



An
Bord
Pleanála

Inspector's Report ABP 310450-21

Development	Demolition of two storey building and construction of a five storey over basement apartment development, gym pedestrian and vehicular entrances vehicular and cycle parking landscaped open space and associated site development works.
Location	The Pavilion, 204-205 Merrion Road, Dublin 4.
Planning Authority	Dublin City Council,
P. A. Reg. Ref.	2435/21.
Applicant	Brian Kennedy
Type of Application	Permission.
Decision	Grant Permission.
Third Party Appeals	Breeda Jones, Merrion Village Residents Association, John and Mary Glynn. Residents of Block 3 Merrion Village.
Observers	Merrion Village Management, (Phase 5) CLG.
Date of Inspection	4 th October, 2021
Inspector	Jane Dennehy

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1.0 Site Location and Description

- 1.1. The site has a stated area of 2,522 square metres and is that of an existing pavilion building, in use as a gym and tennis court and surface carpark. There is vehicular access from via Merrion Village to Merrion Road to the south-west, opposite St. Vincent's Hospital. To the east side is St. John House a large retirement home, to the south is the site of the Merrion Inn, a filling station and to the north is Merrion Village, an apartment development and, to the north and west are nineteenth century town houses, two storey over garden level and three dwellings, Nos 1-3 Lennon's Cottages.
- 1.2. The location is adjacent to the Merrion QBC and a short distance, 100-200 metres of the Sydney Parade DART station. Pay and display on street parallel parking is available in the area along Merrion Road
- 1.3. There is a combined 1350 mm and 900 mm diam sewers which is under the control of Irish Water route across the site.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for
 - Demolition of the existing pavilion building with a stated floor area of 390 square metres and the tennis court.
 - Construction of a 4 and five storey stepped profile, over basement building with twenty-five apartments all of which area dual aspect, comprising: 12 one bed units and thirteen two bed units (two of which are duplexes) the combined floor area of which is 1810 square meters and a ground floor gym with a stated floor area of 159 square metres. The gym is shown at ground floor level at the east and front side of the block with the bedrooms. The total stated floor area is 1,935 square metres. Sedum roofs and SUDS Drainage measures are included in the proposal.
 - Basement carparking for twenty-five car spaces and two disability parking spaces and forty-four residents' and twelve visitor cycle spaces and twelve visitor cycle spaces.

- Pedestrian access to the north-east and vehicular and pedestrian accesses to Merrion Road.
- Associated site works to include relocation an ESB substation, soft and hard landscaping, communal landscaped open space which is in the form of share courtyard garden ad ground level and a redesign garden into northwest of the site which equate to fifty percent of the site area of 1,258 square metres. A landscaping and planting scheme with external lighting is provided.

2.2. The application includes a sunlight and daylight study, design statement, traffic and transport assessment report, flood risk assessment report, engineering planning report, construction management plan, a life cycle report and an appropriate assessment screening report and a written statement of consent from Ruth Forsythe to the inclusion of land in her ownership and to the proposals within the application. (An address is not provided.)

3.0 **Decision**

3.1. By order dated, 21st June, 2021 the planning authority decided to grant permission subject to conditions mainly of a standard nature and the following requirements.

A development contribution scheme in the amount of €100,000 (4,000 per unit) in lieu of public open space in respect of public open space benefitting development in the area as provided for in the development Contributions scheme adapted under Section 48 of the Act.

Condition No 8 is a hard and soft landscaping condition with a requirement for a compliance submission.

Condition No 15 includes a requirement for six additional visitor spaces for cycles adjacent to the entrance with specific design criteria for which a compliance submission is required and a revised layout with locations of road markings to prevent conflict with the pedestrian access to Lennon's Cottages.

Condition No 20 is a Section 96 Part V condition for social and affordable housing provision.

Condition No 21 is a security bond condition.

3.2. **Planning Authority Reports**

- 3.2.1. The **Transportation Division** has provided a detailed report indicating acceptance of the proposed development subject to resolution of some issues. It notes a number of details for which further submissions are recommended with regard to the site layout and road markings at the entrance and pedestrian access and drop off area, with omission of two surface level spaces being acceptable to provide for same, a basement floor plan with a revised provision for and layout of cycle and carparking spaces.
- 3.2.2. The **Drainage Division** in its report indicates no objection subject to conditions.
- 3.2.3. **Irish Water** in its submission indicates no objection further to review of the proposals and its location relative to existing combined sewers traversing the site and indicates no objection subject to conditions.
- 3.2.4. The **Planning Officer** notes the planning history for the site and states that the revised proposal addresses concerns regarding the footprint relative to the existing sewer lines traversing the site, that the dwelling mix is acceptable having regard to statutory guidance and satisfactory standards with regard to separation distances, overshadowing and overlooking potential, building form and height and with regard to the access and parking subject to the recommendations in the technical reports.

3.3. **Third Party Observations**

- 3.3.1. Multiple submissions were lodged with the planning authority in which issue of concern relate to erosion of existing open space provision, density, overdevelopment and overbearing impact creating sense of enclosure at existing development overlooking and overshadowing of existing development, carparking provision and impact on traffic flows and vehicular safety on Merrion Road.

4.0 Planning History

P. A. Reg. Ref. 4461/19/ 307122: The planning authority decision to grant permission for demolition of the pavilion building and tennis court and construction of a twenty-eight-unit apartment development with a stated floor area of 2,213 square metres was overturned following appeal based on the following reason:

“Having regard to the presence of two trunk sewers running through the site, and to the proposed solutions submitted to the Board on the 22nd day of October, 2020 to address Irish Waters concerns in relation to the future maintenance of these critical infrastructure assets, the Board is not satisfied that the amended scheme, which proposes between 17 (60.7 per cent) and 19 (70.4 per cent) studio or one bed units within the scheme of 28 or 27 units, depending on a four metres or six metres separation distance from the Irish Water Asset, adequately complies with the “Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities”, issued by the Department of Housing, Planning and Local Government in March 2018, in terms of unit mix within the scheme. The development would be contrary to the Guidelines and would, therefore, be contrary to the proper planning and sustainable development of the area.”

The original development at Merrion Village also has a planning history dating to the construction and preconstruction period as outlined below: -

P.A. Reg. Ref.4020/78: Permission was granted for a development of nine two storey houses and eighty-seven apartment sin five blocks. (Details are not available)

P.A. Reg. Ref.1471/81: Permission was granted for alterations to Blocks E and F in the permitted development

P. A. Reg. Ref. 660/82: Permission was granted for alterations for approved plans for the amenity and recreational building.

P.A. Reg.Ref.1844/83: Permission was granted for alterations to approved plans for erection of nine two storey house.

5.0 Policy Context

5.1. Development Plan

The operative development plan is the Dublin City Development Plan, 2016-2022 according to which the site location is within an area subject to the zoning objective: *Z4: To provide for and, improve mixed service facilities.*

The indicative plot ratio is 0.5 – 2.00 and the indicative site coverage is 45%-50% and site coverage.

Objective QH 8 provides for higher density development which respects the character of surrounding development on vacant or under-utilised sites.

Development Management Standards for residential development are set out Chapter 16 with guidance and standards for residential quality standards for apartments in in section 16.10.1 which includes minimum communal amenity space provision for 5 square metres per one bed unit and minimum of seven square metres. For public open space provision a minimum area equivalent to ten per cent of the site area should be reserved and suitably landscaped.

Criteria for infill developments in sections 16.10.8 and 16.10.10.

The site location comes within Parking Zone 2 for Parking Standards for cars as provided for in Table 16.1 the maximum requirement and for Cycle Parking standards in Table 16.2.

Standards for communal and public open space are set out in section 16.10.1

5.2. Strategic Guidance

Relevant statutory guidance issued under Section 28 of the Planning and Development Act, 2000 as amended are:

'Guidelines for Planning Authorities: Sustainable Residential Development in Urban Areas' and the accompanying *'Urban Design Manual'*, DOEHLG, 2009. (SRD Guidelines)

Sustainable Urban Housing Design Standards for New Apartments, 2020, (Apartment Guidelines) issued under Section 28 of the Planning and Development Act, 2000 as amended. (Updated from 2018.)

Guidelines for Planning Authorities on Urban Development and Building Heights 2018.

'Design Manual for Urban Roads and Streets' 2012 (DMURS)

6.0 The Appeal

6.1 Appeals

6.2. Third party appeals which are outlined individually below have been received from each of the following parties:

Breeda Jones,

Merrion Village Residents Association,

John and Mary Glynn.

Residents of Block 3 Merrion Village.

6.2.1. Appeal by Ms Breeda Jones.

An appeal was received from Future Analytics on behalf of Ms Breeda Jones of No 69 Merrion Village on 10th June, 2021. Attached is a copy of a decision notice for a grant of permission under P.A. Reg Ref. 1471/81 for development at the apartments and recreational centre at Nos 204-206 Merrion Road. The appeal is stated to be supported by occupants of residents of five of the properties in Merrion Village.

(Details are provided.) According to the appeal:

- The proposed development would materially contravene the parent grant of permission for the Merrion Village development. The tennis courts outdoor area and recreational building are part of the Merrion Village development and residents have legitimate expectation that the amenity space is retained as provided for in the layout for the original development. The conditions attached to the grants of permission under P.A. Ref. Ref. 4020/78, 1471/81 and 660/.82 and conditions attached designate the site area as amenity and recreational space.

- A site plan for the application under P.A. Reg. Ref 1844/83 highlights the area as designated amenity space for an amenity block, children's play area, putting area and tennis courts. Any development would be in conflict with the plans for the grants of permission under P. A. 4020/78 and 1844/83. This matter was not addressed at application stage in the planning authority report and assessment in spite of being raised by third parties.
- Conditions were attached in which use of the recreational amenity block is confined to use by residents of the Merrion Village development primarily with limited membership for non-residents and, (under a condition (No 3) attached to the original grant of permission under P. A. Reg. Ref. 4020/78 "*a clear reference to protection of children's play area within the condition*". In addition, an image of a plan with the redline boundary for the grant of permission under P.A. Reg. Ref. 1844/83 is also provided and it is contended that the proposed development comes within this area.
- In *Altar Developments Ltd v Ventola Ltd.* (quoted in, Simons, G "*Planning and Development Law*" (2007) [2005] I.E.H.C 312 there is an argument that planning conditions are open to interpretation in cases of ambiguity failed.
- It should have been clearly indicated in the site notices that the application is to materially alter the historic planning conditions.
- The Inspector on the previous proposal provided three reasons for the recommendation refuse permission. It is unreasonable and illogical of the planning authority in assessment of the current proposal to have disregarded the Inspector's assessment and that the two reasons recommended. The two reasons relating to the amenity space which were excluded from the reasons for refusal of permission (in the Board's Order) further to the appeals. It is not logical to determine that development on recreational amenity space in historic grants of planning permission would not adversely impact residential amenity. The two recommended reasons referred to and several extracts from the Inspector's report are included in the appeal submission.
- The proposed development would set undesirable precedent for development on designated open space under a previous grant of planning permission. Issues are solely planning matters. Lack of availability of the facilities to

residents or as to ownership are relevant. Precedent can be taken from prior appeal cases: -

A first party appeal against a decision to refuse permission on a plot adjacent to Nos 71 and 71 Grange Wood Dublin 16. It was decided that reduction in usable open space would materially contravene a condition (No 4) attached to the historic (1975) grant of permission under Reg Ref H1043 governing the development of the estate in which the area was to be developed and maintained as public open space. (P. A. Reg. Ref 16A/331 and PL 246984 refer)

A third-party appeal against a decision to grant permission for revisions to omit a pedestrian link through open space and incorporation of the open space into private open space for approved apartments at Navan. It was decided that the proposal would materially contravene a condition attached to a grant of permission under P. A. Reg. Ref. 00/0830 (Meath County Council) which requires the open space to be retained and maintained as public open space, the application site being part of a larger permitted twenty-two dwelling scheme under P. A. Reg. Ref. 99/1991. A condition included requirement for the pedestrian link. PL 207047 refers and extracts from the inspector's report and the reason for the decision are provided.

- The proposed development would negatively affect residential amenity by reason of substandard open space, residential amenity, poor elevation treatments and separation distances.
- At application stage, the impact of the reduction in quantum of open space for Merrion Village was not considered and a landscaping details were not requested, the planning officer having considered the proposals submitted inadequate.
- The site is adjacent to the appellant's property (No 69 Merrion Village) and the proposed development on the constrained backland site would adversely affect its amenities due to overbearing impact. The adjoining garden at the appellant's property would be affected by the overbearing scale and overlooking. Effects of noise and disturbance during construction stage are

also a consideration. Construction management plan should be dealt with prior to determination and not, by condition, post planning.

- The proposed development is an infill that is oppressive and insensitive for the location. It would adversely affect the setting of the adjacent properties in the 'Z2' zoned lands to the west and a lack of due regard to the characteristics of surrounding development in height, scale and bulk and the stepped down nature of Merrion Village blocks. It is contrary to the residential quality standards in the CDP (section 16.10 and 16.10.2) regarding standards on standards and minimisation of overshadowing and overlooking. The daylight impact is not addressed in the Sunlight and shadow analysis.
- The proposed development should be refused permission because the applicant has a record of past failures to comply having regard to section 35 of the Planning and Development Act, 2000 as amended (The Act). This is a material consideration, the applicant being to legal proceedings, in respect of a development permitted under PL 307197 at Herbert Park in respect of the site of the O'Rahilly House at Herbert Park.

6.2.2. **Appeal by Merrion Village Residents Association.**

An appeal was received from Joan O'Beirne on behalf of the appellant on 7th July, 2021 the contents of which are outlined below:

- The existing Pavilion building and the public open space in the northwest of the site were originally planned, designed and designated as amenities for the Merrion Village development. The proposed development is not utilising this space as public open space to serve the proposed development.
- The proposed development would disrupt the residential amenities and privacy of existing development through overlooking overshadowing of the adjoining open space and properties, under provision of public open space and excessive traffic generation. It is contrary to the "Z2" (*sic*) zoning objective.

- With regard to daylight and sunlight access it is clear that there is adverse impact on seven of seventeen windows in diminution of VSC and no Skyline test was undertaken.
- The proposed development will result in devaluation of properties.

6.2.3. **Appeal by John and Mary Glynn.**

An appeal was received from John and Mary Glynn of No 182 Merrion Road on their own behalf on 9th June,2021. According to the appeal:

- The proposed development will result in increased demand for use of on street parking space which are in sufficient in supply. The appellant party depends on the on-street parking.
- Traffic movements are underestimated in the application, The properties at No 186 Merrion Road and four townhouses have access off the road proposed for the apartment development.
- The development will cause traffic hazard: the access is fifty metres from the junction with Nutley Lane and hazard for pedestrians where footfall is heavy will be created. The route at Merrion Road Church should be used for pedestrians.
- Merrion Village which has 151 dwelling units has insufficient green and exercise space and the facilities at the Pavillion and tennis court were integral to the original grant of permission.
- The proposed development will add to the disruption of other development such as the new maternity hospital to be constructed on the former Gowan Motor site.
- It is possible that there would be insufficient space for maintenance of the sewage pipe across the site.

6.2.4. Appeal by Residents of Block 3, Merrion Village.

An appeal was lodged by Armstrong Planning on behalf of the appellant party, namely occupants of Nos 49-68 Merrion Village on 9th June, 2021. According to the appeal:

- The site area incorporates communal open space which is designated as open space for Block 3 in the original development which cannot be accepted as open space for the proposed development. This space is rectilinear and there is a tree directly in front of Block 3's south elevation. Block G in the original grant of permission under P. A. Reg. Ref. 3971/81 was renumbered as Block 3 in the grant of permission under P. A. Reg. Ref. 4657/82 in which the block's south elevation and the space is clearly identified in these application plans. (An extract of the site layout for P. A. Reg. Ref. 4657/82 and from the current application is provided.) The density of development would increase from circa 114 units per hectare if this space is used for development which is in excess of the fifty units recommended in planning guidelines.
- Residents of Block 3 would lose access to the Pavilion building facilities and a tennis court which in recent years been curtailed and it is not appropriate of the open space to be taken as well for a separate development. Reference is made to the comments in the Inspector's report on the previous proposal in support of this case and extracts are included. (P.A. Reg. Ref. 1302/19 PL 211866 refers.)
- The proposed development which is very similar to the previous proposal would be in material contravention of the 'Z1' zoning objective in using the existing open space and in overshadowing Block 3. The reasons for refusal of permission for the previous proposal recommended in the Inspector's report are equally applicable to the current proposal notwithstanding national policy for higher density development. Increased intensity and density should not be at the expense of residential amenity of surrounding development. (Reference is made to sections 16.2.2. (Infill development) 4.5.4.1 (Taller Buildings) and 16.4 (Density Standards) of the CDP.

- Balconies on the south elevation of Block 3 (external private amenity space) and south facing windows would lose their sunny aspect and views towards Merrion Road and beyond. The proposed block is insufficient in separation distance being 18.2 metres from Block 3 and will be imposing and will overlook and overshadow it. This would be contrary to section 16.10.2 of the CDP in which 22 metres separation distances required for opposite windows between two storey dwellings. Use of the open space between Block 3 the application site would impact on privacy and amenity at the ground floor units in Block 3.
- Daylight and sunlight access to the south elevation of Block 3. In the Daylight and Sunlight Analysis provided with the application (page 17) the VSC exceeds the BRE threshold for seven of seventeen windows and this confirms serious impact on the residential amenities of these properties. No Skyline test was conducted as part of the analysis but the proposed development would un standard too in this regard. In addition, the massing would overshadow the communal open space at the north-western quadrant north of the apartment block and it would be poor in amenity potential.
- The overbearing impact and sense of enclosure impact to Block 3 which is thirteen metres in height and four storeys whereas the parapet height of the proposed block is much taller at nineteen metres. The blank façade is unattractive and overbearing in sense of enclosure for the open space between the proposed block and Block 3. Balconies at fourth floor level afford views into the private open space and habitable rooms of Block 3 in that it is at the same height as the top floor of Block 3 and loss of sunlight to the open space between the two blocks.
- Morning and afternoon sunlight for the balconies and windows of the lower-level units would be most seriously affected. With regard to section 16.10.1 of the CDP (Residential Quality Standards) the development would be in contravention in that the north facing balconies would not have sunny aspects, they face block 3 balconies at 18.2 metres which fails to minimise overlooking and the proximity results in overshadowing by the mass of the proposed block.

- The height, scale, massing and orientation adversely affects the residential amenity of Block 3 residents to a severe degree amounting to significant negative impact on residential amenities.

6.3. Applicant Response

6.3.1. A submission was received from the applicant's agent on 12th July, 2021 and attached are some documents to support the applicant's response with regard to the contentions as to past failures to comply in the appeals and observer submission and a supplementary submission in response to the appeal on sunlight and daylight analysis. According to the submission:

- The current proposal is a revised proposal to address and respond to the reason for refusal for the proposal under P.A. Reg. Ref. 4461/19, (PL 307122) in which the requirements of Irish Water regarding access are addressed resulting in increase in the quantum of open space and separation distance to Merrion Village and an enhanced daylight and sunlight amenity.
- Both the planning authority and the Board, following appeals with the regard to the previous proposal and the planning authority with regard to the current proposal confirm satisfaction that no significant impact on residential amenities at adjacent properties at Merrion village in overshadowing or overbearing impact would arise and compliance with the zoning objective.
- The claims as to past failures to comply are spurious and without substance.
- The Pavilion is entirely separate from Merrion Village and under separate management and insurance and residents do not contribute to in in costs of service charges. A new public accessible gym is included in the proposed development and the associated open space will improve the aspect from Block 3. With regard to contentions as to breach a condition for the planning permission under, "P. A. Reg. Ref. 660/82 (Reg Ref 1871/81)" and enforcement officer report (copy attached) confirms that the redline boundary is not exclusive to residents of Merrion Village in that the Pavilion was opened to the public to sustain its use in 1982 as residents did not use the facility. It was determined in the order for the prior proposal that the proposed

development would not cause unacceptable impact on recreational amenities of residents of Merrion Village or Lennon's Cottages.

- Fifty per cent of the site area in the northwest corner is to be landscaped and dedicated to communal open space for residents and it insures adequate separation distance from existing development.
- Contrary to assertions in the appeals, the development is consistent with the CDP's provisions in section 16.2.2. (Infill Development) 4.5.4.1. (Approach to Taller Buildings) and 16.4 Density Standards) and with Section 28 SUDs guidelines.
- The proposal is not for a very large development as contended in the appeals suitably scaled to the immediate area and it comes below the indicative site coverage at 28% and plot ratio at 0.78 for the 'Z1' zoning objective and a density of 99 units per hectare but is in a location in which higher densities are promoted along public transport routes. The site is at a central and accessible urban location close to transport and a district centre as provided for in the Apartment Guidelines 2020.
- The height is compliant with and, well below the 24 metres' limit in section 16.7.2 of the CDP and that of the adjoining developments at Block 3 and St John's House. The majority of the scheme is four storeys or +16.235 m AOD which is well below height of neighbouring buildings at Merrion Village and St. John's House. It does not constitute a taller building.
- The minimum separation distance at 18.2 metres to Block 3 is appropriate due to the infill, urban location. The development is appropriate in scale and design and integrates into the urban context as confirmed by the planning officer. It is consistent with section 16.10.2 of the CDP is appropriate in offset and has increased separation distance from Block 3 which increases with the height due to its tiered stepped back design. It has less impact on Block 3. than the previous proposal which was deemed acceptable having regard to overlooking and overbearing impact.
- The submitted Daylight and Sunlight study assessed VSC, APSH and VSC and it was established with regard to VSC that the baseline figures for Apartment Nos 49-68 Merrion Village is low due to the recessed windows and

presence of balconies. The sensitive design and siting of the proposed development results in minimum impact on the amenities of these properties and the current proposal has a more positive result for these properties than the previous proposal under P.A. Reg. Ref. 4166/19.

- At least two hours sunlight is receivable on 21st March at 80% of the open space in the northwest corner which is a reduction by 16 % from the predevelopment state but which is compliant with BRE guidance. Given the urban context the slight to moderate shadow effect on Merrion Village is acceptable to the planning authority and in the previous proposal the development was deemed not to have significant impact in terms of overshadowing or overbearing impact on Merrion Village. It is established in the sunlight and daylight report that minimum overshadowing impacts limited to winter months would affect Block 3 at Merrion Village.
- There is reduced impact of the current proposal relative to the previous proposal on these properties. Reference is made to the accompanying supplementary submission response on sunlight and daylight impact. With regard to the contention as to the lack of a skyline study, it is stated that the use of the VSC study is appropriate in assessing both the baseline state and projected state with according BRE standards, a noticeable effect being a VSC value drop below the value of 27% and a VSC value which is less than 0.8 times the existing value. Four of five windows out of a total of sixteen on the facade of Nos 49-68 Merrion Village are shown to be compromised due to overhanging balconies a low baseline state for VSC and APSH. The area of the working plane in a room that can receive a direct view of the sky, taking into account window numbers and their sizes and quantitative and qualitative access to light is accessed.
- The open space adjoining Block 3 is unchanged in configuration but enlarged with replacement of the tennis court with landscaped space improving the outlook from south facing units in Block 3.
- The orientation and design are sensitive to surrounding development, the west elevation being appropriate in solid to void ratio with recessed dual aspect balconies which are not solely north facing minimising overlooking.

Separation distances are in excess of eighteen metres and increase over 18.2 metres with the setbacks at Block 3. Orientation is such that outlook of windows looking south is not direct to the proposed block on the eastern section for the site.

- Heights at Merrion Village extending to five and six floors exceed that of the proposed development which is a high-quality architectural solution in form, height and design and has due respect to the surrounding development's character contrary to appeal assertions.
- The property of one of the appellants, Ms Breeda Jones, her property at No 69 Merrion Village is circa 25 metres from the proposed development at its nearest point as a result the impacts on the property and its garden would be negligible. A taller adjoining building already overlooks it. Existing trees and planting along the perimeter of the appellant's garden provides screening to the south and east. It is not accepted that the landscaped open space would have a cramped impact on this property.
- The terminology in the conditions attached to the parent permission (4020/78) and amending permissions (1471/81 and 660/82) permits use of the "recreational amenity block" for recreational uses including a membership by non-residents. There is no explicit statement that the area constitutes communal open space or amenity for exclusive by residents of Merrion Village. The application site was purchased by the applicant which is a separate entity in March 1999 as shown in documents attached on appendix 6 of the appeal. A similar proposal under P. A. Reg. Ref. 2966/09 allowed for a financial contribution in lieu of open space to which the applicant is committed.
- The current proposal includes 50% provision for landscaped communal open space (1,258 square metres) and provision for a contribution in lieu of public open space provision which is acceptable to the planning authority. The existing open space south of Block 3 is to be consolidated and increased in size benefitting the occupants of Block 3. As acknowledged by the planning officer, the site has been allowed to fall into disrepair and disuse and Merrion Village residents have not utilised these facilities. It is reasonable that the

site is a brownfield underutilised site appropriate for redevelopment and this would be supported by way of the zoning objective

- There are no provisions in the CDP for retention of the existing facilities but the proposal does include provision for a 159 square metres gym for residents and by a limited public membership which would be available to Merrion Village residents which is a proportionate response that does not compromise the level of residential amenity previously available to Merrion Village residents.
- It is not accepted that assessment of the prior application was not taken into consideration in the current proposal. (P. A. Reg. Ref.4461/19 / PL 307122 refers.) An explanation (quoted in full) was provided on the Board's order for omitting two of the recommended reasons for refusal of permission in the inspector's report. It is clear that the applicant and the planning officer acknowledged the reason that was attached to the Board's order regarding dwelling mix and he issues with regard to access to the Irish Water assets, a Confirmation of Feasibility Letter having issued with Irish Water having confirmed that the current proposal is acceptable to it. Precedent for acceptability of the current proposal was set by the previous proposal. A statement in the Inspector's report on the previous proposal as to open space in the Merrion Village development being public open space is rejected, it being stated that Merrion Village is a private gated residential community.
- The entry point is appropriately designed to allow for two cars to pass at the gate.
- Irish Water as confirmed acceptance of the proposed development and flood risk is addressed in the applicant The hours of operation conditioned are reasonable.
- 27 basement parking spaces and two accessible spaces (at surface level) for the twenty-five-unit development accords with Apartment Guidelines and the forty-four cycle spaces at surface level exceeds development standards and is accepted by transportation section.
- With regard to traffic impact, the submitted TTAA, which was based on an anticipated worst-case scenario was accepted by the planning authority

shows negligible impact on traffic conditions and on a drawing TA 003 the access allows for simultaneous entry and exit by cars, with adequate sightlines. The relocation of the ESB substation will not hinder access at the entrance.

- With regard to the contentions about past failures to comply having regard to section 35 of the Act, the appeal has an accompanying Legal Opinion according to which the developer for the development at Herbert Park is a separate legal entity, there is no question as to material contravention of the parent permission preserving the land for amenity use by Merrion village it being noted that the Pavilion was used by members of the public since 1982 with an enforcement file to this end held at the planning authority being closed. In the Legal Opinion, it is noted that there is no remit for the Board in relation to section 35 of the Act, that there is no legal basis for the contentions by the third parties regard a development at Herbert Park.
- With regard to material contravention of the original parent and amending permissions the statements in the response to the appeal are supported as in that the Pavilion is not integral or fundamental to Merrion Village and that the site is therefore not sterilised from further development with there being no conflict with the historic grants of planning permission which were implemented. The current proposal is distinct from prohibition of partial implementation of two inconsistent planning permissions on two halves of a site having regard to *Dwyer Nolan Developments Ltd v Dublin County Council* [1986] IR 130.

6.4. Planning Authority Response

- 6.4.1. There is no submission from the planning authority.

6.5. Observations

- 6.5.1. A submission was received from Joan O'Beirne, on behalf of Merrion Village Management (Phase 5) CLG on 7th July, 2021 according to which the proposed development is contrary to the zoning objective on the following grounds:

- Overdevelopment and excessive height and overbearing impact,

- Impacts on residential amenities – overlooking and overshadowing and overbearing impacts. The development, having regard to the submitted Daylight and Sunlight analysis which shows VSC above the BRE threshold for seven of seventeen windows and will overshadowing open space in the north of the building and block 3 (in Merrion village)
- Lack of clarity of separation distance from boundaries,
- The open space in the northwest corner of the site (included as communal amenity space) was originally open space provision for the Merrion Village, a separate development. The applicant intends to build over existing open space.
- The proposed would cause additional traffic generation on Merrion Road affecting the amenities of the Merrion Village development.
- Properties at Merrion Village would be devalued.

7.0 Assessment

7.1. The current proposal is a revised proposal in which the applicant seeks to address and overcome the issues arising in the reasons for refusal of permission for a proposal in a prior application, and the concerns raised in the planning officer and inspector’s reports, for an apartment development incorporating a gym on the application site. The decision of the planning authority to grant permission for the current proposal is subject to three third party appeals and an observer submission. The issues central to the assessment and determination of a decision can be considered below under the following subheadings.

Past failures to comply (Section 35) of the Planning and Development Act, 2000 as amended.

Material contravention of conditions attached to prior grants of planning permission – Merrion Village.

Prior proposal for which permission was refused (P A. Reg. Ref. 4461/19 / PL 307122.)

Residential Quality

Sunlight and Daylight Impacts

Scale, height, form and design – Visual Impact.

Open space.

Parking

Vehicular and public safety and convenience

Construction stage impacts

Environmental Impact Assessment

Appropriate Assessment Screening

7.2. Past failures to comply (Section 35) of the Planning and Development Act, 2000 as amended.

7.2.1. The provisions of section 35 of the Planning and Development Act, whereby a subject to application through the courts, a planning authority may determine that an application for planning permission may be refused on grounds of an applicant/developer's past failure to comply with a grant of permission and conditions attached, lies entirely outside the remit of the Board. It is therefore recommended that in determining the appeal, the matters raised in this regard should and be disregarded and they have therefore not been taken into consideration in this assessment.

7.3. Material contravention of conditions attached to prior grants of planning permission – Merrion Village.

7.3.1. It is considered, following to review of the information and accompanying documentation and the cases made in the appeals and on behalf of the applicant, that the current proposal is not in material contravention of any of the conditions attached to the parent grant of permission for Merrion Village and subsequent grants of permission for revisions to the previously permitted development. (P. A. Reg. Refs 4020/78, 1471/81 and 660/82 refer.) It would have been necessary for there to be clear and distinct terminology within a condition that would in effect, sterilise the land from subdivision from the original application site area or consideration for development at any future date. This is clearly not the case in any of the conditions which restrict the nature use to that which was authorised but does not preclude consideration of future development proposals in applications for planning

permission. Furthermore, the site area of the application does not come within any areas designated or zoned as public open space through an adopted development plan. It is subject to the zoning objective for residential use. As such, it is considered the site can be accepted as is as a separate planning unit for the purposes of development proposals for consideration through the planning process.

7.3.2. The information provided as to the observations by the Enforcement Officer and the closure of the planning authority's enforcement file, having regard to the inclusion of membership for persons not resident in Merrion Village and as to the subsequent evidence separate ownership and independent operation of the facilities is of note in this regard. A separate consideration is that the Pavilion building is not in use and the site area has not been in use or occupied in any way by residents of Merrion Village for their own recreational and amenity benefit or the public for a considerable period. As such the current situation gives rise to negative impact on the interests of the proper planning and sustainable development of the area especially having regard to the serviced, built up inner urban location close to extensive services and facilities and to a transport corridor.

7.4. Prior proposal for which permission was refused (P A. Reg. Ref. 4461/19 / PL 307122.)

7.4.1. It is evident in the application and the planning officer's report that the issues arising in the determination of the appeal on the prior proposal were taken into consideration in the formulation of the current revised proposal. While it is appropriate for all parties to consider assessment on which the three reasons recommended for the refusal of permission in the inspector's report in support of their case, the reasons for the decision to refuse permission was confined to one reason relating to matters concerning the Irish Water infrastructure within the site area and dwelling mix. Nevertheless, the position arrived at by the planning authority is consistent with the decision to exclude the additional two recommended reasons for the refusal of permission in the Inspector's report.

7.4.2. The footprint for the current proposal which provides for an increased separation distance from the public infrastructure provides for the needs of Irish Water in connection with access for purposes of maintenance or related works for the

combined 1350 mm and 900 mm diam sewers traversing the site. There is confirmation to this effect in the report of Irish Water on the application, dated, 14th April, 2021 subject to finalisation of details and compliance, by condition with standard requirements.

- 7.4.3. With regard to dwelling mix, twenty-five instead of twenty-eight units are proposed for the apartment block in the current proposal consisting of twelve one bed units and thirteen two bed units inclusive of three duplex units. Having regard to section 2.19 and SPPR 1 of the Apartment Guidelines there are less than fifty percent in one bed units and a sufficient quality and variety in design and layout overall with three of the two bed units being duplex the development overall having a total stated floor area of 1,935 square metres, exclusive of the basement level carpark.
- 7.4.4. It is agreed with the planning officer that the issues in the reason for refusal of permission for the prior proposal have been addressed and are resolved.

7.5. Residential Quality

- 7.5.1. All the apartment units are dual or triple aspect owing to the footprint and form of the block and distribution of communal open space in a courtyard format enclosed by the building and the private open space in balconies and ground level private spaces for each of the units. The sizes and internal layouts and communal internal space such as staircases exceed the minimum requirements of the Apartment Guidelines, 2020.
- 7.5.2. The density of development is appropriate to the location and consistent with strategic guidance at national policy at 99 units per hectare, given the infill, inner urban serviced location on a transport corridor, close to the Dart (Sydney Parade) and several bus routes and close to a district centre, wide ranging services and facilities and places of major employments such as public transport.

7.6. Sunlight and Daylight Impacts

- 7.6.1. With regard to sunlight and daylight access, the sunlight and daylight study included with the application, and supplemented in the response to the appeal is considered

fully comprehensive, appropriate and consistent with BRE Guidance¹, (in methodology, and extent and range of considerations assessed, Vertical Sky Component (VSC), Average Probable Sunlight Hours (ASPH) and in standards² for internal accommodation Average Daylight Factor (ADF). Baseline and projections for the effect of the proposed development having regard to minimum standards, for 21st March, the spring equinox are provided applying the prescribed methodology. and standards.

- 7.6.2. It is noted that overall, the revised proposal, results in slightly improved outcomes for the adjoining development at Merrion Village relative to the previous proposal. The windows at ground and first floor level for VSC being moderate effect for VSC and the ground floor window for ASPH.
- 7.6.3. Owing to enclosure of the glazing, the windows being recessed and outlook from the apartments by their balconies, the south elevation of Block 3 at Merrion Village contributes to overshadowing to the interiors of some of the lower-level units notwithstanding the southerly aspect. The effect on windows other adjacent developments at imperceptible or slight is noted.
- 7.6.4. For the communal open garden space adjacent to and overlooked from Block 3, it is satisfactorily demonstrated in the sunlight and daylight study's sunlight assessment for 21st march, the spring equinox that conditions would be well in excess of minimum standards with at 80.7% of the area which more than two hours sunlight daily and no effect during summer months.
- 7.6.5. Given the zoning objective, underutilised nature of the site at present, and having regard to strategic policy for consolidation of urban centres and for and intensification of development on sites such as the subject site and location and having regard to the previous proposal relative to which the sunlight and daylight effects were greater than that of the proposed development in this regard is considered acceptable.

¹ BRE Site Layout Planning for Daylight and Sunlight - A guide to Good Practice.

² BS 8206- - 2008: Lighting for Buildings: Part 2 Code of Practice for Daylighting

7.7. Scale height and Design – Visual Impact

- 7.7.1. The height of the proposed block at from eighteen metres to twenty metres at fifth floor level and is fully compatible with that of surrounding development at Merrion Village and, St. John's Retirement home with its modern extensions which are higher than the proposed development, and the period houses on Merrion Road, the Merrion Inn and filing station to the front facing onto Merrion Road to the rear of which the building would come into view. The design and form are considered aesthetically acceptable in terms of outlook from the public realm and surrounding development as was deemed to be the case in respect of the previous proposal.
- 7.7.2. The proposed block is partly offset from Block 3 as opposed to directly opposite it. The minimum separation distance, at the nearest point is 18.2 metres as shown on the plans which increases considerably along the footprint of Block 3 towards the north with upper floor setbacks and the staggered footprint of the proposed block where it faces towards Block 3. As such, taking into account the building form which is not that of a continuous facades to a block, and the heights with the four and five storeys it is not accepted that the proposed development is overbearing on Block 3 and that it is compatible and a modern infill on the site in relation to the surrounding buildings and overall built character of the area.

7.8. Open Space.

- 7.9. With regard to open space, it has been established that the application site which is referred to as the "recreational amenity block", having regard to the original grants of planning permission for Merrion Village), does not constitute public open space or communal open space for the Merrion Village development as discussed in Section 7.3 above. The agreement of the planning authority to accept a financial contribution in lieu of public open space provision within the development is considered reasonable, the scope for such provision and use by the public being limited. Nevertheless, by reason of the low site coverage and generous provision for communal landscaped open space within the scheme in substitution for the current neglected state of the lands, will benefit occupants of the proposed and adjoining developments.

7.10. Parking

- 7.10.1. It is considered that the on-site basement and surface level carparking and cycle parking provision is sufficient for the proposed development and would not give rise to notable additional demands on existing spaces available pay and display and residential permit parking availability on the public road network. It is of note that the Merrion Village development is gated and as such it can be anticipated that the surface parking serving it, which are accessed by an alternative route would be unaffected by the proposed development.
- 7.10.2. The recommendation in the Transportation Division's report for some revisions including omission of two surface car spaces adjacent to Lennon's Cottages on the access road and to the layouts for ground floor and basement in respect of cycle parking and cycle parking adjacent to the gym (for pedestrian/cycle access only is to be provided) which would be feasible is noted. The requirements recommended in the Transportation Division's report are suitable to be addressed by compliance with conditions.

7.11. Vehicular and public safety and convenience.

- 7.11.1. The traffic and transport assessment report provided with the application satisfactorily demonstrates that the impact on traffic volumes on Merrion Road by the additional traffic generation of the apartments would be negligible. There are no new substantive issues of concern arising in the current slightly lower density proposal which would warrant a departure from the acceptance of the prior proposal in respect of impact on traffic flows and safety and the entrance arrangements.
- 7.11.2. While direct access onto main arterial route and public transport corridors is undesirable, particularly in terms of obstruction, it should be noted the proposed entrance is via an existing route with direct access onto Merrion Road which is to be upgraded and widened and which will allow satisfactory standards for simultaneous access and egress at the entrance as shown in swept path analysis for cars and in addition for larger services vehicles.
- 7.11.3. Furthermore, in addition to the shared surfacing alternative pedestrian access to the development and gym is provided for in the proposal. The scope for vehicular access via the existing entrance for the Merrion Village development as sought in

one of the appeals would necessitate third party agreement, Merrion village being under private ownership and management and redesign of the development at a minimum at surface and basement level itself. Relocation of the existing electricity substation would not be in conflict with the proposals.

- 7.11.4. As indicated in the report of the transportation and traffic section, subject to conditions to address the issues discussed above and to include some revisions to the basement entrance and at the front of Lennon's Cottages where there is a conflict with an entrance.

7.12. Construction stage effects.

- 7.12.1. There is no dispute that residential amenities of adjoining properties undoubtedly would be affected during the period of the demolition and construction stages. However, it is considered that there are no special circumstances that would justify reconsideration of the restrictions for hours of construction as provided for in the standard condition attached to the planning authority decision. It reasonable for a comprehensive demolition and construction management plan to include construction traffic management planning, mitigation measures of all potential environmental impacts and adherence to relevant codes and standards of practice to be prepared following appointment of a contractor, if permission is granted, and agreed with the planning authority by way of compliance with a condition.

7.13. Environmental Impact Assessment Screening.

- 7.13.1. Having regard to the nature of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.14. Appropriate Assessment.

- 7.14.1. The application is accompanied by an appropriate assessment screening report which has been consulted for the purposes of the screening of the project. The

project is not within or directly adjacent to any European sites, the South Dublin Bay and River Tolka Estuary SPA and the Dublin Bay SAC being circa 300 metres to the east with the River Dodder circa 1.6 metres to the west.

- 7.14.2. There are no direct source pathway receptor linkages between the European site and the application site. The development incorporates SUDS drainage to include sedum green roofs permeable paving and grassed landscaping. Wastewater and surface water from the site, which is fully serviced and located within a suburban area is to be collected in a basement and connected to an external surface network in the site and transferred by gravity to an attenuation system in communal open space in the west side of the site and onwards from its outfall at a flow rate of 2l/ to a private networks. Foul drainage is to be collected and transferred along the public sewer network to the Ringsend Treatment Plant an ultimate discharge to Dublin Bay. The treatment plan is to be upgraded providing for a twenty five percent increase in capacity and with improved methods of treatment.
- 7.14.3. The proposed development would not result in loading on the system that would significantly affect water quality within the European site areas or to species and habitats which are conservation objective and qualifying interests therein.
- 7.14.4. Having regard to the nature and scale of the project and its location on a serviced infill site land within the existing built-up urban area and, to the existing development in the area, no appropriate assessment issues arise, the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. In view of the foregoing, it is recommended that the planning authority decision to grant permission be upheld based on the reasons and considerations and subject to the conditions overleaf.

9.0 Reasons and Considerations

Having regard to:

- to the planning history for the area in which the site is located,
- to the urban serviced infill location of the underutilised site within Dublin City close to services and facilities and to public transport corridors the policies,
- to the policies and objectives within the National Planning Framework which provide for consolidation of the city with compact urban growth and higher densities,
- to the policies and zoning objective and standards in the Dublin City Development Plan, 2016-2021,
- to Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government in 2020,
- to the Urban Development and Building Heights Guidelines for Planning Authorities issued by the Department of Housing, Planning and Local Government in December 2018 and,
- to the layout, scale, height design and density of the proposed development

It is considered that subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential density, would not seriously injure the residential or visual amenities and would be compatible with the existing built character of the area, would not depreciate the value of property in the vicinity, would be acceptable in terms of traffic and pedestrian safety and convenience and, would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions.

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars received by An Bord Pleanála on 12th July, 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. All service cables associated with the proposed development shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development and any existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

3. The developer shall ascertain and comply with the requirements of Irish Water in respect of required protective measures for the public infrastructure within the site and arrangements for access during construction and for future maintenance and repair, to include, prior to and post construction CCTV survey for the location of all infrastructure with for excavation without impairment to such infrastructure or adjoining buildings and for all foundations to three metres below the invert level of the sewers.

Reason: In the interest of public health and safety, clarity and the proper planning and sustainable development of the area.

4. The developer shall enter into water and wastewater connection agreements with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

5. The construction of the development shall be managed in accordance with a Final Construction and Environmental Management Plan to include a construction traffic management plan, which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. This plan shall provide inter alia: details and location of proposed construction compounds, details of intended construction practice for the development, including noise management measures, details of arrangements for routes for construction traffic, parking during the construction phase, and off-site disposal of construction/demolition waste and/or by-products. The traffic management plan for the demolition and construction phases shall include measures to improve vehicular access to and egress from the site including the widening of existing entrance and relocation of pedestrian gate, removal of on-street parking and relocation of the electricity substation.

Reason: In the interests of orderly development, safety and amenity.

6. Site development and building works shall be carried out only between 0700 to 1900 hours Mondays to Fridays and between 0800 to 1400 on Saturdays, and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

7. The site development and construction works shall be carried out in such a manner as to ensure that the adjoining roads are kept clear of debris, soil and other material, and cleaning works shall be carried on the adjoining public roads by the developer and at the developer's expense on a daily basis.

Reason: To protect the residential amenities of property in the vicinity.

8. Prior to commencement of the development, the applicant shall submit and agree in writing a revised site layout plan with the planning authority with full details of the following requirements:

- Location of the 'Stop' road markings and all associated equipment (Loops, traffic signal heads etc.) to prevent obstruction of the existing pedestrian access to Lennon's Cottages.
- Omission of two parking spaces located north of Lennon's Cottages and measures for manoeuvrability for the permit surface level spaces.
- Six additional visitor cycle parking spaces shall be provided adjacent to the gym entrance to facilitate staff and public access.
- Cycle parking shall be secured with a separate access door/gate conveniently located, sheltered and well lit, and the design shall allow both wheel and frame to be locked. A minimum separation distance of one metre shall be provided for Sheffield type cycle stands to facilitate manoeuvrability.
- Six additional cycle stands at ground level and sufficient spacing between the stands at basement level

Car and cycle parking spaces shall not be sold, rented or otherwise sub-let or leased to other parties.

Reason: In the interest of clarity and the safety and convenience of all road users.

9. Details of the materials, colours and textures of all the external finishes to the proposed dwellings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

10 No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

11. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of the development.

Reason: In the interests of amenity and public safety.

12. A plan containing details for the management of waste including recyclable materials within the development, including the provision of facilities for the storage, separation and collection of the waste and, and for the ongoing operation of these facilities for each apartment unit shall be submitted to, and agreed in writing with, the planning authority not later than six months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan which shall provide for screened bin stores.

Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

13. A minimum of ten per cent of all communal car parking spaces shall be provided with functioning electric vehicle charging stations/points, and ducting shall be provided for all remaining car parking spaces facilitating the installation of electric vehicle charging points/stations Full details shall be submitted and agreed in writing with the planning authority prior to the occupation of the development.

Reason: To provide for and/or future proof the development such as would facilitate the use of electric vehicles.

14. Proposals for a name and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The proposed name shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No signage relating to the name of the development shall be erected with the prior written agreement of the planning authority.

Reason: In the interest of urban legibility and amenity.

15. The site shall be landscaped in accordance with a landscape scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The developer shall retain the services of a suitably qualified Landscape Architect throughout the life of the site development works. The approved landscaping scheme shall be implemented fully in the first planting season following completion of the development or each phase of the development and any plant materials that die or are removed within three years of planting shall be replaced in the first planting season thereafter.

Reason: In the interest of residential and visual amenity.

16. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

17. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

18. The developer shall pay to the planning authority a financial contribution in the amount of €100,000.00, (€4,000 per unit) in respect of public open space benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the adopted Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

19. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the

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

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

Jane Dennehy

Senior Planning Inspector

12th October, 2021.