refers to the effect of the proposed development on the sunlight available to existing gardens. BRE guidelines state that in order for a development to have a noticeable effect on the amount of sunlight received in a garden, the value needs to drop below 50% and be reduced by more than 20% of the existing value. The assessment found that the existing open space around

Convent Lodge were BRE compliant with an imperceptible effect (the baseline reduced from 79.4% to 78.8%).

- 7.6.8. For the outdoor amenity areas of the proposed development, all areas were found to be capable of receiving two hours of sunlight on March 21<sup>st</sup>, with all areas scoring above 90%. The average daylight factor (ADF) for kitchens is 2%, 1.5% for living rooms, 1.5% for living / kitchen / dining (LKD) areas and 1% for bedrooms. Each of the rooms on the first and second floor comply with the BRE guidelines.
- 7.6.9. Analysing the VSC results, the report states that the proposed development can be considered to have preformed well. The effect on the windows in Eglinton Square arise from the granted SHD development rather than the subject development. The affected windows in Convent Lodge (that building closest to the proposed development) would incur a slight level of effect. The effect on ADF and sunlight in existing gardens are all imperceptible.
- 7.6.10. The report notes that overshadowing was raised as a concern by the Planning Authority. In response, the report states that overshadowing of neighbouring gardens will be minimal. The area that can receive 2 hours of sunlight on March 21<sup>st</sup> is reduced by less than 1%. The properties at 1 and 2 St. Marys Convent, the Convent Lodge and 55-61 Donnybrook Road will be affected until 10am in March and December and until 11am in June. For the proposed development, all of its outdoor amenity areas and will receive BRE compliant levels of sunlight. The ADF of the first and second floors was above the BRE guidelines. Floors above were not assessed as they will likely fare better. The report notes that when the planning application was first lodged to the Planning Authority, a target value of 2% for LKD was used. Since then, a High Court case has accepted 1.5% as the appropriate target value. Notwithstanding that, the report notes that the proposed development complies with both the 1.5% and the 2% target.
- 7.6.11. I am satisfied that the assessments carried out are accurate and reflect the likely impacts of proposed development on the surrounding area. The proposed development is acceptable in relation to daylight and sunlight impact upon neighbouring residents.

## **7.7. Impact on Public Transport**

- 7.7.1. The Planning Authority's third reason for refusal references the impact of the proposed development on the CBC no. 13, stating that the NTA's requirements could not be accommodated.
- 7.7.2. Part of the overall BusConnects Programme is to create 16 radial core bus corridors (CBC), an existing road with bus priority. According to BusConnects, this generally means full length dedicated bus lanes on both sides of the road from start to finish of each corridor or other measures to ensure that buses are not delayed in general traffic congestion.
- 7.7.3. CBC no. 13 is the Bray to City Centre Corridor. It commences at the junction of Leeson Street Lower and St. Stephen's Green, runs along Leeson Street Lower and Upper including the existing one-way system on Sussex Road. It continues on Morehampton Road and Donnybrook Road through Donnybrook Village, and on to the Stillorgan Road. From there, it intersects with the UCD to City Centre CBC at Nutley Lane and includes the Belfield Interchange at the entrance to University College Dublin (UCD). It continues south on Stillorgan/Bray Road as far as the Loughlinstown Roundabout. The route then proceeds along the Dublin Road through Shankill and on to Bray through the Wilford Roundabout (M11 Access Roundabout) and Castle Street. The CBC terminates at the Dargle River Crossing where it ties into the proposed Bray Bridge Scheme.
- 7.7.4. That section of preferred route 13 alongside the subject site proposes continuous bus priority and segregated cycle tracks in each direction along Morehampton Road and Donnybrook Road through Donnybrook Village and the Stillorgan Road to UCD through a combination of bus lanes and Signal Controlled Priority. The public consultation document for the preferred route acknowledges that to accommodate this improved infrastructure, limited land take will be necessary between Brookvale Road Junction and Eglinton Road Junction.
- 7.7.5. In appealing the decision of the Planning Authority, the applicant states that they engaged with the NTA with a view to accommodating their needs. According to the applicant, the NTA require a 2m width at ground level, to accommodate a footpath inside the cycle lane. To address this, the applicant set back the ground level by 2.5m on both sides (see drawing no.DTA-2002-DBH-PL-100 proposed site layout) ,



in the amended proposal submitted to the Board. The basement area beneath the footpath aligns to the new setback line (drawing no. DTA 2002-DBH-PL-101-A).

7.7.6. The NTA have made a submission to the Board, stating that they are in receipt of material which illustrates the interface between the proposed development and the route. The NTA state that the proposed development as amended and set out in the named drawing, will not prejudice the delivery of the CBC, subject to 4 no. specific requirements.

7.7.7. I am satisfied that the issue raised by both the NTA and the Planning Authority has been addressed. Should the Board decide to grant permission, these can be achieved by way of condition.

## 7.8. Summary

7.8.1. The subject site is an opportune site for a mixed-use development. The proposed development represents a welcome opportunity to use more appropriately, zoned and serviced land. The design of the subject building is such that both existing and future residents will enjoy adequate residential amenity and that surrounding land uses will not be negatively impacted in terms of overshadowing or overlooking. The impact of the proposed development on public transport and the future BusConnects CBC no. 13 has been satisfactorily addressed.

7.8.2. The single outstanding issue is the visual impact, an impact that results from a building that significantly exceeds recommended guidelines on density, plot ratio and site coverage. As outlined above, the proposed development, would not satisfactorily integrate into or enhance the character of the Donnybrook area, and does not respond in a positive way to adjoining developments. I am satisfied that the proposed development is contrary to the advice set out in section 3.2 of the Urban Development and Building Heights – Guidelines for Planning Authorities: issued by the Department of Housing, Planning and Local Government in December 2018. The proposed development would therefore be contrary to the above-mentioned plan and Ministerial Guidelines issued to planning authorities under section 28 of the Planning and Development Act, 2000, as amended, and would be contrary to the proper planning and sustainable development of the area.



## **7.9. Appropriate Assessment**

- 7.9.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U and section 177V of the Planning and Development Act 2000 (as amended) are considered fully in this section.
- 7.9.2. The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given. The proposed development is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3). The applicant has submitted a Screening Report for Appropriate Assessment as part of the planning application (February 2021)
- 7.9.3. The Report provides a brief description of the proposed development and states that the site is not located within or directly adjacent to any Natura 2000 site. the report identifies European Sites within a possible zone of influence (15km) of the development.
- 7.9.4. The AA screening report concludes that the possibility of any significant impacts on any European Sites, whether arising from the project itself or in combination with other plans and projects, can be excluded beyond a reasonable scientific doubt on the basis of the best scientific knowledge available.
- 7.9.5. Having reviewed the documents and submissions, I am satisfied that the submitted information allows for a complete examination and identification of all the aspects of the project that could have an effect, alone, or in combination with other plans and projects on European sites.

## Assessment

7.9.6. The European Sites that occur within the vicinity of the proposed development are as follows:

- South Dublin Bay SAC (000210), South Dublin Bay and River Tolka Estuary SPA (004024),
- North Dublin Bay SAC (000206), North Bull Island SPA (004006),
- Rockabill to Dalkey Island SAC (0300), Dalkey Islands SPA (004172),
- Wicklow Mountains SAC (002122), and SPA (004040),
- Howth Head SAC (000202), Howth Head Coast SPA (004113),
- Baldoyle Bay SAC (000199), Baldoyle Bay SPA (004016),
- Glenasmole Reservoir SAC (001209),
- Knocksink Wood SAC (000725),
- Ballyman Glen SAC (000713),
- Malahide Estuary SPA (004025), Malahide Estuary SAC (000205),

7.9.7. There are no potential pathways between the subject site and the following designated sites. The issues examined are habitat loss or alteration, habitat/species fragmentation, disturbance and/or displacement of species, changes in population density and changes in water quality and resource. The potential for habitat loss or habitat/species fragmentation is ruled out due to no direct habitat loss or alteration. In applying the 'source-pathway-receptor' model in respect of potential indirect effects, I am satisfied that the following sites can be screened out.

- Baldoyle Bay SAC (000199), Baldoyle Bay SPA (004016),
- Howth Head SAC (000202), Howth Head Coast SPA (004113),
- Rockabill to Dalkey Island SAC (0300), Dalkey Islands SPA (004172),
- Glenasmole Reservoir SAC (001209),
- Knocksink Wood SAC (000725),
- Ballyman Glen SAC (000713),
- Wicklow Mountains SAC (002122), and SPA (004040),
- Malahide Estuary SPA (004025), Malahide Estuary SAC (000205), 14.5km from the site.

7.9.8. There is no direct hydrological connection from the site to Dublin Bay but there is an indirect pathway through stormwater and foul sewers through the Ringsend WWTP. Therefore there are potential source-pathway-receptor routes between the subject site and the North Dublin Bay SAC, the North Bull Island SPA, the South Dublin Bay SAC, South Dublin Bay & River Tolka Estuary SPA, and the Poulaphouca Reservoir SPA.

7.9.9. Regarding possible risks, the report notes that ground investigations undertaken by the applicant prior showed one sample with high levels of hydrocarbons which was classified as hazardous waste. Access issues prevented sampling directly underneath the fuel tanks and the fuel dispensing pumps and therefore the possibility of hazardous waste cannot be excluded.

7.9.10. The qualifying interests of the relevant sites are as follows:

Site (site code)	Qualifying Interests/Species of Conservation Interest
North Dublin Bay SAC	<ul style="list-style-type: none"> <li>• Mudflats and sandflats not covered by seawater at low tide (1140)</li> <li>• <i>Salicornia</i> and other annuals colonizing mud and sand (1320)</li> <li>• Atlantic salt meadows (1410)</li> <li>• Mediterranean salt meadows (1410)</li> <li>• Annual vegetation of drift lines (1210)</li> <li>• Embryonic shifting dunes (2110)</li> <li>• Shifting dunes along the shoreline with <i>Ammophila Arenaria</i> (white dunes) (2120)</li> <li>• Fixed coastal dunes with herbaceous vegetation (grey dunes) (2130)</li> <li>• Humid dune slacks (2190)</li> <li>• Petalwort (1395)</li> </ul>
North Bull Island SPA	<ul style="list-style-type: none"> <li>• Light-bellied Brent Goose (<i>Branta bernicla hrota</i>)</li> </ul>

	<ul style="list-style-type: none"> <li>• Oystercatcher (<i>Haematopus ostralegus</i>)</li> <li>• Teal (<i>Anas crecca</i>)</li> <li>• Pintail (<i>Anas acuta</i>)</li> <li>• Shoveler (<i>Anas clypeata</i>)</li> <li>• Shelduck (<i>Tadorna tadorna</i>)</li> <li>• Golden Plover (<i>Pluvialis apricaria</i>)</li> <li>• Grey Plover (<i>Pluvialis squatarola</i>)</li> <li>• Knot (<i>Calidris canutus</i>)</li> <li>• Sanderling (<i>Calidris alba</i>)</li> <li>• Dunlin (<i>Calidris alpina</i>)</li> <li>• Black-tailed Godwit (<i>Limosa limosa</i>)</li> <li>• Bar-tailed Godwit (<i>Limosa lapponica</i>)</li> <li>• Curlew (<i>Numenius arquata</i>)</li> <li>• Redshank (<i>Tringa totanus</i>)</li> <li>• Turnstone (<i>Arenaria interpres</i>)</li> <li>• Black-headed Gull (<i>Larus ridibundus</i>)</li> </ul>
South Dublin Bay and Tolka Estuary SPA	<ul style="list-style-type: none"> <li>• Light bellied Brent Goose (<i>Branta bernicla hrota</i>)</li> <li>• Oystercatcher (<i>Haematopus ostralegus</i>)</li> <li>• Ringed Plover (<i>Charadrius hiaticula</i>)</li> <li>• Grey Plover (<i>Pluvialis squatarola</i>)</li> <li>• Knot (<i>Calidris canutus</i>)</li> <li>• Sanderling (<i>Calidris alba</i>)</li> <li>• Dunlin (<i>Calidris alpina</i>)</li> <li>• Bar-tailed Godwit (<i>Limosa lapponica</i>)</li> <li>• Redshank (<i>Tringa totanus</i>)</li> <li>• Black-headed Gull (<i>Croicocephalus ridibundus</i>)</li> <li>• Roseate Tern (<i>Sterna dougallii</i>)</li> <li>• Common Tern (<i>Sterna hirundo</i>)</li> </ul>



	<ul style="list-style-type: none"> <li>• Arctic Tern (<i>Sterna paradisaea</i>)</li> </ul>
South Dublin Bay SAC	<ul style="list-style-type: none"> <li>• Mudflats and sandflats not covered by seawater at low tide (1140)</li> <li>• Annual vegetation of drift lines (1210)</li> <li>• Salicornia and other annuals colonising mud and sand (1310)</li> <li>• Embryonic shifting dunes (2110)</li> </ul>
Poulaphouca Reservoir SPA (4063)	<ul style="list-style-type: none"> <li>• Greylag Goose (<i>Anser anser</i>)</li> <li>• Lesser Black-backed Gull (<i>Chroicocephalus ridibundus</i>)</li> </ul>

7.9.12. Specific conservation objectives have been set for mudflats in the South Dublin Bay SAC and the North Dublin Bay SAC. The objectives relate to habitat area, community extent, community structure and community distribution within the qualifying interest. There is no objective in relation to water quality. For the South Dublin Bay & Tolka Estuary SPA and the North Bull Island SPA the conservation objectives for each bird species relates to maintaining a population trend that is stable or increasing and maintaining the current distribution in time and space. For the Poulaphouca Reservoir SPA, the objective is to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.

7.9.13. Due to the distance separating the site and the SPAs/SACs noted above, there is no pathway for loss or disturbance of important habitats or important species associated with the features of interest of the SPAs or qualifying interests of the SACs.

7.9.14. The site is approximately 1.8km from the boundary of the Natura 2000 areas within Dublin Bay. In reality however, this distance is likely to be greater when following the hydrological pathway through the drainage network. There is no direct pathway to the Tolka Estuary from the development as it lies to the north of the River Liffey. There is no direct surface pathway to the River Dodder as the two areas are separated by a public road and other built development. Because of the distance separating the site and the SPAs/SACs noted above, there is no pathway for loss or disturbance of important habitats or important species associated with the features of interest of the SPAs or qualifying interests of the SACs.

- 7.9.15. During the occupation stage, there is a hydrological pathway from the site via wastewater and surface water flows to Dublin Bay, via the Ringsend plant and the River Dodder respectively. Water quality is not listed as a conservation objective of the SPAs or SACs and there is no evidence that poor water quality is negatively affecting the conservation objectives of the SPAs/SACs. The development will increase loadings to the Ringsend wastewater treatment plant. This increase will be relatively small compared to overall capacity and therefore the impact of this project is considered to be not-significant. No significant effects will occur to the SACs or SPAs from surface water leaving the site during operation, and as a result of the distance and temporary nature of works, no significant effects to the SACs or SPAs will occur during construction.
- 7.9.16. Regarding the hazardous material found on site, I am satisfied that there is no risk to the designated site as there is no pathway for hydrocarbons in the soil to reach the sites. I am satisfied therefore that there is no likelihood that pollutants arising from the proposed development either during construction or operation could reach the designated sites in sufficient concentrations to have any likely significant effects on them, in view of their qualifying interests and conservation objectives.
- 7.9.17. On the basis of the foregoing, I conclude that the proposed development will not impact the overall water quality status of Dublin Bay and that there is no possibility of the proposed development undermining the conservation objectives of any of the qualifying interests or special conservation interests of European sites in or associated with Dublin Bay. In relation to in-combination impacts, given the negligible contribution of the proposed development to the wastewater discharge from Ringsend, I consider that any potential for in-combination effects on water quality in Dublin Bay can be excluded. Furthermore, other projects within the Dublin Area which can influence conditions in Dublin Bay via rivers and other surface water features are also subject to AA. In this way in-combination impacts of plans or projects are avoided.

## **AA Screening Conclusion**

7.9.18. It is reasonable to conclude that on the basis of the information on file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on South Dublin Bay SAC (000210), North Dublin Bay SAC (000206), South Dublin Bay and River Tolka Estuary SPA (004024), North Bull Island SPA (004006), or any European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required. In reaching this conclusion I took no account of mitigation measures intended to avoid or reduce the potentially harmful effects of the project on any European Sites.

## **8.0 Recommendation**

8.1. I recommend permission be REFUSED for the following reason:

- 1 The applicant has not satisfactorily demonstrated that the proposed development would successfully integrate into or enhance the character and public realm of the area, having regard to prevailing heights in the surrounding area. The height of the proposed building, notwithstanding the proposed revision to 10-storey at appeal stage, would not make a positive contribution to place-making and does not respond in a positive way to adjoining developments. At the scale of the site and the neighbourhood, the proposed development would not successfully integrate with existing development in the vicinity and would therefore be contrary to the advice given by section 3.2 of the Urban Development and Building Heights – Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in December 2018. The proposed development would therefore be contrary to the above-mentioned plan and Ministerial Guidelines issued to planning authorities under section 28 of the Planning and Development Act, 2000, as amended, and would be contrary to the proper planning and sustainable development of the area.
- 2 The proposed development, by reason of its height relative to surrounding buildings, scale, massing and bulk at this prominent site, would constitute overdevelopment of the site and would be out of character with the pattern of

development in the vicinity. The proposed development would constitute over development of the site by virtue of its height, scale and massing and would result in an unacceptable negative visual impact on this prominent site within Donnybrook Village.



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Gillian Kane  
Senior Planning Inspector  
20 February 2022

**DECISION QUASHED**