



An
Bord
Pleanála

Inspector's Report ABP310677-21

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| Development | Demolish Maple Tree House and construct a Nursing Home |
| Location | Harbour Road/Ulverton Road, Dalkey, County Dublin. |
| Planning Authority | Dun Laoghaire Rathdown County Council |
| Planning Authority Reg. Ref. | D21A/ 0304 |
| Applicant(s) | Bartra Property Ltd. |
| Type of Application | Permission |
| Planning Authority Decision | Refuse. |
| Type of Appeal | First Party v Refusal |
| Appellant(s) | Bartra Property Ltd. |
| Observer(s) | Appendix A. |
| Date of Site Inspection | September 2022 |
| Inspector | Hugh Mannion |

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1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 0.6 ha and is located in Dalkey, Co. Dublin. The site is irregularly shaped and lies between Harbour Road to the east and Ulverton Road to the west. The main vehicular access is from Harbour Road with a second access (proposed to be pedestrian/cycle only which once served the now demolished 'Yonder') from Ulverton Road. There is an existing house (Maple Tree House) on the site proposed for demolition. There are steep changes of site levels within the site, very generally, the site falls west to east – from the rear of the houses on Ulverton Road east towards the sea. There are significant trees along parts of the site boundaries detailed in the submitted landscape assessment/plan.

2.0 Proposed Development

- 2.1. The proposed development comprises redevelopment of a site of about 0.6ha previously occupied by "Yonder" (previously demolished) and "Maple Tree House" (proposed for demolition) between Ulverton Road and Harbour Road, Dalkey, County Dublin.
- 2.2. A 104-bedroom nursing home is proposed, part 2 storey to part 5 storeys with a gross floor area of 5,618.4m². Disable car access, pedestrian, bike and service vehicle access will be from Ulverton Road and while the main car access is from Harbour Road. Within the site is car and bicycle parking, green roofs, solar panels, signage, boundary treatment, hard and soft landscaping, plant, lighting, changes in levels and associated works all at Ulverton Road and Harbour Road, Dalkey, County Dublin.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission for 2 reasons.

1. The massing, scale, design and proximity to the site boundaries would be overbearing and overlook adjoining property. The proposed development would detract from the visual and residential amenity of the area, would set an

undesirable precedent for further development and be contrary to the Dun Laoghaire Rathdown County Development Plan.

2. The proposed development would conflict with policy UD1 of the County Development Plan Urban Design Principles and section 8.2.3.4 (xiii) Nursing Homes for the elderly/Assisted Living Accommodation. The intensification of use on a substandard road network would endanger public safety by reason of traffic hazard.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

- 3.3. The planners report recommended refusal as set out in the manager's order.

3.3.1. **Other Technical Reports**

- 3.3.2. The Environment Section reported that, following an AA screening exercise it could be concluded that the proposed development is not likely to have a significant effect either individually or in combination with other plans or projects in any European site in view of the site's conservation objectives.

A condition relating to construction phase noise should be applied.

A Construction Phase Management Plan should be submitted with greater detail in relation to noise emissions from rock removal/micro-blasting.

Transport Planning states that the proposed intensification of traffic use on Harbour Road will give rise to traffic hazard. A number of access issues (listed 4.1 to 4.6 in the report on file) raised in a previous withdrawn application have not been addressed.

The swept path analysis is inadequate. Pedestrian permeability through the development is very poor.

Permission should be refused.

The **Environmental Health Officer** recommended that permission be refused as the predicted construction phase noise impacts exceeded the relevant standards and that Harbour Road is not suitable for the proposed traffic loading.

The **Municipal Services Department** recommended against the proposed LED bollard lighting on health and safety grounds and recommended adoption of an alternative lighting scheme.

Drainage Planning Section queried the surface water discharge rate applied by the applicant and therefore the required attenuation within the site, pointed out a design flaw in manhole 54, required a rationale for the design of the surface water storage tank, required the recalculation of the contribution by green roofs to surface water management and there is inconsistencies in some of the application drawings.

The **DAU/Development Applications Unit/** Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media noted that there were several recorded monuments in the area and recommended a condition in relation to archaeological protection. The badger conservation plan submitted is deficient. It is likely that the badger set on site will be disturbed/damaged.

4.0 Planning History

- 4.1. Reg Ref **D21A/0026** Permission **refused** for development comprising the demolition of the existing 2 storey dwelling 'Maple Tree House' (c.289 sq m) and the removal of the foundation slab of the previously demolished 'Yonder' and the construction of a 104 No. bedroom nursing home, ranging in height from part-two to part-five storey (total gross floor area measures 5,618.40 sq m). The development will also include the provision of a vehicular entrance off Ulverton Road and the spur off Harbour Road; car and bicycle parking; green roofs; PV panels; ancillary signage; boundary treatments; hard and soft landscaping; plant; lighting; changes in level; and all other associated site works above and below ground. **ABP309766 (D21A.0026) –** application withdrawn.
- 4.2. ABP303279-18 (18A/0929) Permission refused at application stage and **granted** on appeal for demolition of Maple Tree House and erection of 26 apartments/duplex units (7 houses and 19 apartments) located between Harbour Road and Ulverton Road, Dalkey, County Dublin.
- 4.3. ABP310648 – 21 Adjoining site domestic scale works at Road Carraig, Harbour Road, Dalkey, County Dublin.

5.0 Policy and Context

- 5.1. The **National Planning Framework** NPF sets out a number of national policy objectives (NPO) relevant to this case.
- 5.2. **NPO 3b** Deliver at least half (50%) of all new homes that are targeted in the five Cities and suburbs of Dublin, Cork, Limerick, Galway and Waterford, within their existing built-up footprints.
- 5.3. **NPO 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.
- 5.4. **NPO 30** Local planning, housing, transport/ accessibility and leisure policies will be developed with a focus on meeting the needs and opportunities of an ageing population along with the inclusion of specific projections, supported by clear proposals in respect of ageing communities as part of the core strategy of city and county development plans.
- 5.5. **The Eastern and Midland Regional Assembly Regional Economic and Spatial Strategy 2019-2031** is the relevant RESS for Dun Laoghaire Rathdown and sets out a number of regional policy objectives (RPOs) relevant to this application.
- 5.6. **RPO 4.3: Consolidation and Re-Intensification** - 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.
- 5.7. **RPO 9.23:** Facilitate the development of primary health care centres, hospitals, clinics, and facilities to cater for the specific needs of an ageing population in appropriate urban areas in accordance with RSES settlement strategy and core strategies of development plans.

5.8. Development Plan

5.9. The application site is zoned A 'To provide residential development and improve residential amenity while protecting the existing residential amenities' in the Dun Laoghaire Rathdown County Development Plan 2022 to 2028.

5.10. Section 12.3.8.2 Nursing Homes for the Elderly/Assisted Living Accommodation

5.11. When dealing with planning applications for such developments a number of criteria will be taken into account including:

- Such facilities will be resisted in remote locations at a remove from urban areas. They should be located into established neighbourhoods / residential areas well served by community infrastructure, and amenities. Future residents should expect reasonable access to local services such as shops and community facilities.
- The potential impact on residential amenities of adjoining properties.
- Nursing Homes/Assisted Living Accommodation will provide at least 20% open space of the overall site area (Refer also to Section 12.8)
- Adequate provision of parking facilities (Refer also to Section 12.4.5).
- The design, proposed pallet of materials, and fenestration.
- The size and scale of the proposal must be appropriate to the area.
- Proximity of high-quality public transport links and provision of good footpath links.

Individual dwelling units within established residential areas may also be considered under the provisions of infill/garden site development (Refer also to Section 12.3.7.7) particularly, where there is insufficient land availability for larger housing/ nursing home development, and there is a need to provide alternative accommodation for older people wanting to downsize but remain within their community.

5.12. Natural Heritage Designations

5.13. Not relevant.

5.14. EIA Screening

- 5.14.1. An Environmental Impact Assessment Screening report was not submitted with the application.
- 5.14.2. Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:
- Construction of more than 500 dwelling units,
 - Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. (In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)
- 5.14.3. This application refers to a 104-bedroom nursing home with ancillary accommodation on 0.6ha. The quantum of development is significantly below the threshold of 500 dwelling units and the site area is below the applicable threshold of 10 ha.
- 5.14.4. The site is a brown field site with an established residential within a zoned, serviced, urban location will not give rise to likely significant environmental impacts such as to trigger the requirement for submission of an EIAR.

6.0 The Appeal

6.1. Grounds of Appeal

- The previous house (Yonder) on site has been demolished. The proposed nursing home comprising 104 beds and ancillary accommodation complies with the residential zoning objective for the site set out in the County Development Plan.
- The building has been designed to respect its neighbours and the proposed development complies with national policy to support the redevelopment of brownfield sites.

- The current proposal largely reflects that permitted under ABP303279-18 with the exception that development in the southern end has been omitted.
- Elsewhere the changes to distances off the boundary are minimal. The set back off the eastern boundary is between 8.9m and 29.9m. The differences in levels within the site have been used to reduce impacts on adjoining properties. The maximum height at 16.3m is not excessive on an infill site 500m from Dalkey Dart station.
- On the northern boundary the building line matches or is set further back from the permitted scheme. This elevation incorporates spy windows that direct views east towards Harbour Road which is the least sensitive direction from the site and incorporates screen planting. The two adjoining houses (the Wave and Shelsbury) are already overlooked from adjoining properties.
- There are small differences in the Ulverton Road (western) boundary over that permitted under ABP303279-18 and the separation distances are in the region of 25m to 30m. The site level differences on this boundary allow for stepped screen planting which further reduces visual impact.
- In recent housing cases the Board accepted 18m separation distances as sufficient.
- Permitted houses have been omitted from the southern part of the site and replaced with a nursing home residents' garden.
- The NPF supports the provision of services, including residential accommodation for older people.
- The Building Height Guidelines support increased building heights in appropriate urban locations.
- The site is within the coastal fringe described in appendix 9 of the County Development Plan where proposed heights above prevailing figures can be accommodated where a rationale is provided. The application includes such a rationale.
- The planning authority recognised that more than adequate open space is provided in the proposed development.

- The proposed car parking accords with Development Plan standards.
- The proposed development will give rise to less traffic than that permitted under ABP303279-18. Provision has been made for refuse, fire and ambulances within the site. The existing access over Harbour Road will continue as a shared access (cars/bike/pedestrians). Adequate sightlines are provided on Ulverton Road. Traffic management measures have been shown for Harbour Road and Ulverton Road.
- The applicant proposes to protect badgers on the site in accordance with a previous condition.

6.2. Planning Authority Response

- The appeal raises no new matter which requires a change of decision by the planning authority.

6.3. Observations

6.4. The observations made to the Board may be summarised as follows.

- The proposed development contravenes national planning guidance on Building Heights and the County Development Plan.
- The proposed nursing home is similar to another operated by the applicant in Santry which would be unsuitable for Bullock Harbour.
- The proposed development is too close to the site boundaries and will overshadow and overlook adjoining property including from windows to a shared area and a terrace/roof garden. The spy windows on the do not prevent overlooking as claimed in the appeal.
- The proposed development will give rise to traffic hazard. The lane off Harbour Road is inadequate to service the proposed development, including the construction phase traffic.

- There is already a nursing home in the area and additional one will tilt the balance away from neighbourhood/community. The proposed development is unsuitable in an area generally occupied by two storey houses.
- Plant and machinery noise associated with the development, light pollution and odour will impact on the amenity of adjoining property.
- The application site is the amalgamation of two previous houses and accommodates badgers, fox, bat and sparrowhawk. The badger conservation plan submitted with the application is inadequate.
- Views towards the sea will be interrupted.
- The sunlight/daylight report is inaccurate and inadequate.
- Inadequate car parking is provided on site.
- The proposed development will depreciate the value of property in the vicinity.
- There will be significant rock blasting associated with the development resulting in unreasonable noise impacts.
- The material submitted to the Board misrepresents the planning advice given to the Board under ABP303279-18.

6.5. Further Responses

None

7.0 Assessment

7.1. This assessment will address the following.

1. Refusal Reason 1 Overlooking and Overbearing Aspect.
2. Refusal Reason 2 Urban Design and Nursing Homes Policy.
3. Overshadowing/sunlight and daylight.
4. Views
5. Parking standards
6. Traffic safety

- 7. Noise
- 8. Depreciation of Property Values
- 9. Ecological Considerations.
- 10. AA Screening.

7.2. Refusal Reason 1

- 7.3. The site is zoned A 'to protect and/or improve residential amenity' in the Dun Laoghaire Rathdown County Development Plan 2022-2028. Uses permitted in principle in this zoning include assisted living accommodation and residential institutions¹ both of which categories could include nursing homes. I conclude that the proposed development complies with the zoning objective for the area.
- 7.4. The existing site contours are illustrated on Existing Site Survey drawing 20009AP010 Rev submitted with the application. This illustrates the significant differences in site levels within the site. Generally, there is a drop of about 4.5m west to east across the southern and narrower end of the site. There is a difference of about 8.5m west to east in the northern and wider end of the application site. The southern end of the site has a permission for housing development but in this application has been left free of development to allow for an open space/amenity area. The proposed nursing home starts generally in the track of the existing house on site (Maple Tree House) and continues north within the site to form an L shaped building. There are 5 floor levels. Drawing 20009 AP 06Rev usefully illustrates the building footprint permitted under ABP303279-18 as against that currently proposed.
- 7.5. Level 0 (see drawing 20009 AP 020 Rev) comprises a service area (kitchen, workshops, oratory etc), is partially built into the existing ground levels and occupies about 50% of the total footprint of the complete L shaped building. Level 1 comprises a mix of residents' bedrooms and service areas and about 60% of the total footprint of the proposed development. Level 2 comprises bedrooms and dining areas and is the complete L footprint of the proposed development. Level 3 again comprises bedrooms and dining areas and is the complete footprint of the L shaped building.

¹ Section 8.3.12 of the CDP gives definitions of use classes for the purposes of zoning designations.

Level 4 (bedrooms and stores) occupies only the long axis of the L shared footprint with an additional 'pop up' element (providing a stair core and family room) in the extreme north-western corner of the building. The outcome of this relative variety on a site with very different site levels is that the building will have different heights and aspects depending on the viewers' vantage point.

- 7.6. There are potential impacts on four houses on Ulverton Road, these are (south to north) Kilderry, Newport (number 58), the Praiano, Scopello and Faro. Level 1 (see drawing 20009 AP 021 Rev), level 2 (see drawing 20009 AP 022 Rev) and level 3 (see drawing 20009 AP 023 Rev) of the proposed building will be a minimum of 6.8m off the boundary with Kilderry, and 8.4m at level 4 because this level is set back from the edge behind a green roof. Levels 1 and 2 are below the site level of Kilderry, level 3 is approximately at ground level and level 4 has a windowless bedroom wall and windowless corridor wall as it faces the rear boundary of Kilderry. On this basis I conclude that the proposed development will not seriously impact on the amenity or depreciate the value of Kilderry by reason of overlooking or overbearing aspect. In relation to the impacts on Newport the separation distances off the rear boundary with that property are approximately 4.5m and 5m at level 1 increasing to approximately 7.5 at level 4. There are bedroom windows at level 3, but this is about ground level with Newport and the level 4 façade is windowless and set back behind a green roof. I conclude on this basis that the proposed development will not seriously impact on the amenity or depreciate the value of Newport by reason of overlooking or overbearing aspect.
- 7.7. In reference to Praiano and Scopello the proposed building is 6.1m to 6.4m off these rear boundaries. Levels 1 and 2 are below the ground levels in Praiano and Scopello. Level 3 is at ground level and level 4 will appear at first floor when viewed from these properties and at that level the uses are service uses and there are no windows to give rise to a perception of overlooking. The short axis of the L shaped building wraps around the corner with Scopello's rear garden. At this point levels 0 and 1 are below ground level as they face south towards the boundary with Scopello's rear garden. Levels 2 and 3 are set back further at about 12m with high level windows onto a corridor. There is no 4th level at this point. On this basis I conclude that the proposed development will not seriously impact on the amenity or

depreciate the value of Praiano or Scopello by reason of overlooking or overbearing aspect.

- 7.8. The last of these houses on Ulverton Road – Faro – is close to the shared boundary with the application site. There is no level 0 or level 1 at this point. At levels 2 and 3 there is a wall with high level windows with a minimum separation distance of 3.6m. At the extreme eastern of the building there is a 4th level with a family visiting room and a stairwell facing the boundary with Faro. On this basis I conclude that the proposed development will not seriously impact on the amenity or depreciate the value of Praiano or Scopello by reason of overlooking or overbearing aspect.
- 7.9. Along the northern site boundary there are two houses: Shelsbury/64 Ulverton Road and The Wave which accesses Harbour Road. Levels 0 and 1 of the proposed development do not exist along the boundary with Shelsbury/64 Ulverton Road. There are three bedrooms at levels 2 and 3 with spy windows angled towards the east which will not afford views of the rear garden of Shelsbury/64 Ulverton Road. The fourth-floor family visiting room at the end of this wing of the building has a blank façade facing Shelsbury/64 Ulverton Road and will not allow overlooking of that property. On this basis I conclude that the proposed development will not seriously impact on the amenity or depreciate the value of Shelsbury/64 Ulverton Road by reason of overlooking or overbearing aspect.
- 7.10. In relation to The Wave the proposed levels 0 and 1 are either wholly or partially at basement level with no capacity to generate views into that site or appear overly dominant in views from that site. Levels 2 and 3 have spy windows angled towards the east and set back a minimum of 5.5 metres off the boundary where screening will augmented by additional landscaping. I conclude that these factors combine to ensure that the proposed development will not seriously injure the visual or residential amenity of The Wave by reason of overlooking or overbearing aspect.
- 7.11. The proposed development is set back from the eastern site boundary with Montpellier by between 10m and 12m at floors 2,3 and 4. The facades in this area are generally windowless and where there are small windows, they serve a stair core where the potential for overlooking is minimal. Having regard to these factors, the existing and proposed screening vegetation and the setback between the shared site boundary and Montpellier, I conclude, that the proposed development will not

seriously injure the amenity of that property by reason of overlooking or overbearing aspect. Finally, there is the Anchorage on the far south-eastern boundary. The proposed development has left the area along this boundary undeveloped as open space and the proposed development will not impact on that property.

7.12. I conclude based on the foregoing that the planning authority's refusal reason number 1 should be set aside.

7.13. Refusal Reason 2 - Urban Design and Nursing Home Policy.

7.14. The Urban Design Policy referenced the second refusal reason is "it is Council policy to ensure that all development is of high-quality design that assists in promoting a 'sense of place'. The Council will promote the guidance principles set out in the 'Urban Design Manual – A Best Practice Guide' (2009), and in the 'Design Manual for Urban Roads and Streets' (2013) and will seek to ensure that development proposals are cognisant of the need for proper consideration of "context, connectivity, inclusivity, variety, efficiency, distinctiveness, layout, public realm, adaptability, privacy and amenity, parking, wayfinding and detailed design". The new County Development Plan references similar concerns in particular in policy 4.2.1.2 where the planning authority commits itself to "plan for communities in accordance with the aims, objectives and principles of 'Sustainable Residential Development in Urban Areas' and the accompanying 'Urban Design Manual – A Best Practice Guide' and any amendment thereof" and "ensure that an appropriate level of supporting neighbourhood infrastructure is provided or that lands are reserved for Sustainable Neighbourhood Infrastructure (SNI), in conjunction with, and as an integral component of, residential development in new residential communities as identified in the Core Strategy".

7.15. The site is relatively secluded within an urban setting, it benefits from some mature trees and has significant variation in site levels within the site and between the site and adjoining property. Additionally, it has an established residential use which, it may be argued, represents an inappropriately low density use in the context of its urban setting and the availability public services and community facilities including public water and sewerage facilities and good quality public transport links. Sustainable Residential Development in Urban Areas advise that in such

circumstances more intensive use of zoned and serviced lands is an appropriate planning response when opportunities for redevelopment arise.

- 7.16. The Design Manual sets out 12 criteria² that new urban development should have regard to. The context for this application is an urban area where assisted living complies with the development plan zoning objective and the proposed development will meet a locally generated need for assisted living accommodation. The area is well connected in terms of good quality public transport that will facilitate staff, residents and visitors. There is proposed pedestrian, and cycle access from Ulverton Road and another entrance off Harbour Road. The proposed development will contribute to the inclusivity of the neighbourhood by making available an enhanced variety of housing options. The proposed development represents a more efficient use of zoned and serviced land. The proposed development will not (as discussed in other parts of this planning assessment) seriously injure the privacy or residential amenity of the adjoining houses.
- 7.17. Having regard to these considerations and other matters dealt with elsewhere in this assessment I recommend that the planning authority's second refusal reason should be set aside.
- 7.18. **Overshadowing/sunlight and daylight.**
- 7.19. The observations submitted to the Board make the point that the proposed development will overshadow adjoining property and that the sunlight/daylight report is inadequate.
- 7.20. The Development Plan (section 12.3.2.2) states that the planning authority will have regard to the 'Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities' (2020), and 'Quality Housing for Sustainable Communities: Best Practice Guidelines for Delivering Homes Sustaining Communities' (2007) in relation to the quality of residential development and that development will be guided by the principles of Site Layout Planning for Daylight and Sunlight, A guide to good practice (Building Research Establishment Report, 2011). A daylight analysis will be required for all proposed developments of 50+ units, or as

² Context, connections, inclusivity, variety, efficiency, layout, public realm, parking, detailed design distinctiveness, adaptability, and amenity.

otherwise required by the Planning Authority and the impact of any development on existing habitable rooms should also be considered.

- 7.21. The application is accompanied by a sunlight and daylight assessment report which has had regard to the BRE standards³. The report examines the impacts on 42 windows in Faro, Scopello, Praiano, Shelsbury and The Wave. The report concludes that of 42 windows examined that the impact on the vertical sky component (VSC - a measure of the amount of sky visible from the centre of a window) the effect will be “imperceptible” in 41 of these instances and “not significant” in a single window in The Wave. The report compared the proposed development against the permitted development on site (under reference ABP303279-18) and concludes that the currently proposed development will have a slightly lower overall impact on adjoining property.
- 7.22. The report also examines annual probable sunlight hours (APSH) with reference to the two properties due north of the application site (The Wave and Shelsbury) and concludes that the impact is imperceptible.
- 7.23. The development plan states that an assessment of the impact on daylight and sunlight will be carried out having regard to the document ‘Site Layout Planning for Daylight and Sunlight, A guide to good practice (Building Research Establishment Report, 2011)’. In the lifetime of the application this document was updated in a 2022 edition of the good practice guide. There are no material differences between these documents in so far as this application is concerned. Given the orientation of the site and nearby houses relative to the transit of the sun I consider that the sunlight and daylight report reasonably confined its assessment to the adjoining houses on the western and northern site boundaries. I concur that these are the only properties with potential to be impacted by the proposed development.
- 7.24. Having regard to the existing and proposed site levels, the proposed building heights, orientation of the proposed development and the separation distances off these boundaries I am satisfied that the predicted impacts in terms of VSC and APSH are accurate. The test in this instance must be that of serious injury to the residential amenity of the adjoining properties arising from the proposed

³ There is a 2022 updated edition of this document which has no material changes that impact on this case.

development. Having regard to the factors set out above and the material submitted with the application I conclude that the proposed development will not seriously injure the amenity of the adjoining properties by reason of overshadowing or loss of day light.

7.25. Views

7.26. The observations made to the Board state that views towards the sea from houses on Ulverton Road will be interrupted. The planning application includes a visual impact assessment and set of photomontages. Ten separate views are assessed and accompanied by photomontages. Of note is view 7 which is north along Ulverton Road where a number of trees will be removed to accommodate the development and the revised pedestrian access. The applicant assesses the impact and moderate. View number 8 is also from Ulverton Road but looking northeast at the revised Ulverton Road entrance and the visual impact is assessed in this case as significant. Photo 9 looks south along Ulverton Road and the applicant's assessment is that this visual impact is moderate.

7.27. There are no protected views designated in the County Development Plan in the vicinity of the site.

7.28. I carried out a site inspection including within the site, along Ulverton Road and Harbour Road. I am satisfied that the main visual impacts have been assessed in the application. Having regard to the materials submitted with the application and the observable conditions in the vicinity of the site I conclude that the proposed development will not seriously injure the visual amenity of property in the area by reason of unacceptable visual intrusion or impacts.

7.29. Traffic safety

7.30. The observers make the point that the proposed development will give rise to traffic hazard on Harbour Rod and that there is inadequate proposed on-site parking.

7.31. The planning authority's Transport Planning Section commented that Harbour Road is substandard in construction and layout and sight lines available are substandard. The intensification of traffic arising from the proposed development would give rise to traffic hazard. The applicant responded in the appeal to the planning authority's transport department's concerns.

7.32. The access onto Ulverton Road will provide pedestrian access along access for refuse vehicles and fire tenders (the entrance detailed layout is illustrated on drawings 20009AP 401 Rev submitted with the appeal). Having regard to the 50kph speed limit applying to Ulverton Road at this point, to the multiplicity of other entrances along the road and to the relatively modest additional traffic movements attributable to the proposed development I conclude that the proposed development will not give rise to traffic hazard on Ulverton Road. The planning authority Transport Department regarded the pedestrian access through the site from Ulverton Road to Harbour Road to be unsatisfactory, including because of the inclusion of staircases. I would note in this context that there is no existing access between these two roads through the site and that given the significant variation in site levels within the site the inclusion of staircases within the pedestrian route is justified. In relation to the sightlines at the access onto Ulverton Road I have carried out a site inspection and had regard to the revised drawing 20009 AP 401 Rev- submitted with the appeal. Having regard to the existing layout at the access to Ulverton Road, the speed limit which applies there, the pattern of other access points on the route I conclude that the proposed development provides 49m unobstructed sightlines for a setback of 2.4m in accordance with the Design Manual for Roads and Streets and that no additional traffic hazard will arise at this entrance related to the proposed development.

7.33. In relation to Harbour Road the applicant makes the points that there is a permitted access from that road to a permitted housing development under reference ABP303279-18, that the road is narrow and thereby limits speeds and encourages a shared modal arrangement allowing for cars, pedestrians, and bicycles. The applicants response to the appeal also includes an auto track drawing demonstrating the ability of Harbour Road to provide for the proposed additional traffic levels. The planning authority is concerned that the swept path analysis of Harbour Road submitted with the application is inadequate. The applicant makes the point that the application drawings demonstrate that two cars can pass on Harbour Road without mounting the footpath and, having observed conditions on Harbour Road, I agree with this point. Finally, the planning authority is concerned that there is not a continuous footpath along Harbour Road and that pedestrian access is prioritised at Ulverton Road. I note that there is an almost continuous footpath from the site

entrance along Harbour Road. Access is prioritised from Ulverton Road because, *inter alia*, there is a bus service on that road. Additionally, service vehicles/refuse collection will occur at this entrance, there is a disabled parking space here also. Cars accessing the 17 on-site parking spaces within the site over Harbour Road will not materially alter the traffic patterns in the area. I consider that the split of access between Ulverton Road and Harbour Road is reasonable and I conclude that the proposed development will not endanger public safety by reason of traffic hazard.

7.34. Parking Standards.

7.35. The observers make the point that parking provision is inadequate.

7.36. The most recent Sustainable Urban Housing: Design standards for New Apartments (2022) make the point that the quantum of car parking required for new developments will vary, having regard to the types of location in cities and towns that may be suitable for apartment development, broadly based on proximity and accessibility criteria. Centrally located developments with access to good public transport links will give rise to a relatively lower demand for parking spaces and “the default policy is for car parking provision to be minimised, substantially reduced or wholly eliminated in certain circumstances”. While the current application is not for conventional apartments the policy preference for lower parking provision is applicable. Paragraph 12.4.5.2 of the County Development Plan sets out a number of criteria to be considered in relation to the application of the standards including proximity to public transport services, the particular nature, scale and characteristics of the proposed development, the impact on traffic safety and the amenities of the area and capacity of the surrounding road network.

7.37. The application provides for 17 parking spaces accessed over Harbour Road. Table 12.5 in the Plan sets a maximum provision for residential institution of 1 space per 2 beds in residential institutions. The proposed development provides for 104 bedrooms which would give rise to a maximum demand for 51 spaces. The maximum car parking provision appears to have increased from the former to the new County Development Plan. Nevertheless, having regard to the urban location of the proposed nursing home, the likelihood that at least some of the future residents will originate from the immediate area of the development and the accessibility of the development by Dart and public bus services to a much wider catchment and the

desirability of limiting traffic movements in the area in the interest of the residential amenity of a settled community I conclude that proposed on-site car parking is an appropriate level and will not give rise to traffic hazard or congestion on the nearby road network.

7.38. Noise

7.39. The observers make the point that the proposed development will give rise to unreasonable noise impacts for adjoining residents.

7.40. The application included a Noise Impact Assessment (NIA) which assesses the operational and construction phases of the proposed development. In the operational phase of the development car noise and building plant are identified as the main noise sources. The NIA concludes that the site is likely to be acceptable from noise perspective. Having regard to the nature of the proposed development as a residential use in an area zoned for residential development where the predominant land use is residential, to the material submitted with the application and the reports of the planning authority I conclude the operational phase of the proposed development will not give rise to any unreasonable noise impacts for adjoining residential uses.

7.41. The NIA predicts that there would be potential significant noise impacts for several houses (see Figure 4 for the mapped noise sensitive receptors and table 10 for the predicted noise levels) during the construction phase. The assessment provides for several mitigation measures including liaison with neighbours, noise monitoring, limiting working hours, selection of quiet plant/machinery, control of noise sources and making use of noise screens around working areas. The report (see section 7/page 23) concludes that the implementation of the mitigation measures will reduce noise impacts to an acceptable level. The planning authority's Environment Section reviewed the NIA and reported that the approach adopted in the Noise Assessment Report had not adequately mitigated noise impact in the Dalkey area in other developments and recommended an additional measure requiring specialist rock removal measures to be adopted.

7.42. I have considered the submissions made by the observers, material submitted by the applicants and the reports of the planning authority. I consider that the assessment set out in the NIA by the applicant in relation to noise impacts is robust and

reasonable and adheres to the appropriate standards (see in particular the standards adopted and listed in the Executive Summary to the report). I recognise the mitigation measures as best industry standards - in particular in relation to rock blasting and the potential for impacts on adjoining uses - and I conclude that the mitigation measures are adequate to address the potential noise impacts arising from the construction phase of the proposed development. Recommended condition 14 set out in the draft order below requires the applicant to submit a construction management plan which also allows the planning authority to manage noise impacts in the construction phase. Based on the foregoing, I conclude that the proposed development will not seriously injure the residential amenity of nearby property.

7.43. Depreciation of Property Values.

7.44. The observers make the point that the proposed development would devalue property in the vicinity. For the reasons set out elsewhere in this report I conclude that no serious injury to the residential of the adjoining property or visual amenity of the wider area will arise which would depreciate the value of those properties.

7.45. Ecological Considerations.

7.46. The observers make the point that there are badger setts on site and that the Badger Conservation Plan submitted with the application is inadequate.

7.47. The application included a Badger Conservation Plan. The plan recognised that badgers are protected under the Irish Wildlife Acts. The Plan recognises that there are areas within the application site which hold habitats suitable for badgers. A combination of site surveys and ground penetrating radar revealed a badger sett with several chambers. The best illustration of its location is mapped Figure 6 in the Plan. The applicant's intention is that several badger conservation objectives can be met by preserving the sett within the site, by preserving access routes from the sett to foraging grounds and by avoiding disturbance during breeding season. Several specific actions are set out which will achieve these objectives, and these include, but are not limited to.

- Appointment of an Ecological Clerk of Works to advise on the implementation of the overall protection plan.

- Implementing a conservation action plan to ensure that where works take place within 10m of the sett that a licence is obtained from the NPWS.
- Avoiding works close to the sett during the breeding season of 1st December to 30th June.
- Investigations prior to commencement of development to ensure that there are no other badger setts on site.

7.48. The Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media made a submission to the planning authority and *inter alia*, suggested that an addendum to the submitted Badger Conservation Plan should be submitted which should establish definitively that there are no additional badger setts on site and that amendments to the layout may be required to fully ensure that the disturbance to the animals would not occur.

7.49. I consider that the application has presented a reasonably comprehensive assessment of the capacity of the application site to provide badger-friendly habitats and has in fact identified a sett within the site. I take the point made by the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media that there remains a possibility of additional setts within the site. There are detailed mitigation measures set out in the application including avoiding works close to the identified sett during breeding season, avoiding noise/vibration associated disturbance and avoiding in so far as possible loss of foraging habitat. Additionally, I have attached condition 2 which requires compliance with methodology developed by the NRA for dealing with badgers on construction sites which I consider deals appropriately with the badger conservation aspects of this case. On the basis of the material on file and subject to the conditions set out below I conclude that no unacceptable interference with badgers within the site will arise from carrying out the proposed development.

7.50. AA Screening.

7.51. The application includes a screening report which identifies 17 European sites with the potential to be impacted upon by the proposed development. These are.

- 1) Baldoyle Bay SAC (000199)
- 2) Howth Head SAC (000202)
- 3) North Dublin Bay SAC (000206)
- 4) South Dublin Bay SAC (000210)
- 5) Ballyman Glen SAC (000713)
- 6) Bray Head SAC (000714)
- 7) Knocksink Wood SAC (000725)
- 8) Wicklow Mountains SAC (002122)
- 9) Irelands Eye SAC (002193)
- 10) Rockabill to Dalkey Island SAC (003000)
- 11) North Bull Island SPA (004006)
- 12) Baldoyle Bay SPA (004016)
- 13) South Dublin Bay and River Tolka Estuary SPA (004024)
- 14) Wicklow Mountains SPA (004040)
- 15) Howth Head Coast SPA (004113)
- 16) Irelands Eye SPA (004117)
- 17) Dalkey Island SPA (004172).

7.52. The closest European sites are Rockabill to Dalkey Island SAC (003000), the Dalkey Island SPA (004172). The Screening Report states that there are no discharges to the coastal water environment, that the site is not used by the Tern species which is a qualifying interest of the SPA and no disturbance of species are predicted. There will be no significant increase in surface water run off or foul water into the public wastewater treatment system. The in-combination impacts are assessed in the light of identified extant planning permissions and the report concludes that potential

significant effects can be excluded at this preliminary stage. The screening report concludes that since the application site is not directly connected with or necessary for the management of a European site and the proposed development will not impact on any qualifying interest or conservation objective and, therefore, that there are no potential significant effects and no uncertain effects on any European site.

- 7.53. The planning authority carried out an AA screening exercise and concluded that the proposed development would have no adverse impact on any European site.
- 7.54. I note the material submitted in the AA screening report and the planning authority's screening exercise. There are no other European sites beyond those recorded in the report that need to be considered in this application. The two closest sites are the Rockabill to Dalkey Island SAC and the Dalkey Island SPA. The conservation objective for the Rockabill to Dalkey Island SAC is the maintenance of habitats and species within the Natura 2000 site at favourable conservation condition that will contribute to the overall maintenance of favourable conservation status of those habitats and species at a national level. The qualifying interests are reefs and the Harbour porpoise. The conservation objective for the Dalkey Island SPA is the maintenance of habitats and species within Natura 2000 site at favourable conservation condition that will contribute to the overall maintenance of favourable conservation status of those habitats and species at a national level. The qualifying interests in the SPA are the Roseate Tern, Common Tern and the Arctic Tern.
- 7.55. In the absence of any direct hydrological connection between application site and the nearest European sites or any other European sites, the conservation objectives for these sites set out by the NPWS and the nature of the qualifying interests to which the conservation objectives relate, the nature of the application site as a brownfield without ecological significance for the species and habitats for which the European site have been designated, it is reasonable to conclude, on the basis of the information on the file and the material published by the NPWS, 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 the Rockabill to Dalkey Island SAC (003000), the Dalkey Island SPA (004172) or any other European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.0 Recommendation

8.1. I recommend a grant of planning permission.

9.0 Reasons and Considerations

9.1. Having regard to,

- The Guidelines for Sustainable Residential Development in Urban Areas and the accompanying Urban Design Manual – a Best Practice Guide, issued by the Department of the Environment, Heritage and Local Government in May 2009,
- The zoning designation for the site “to provide residential development and improve residential amenity while protecting the existing residential amenities” in the Dun Laoghaire Rathdown County Development Plan 2022 to 2028 where assisted living accommodation is permitted in principle,
- The existing, but underutilised, use of the site for residential development,
- The site’s location in an urban area where community facilities, transport links and public piped services are available,
- the differing site levels within the site which has allowed for an acceptable quantum of development which respects the amenity of nearby residential development and the visual amenity of the wider area,

it is considered, subject to compliance with the conditions set out below, that the proposed development would not endanger pedestrian or traffic safety, would not seriously injure the residential amenity of property in the area by reason of overshadowing or overlooking or the visual amenity of the wider area, would not give rise to unacceptable ecological impacts and would otherwise accord with the provisions of the current County Development Plan and with the proper planning and sustainable development of the area.

Appropriate Assessment Screening

The Board completed an Appropriate Assessment Screening exercise in relation to the potential effects of the proposed development on designated European Sites, taking into account the nature, scale and location of the proposed development within a zoned and serviced urban area, the Appropriate Assessment Screening Report submitted with the application, and the Inspector's report and submissions on file. In completing the screening exercise, the Board adopted the report of the Inspector and concluded that, by itself or in combination with other development in the vicinity, the proposed development would not be likely to have a significant effect on any European Site in view of the sites' conservation objectives, and that a Stage 2 Appropriate Assessment is not, therefore, required.

10.0 Conditions

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| 1. | <p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p> |
| 2. | <p>During the construction phase, the developer shall adhere to the <i>Guidelines for the Treatment of Badgers prior to the Construction of National Road Schemes</i>, published by the National Roads Authority in 2006. In particular, there shall be no blasting or pile driving within 150 metres of an active badger sett during the breeding season (December to June) or construction works within 50 metres of such an active sett during the breeding season.</p> |

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| | Reason: In the interest of wildlife protection. |
| 3. | <p>Detailed measures in relation to the protection of bats shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. These measures shall be implemented as part of the development. Any envisaged destruction of structures that support bat populations shall be carried out only under licence from the National Parks and Wildlife Service and details of any such licence shall be submitted to the planning authority.</p> <p>Reason: In the interest of wildlife protection.</p> |
| 4. | <p>The developer shall enter into water and wastewater connection agreements with Irish Water, prior to commencement of development.</p> <p>Reason: In the interests of clarity and public health</p> |
| 5. | <p>Drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health and surface water management.</p> |
| 6. | <p>Details of the materials colours and textures of all the external finishes to the proposed development shall be submitted for the written agreement of the planning authority, prior to commencement of development.</p> <p>Reason: In the interests of visual amenity.</p> |
| 7. | <p>The site shall be landscaped in accordance with the detailed scheme of landscaping, which shall be submitted to and agreed in writing with the Planning Authority prior to commencement of development. The scheme shall include provisions for hard and soft landscaping within the site, boundary treatments and include measures for the protection of trees within and adjoining the site.</p> <p>Reason: In order to ensure the satisfactory completion of the development.</p> |
| 8. | <p>Proposals for the name of the development and associated signage shall be submitted to and agreed the planning authority prior to occupation of the development. No advertisements/marketing signage relating to the name of</p> |

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| | <p>the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.</p> <p>Reason: In the interest of urban legibility.</p> |
| 9. | <p>The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works.</p> <p>Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.</p> |
| 10. | <p>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 installation of lighting. Such lighting shall be provided prior to the making available for occupation of any residential unit.</p> <p>Reason: In the interests of amenity and public safety</p> |
| 11. | <p>All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. The cables shall avoid roots of trees and hedgerows to be retained in the site. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.</p> <p>Reason: In the interests of visual and residential amenity</p> |
| 12. | <p>A plan containing details for the management of waste within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.</p> <p>Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment</p> |

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| 13. | <p>Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.</p> <p>Reason: In the interest of sustainable waste management.</p> |
| 14. | <p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:</p> <p>(a) Location of the site and materials compounds including areas identified for the storage of construction refuse; areas for construction site offices and staff facilities; site security fencing and hoardings; and car parking facilities for site workers during the course of construction;</p> <p>(b) The timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site; measures to obviate queuing of construction traffic on the adjoining road network; and measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;</p> <p>(c) Details of the implementation of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;</p> |

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| | <p>(d) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains. The measures detailed in the construction management plan shall have regard to guidance on the protection of fisheries during construction works prepared by Inland Fisheries Ireland.</p> <p>A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.</p> <p>Reason: In the interest of amenities, public health and safety.</p> |
| 15. | <p>Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Saturdays inclusive, and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p> |
| 16. | <p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the</p> |

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| | Development Contribution Scheme made under section 48 of the Act be applied to the permission. |
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Hugh Mannion
Senior Planning Inspector

11th May 2023.

Appendix – Observers

- 1) Mairead & Sam Duncan-Jones
- 2) Donal McBrinn
- 3) Neils & Marlene van Antwerpen
- 4) Billy Flynn
- 5) Pat & Kathy Kenny
- 6) Frank & Stephanie Keane
- 7) Christopher & Ann Herbert
- 8) Dalkey Community Council
- 9) Kerri and Peter Cullen
- 10) Kerri and Peter Cullen and Others.
- 11) Ton & Elke Palmer
- 12) Patrick J Drudy
- 13) Maura Lee West
- 14) Danielle Byrne
- 15) Damien and Siobhan Gill