



An  
Bord  
Pleanála

# Inspector's Addendum Report ABP-311106-21 Addendum to 307873- 20

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**To:** Legal Section

**From:** Paul O'Brien, Inspectorate

**Re:** Development on this site consists of a three to six storey apartment block, comprised of 32 apartment units, car parking, bicycle parking and all associated site works.

**Location:** 149 Braemor Road, Churchtown, Dublin 14.

**Site Visit** 13<sup>th</sup> April 2022

**Date:** 14<sup>th</sup> April 2022

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I note the contents of the memo received on the 12<sup>th</sup> of April 2022 with regards to the received response of Downey Planning and responses received from third parties, four in total.

I therefore prepare this Addendum report to my report dated 17<sup>th</sup> December 2020. I have revisited the site on the 13<sup>th</sup> of April 2022.

**Background:**

Under ABP Ref. 311106-21, the proposed development is for 32 apartment units located on the south west corner of the Braemor Road/ R112 and Landscape Road in Churchtown, Dublin 14. On my site visit of the 13<sup>th</sup> of April 2022, it was observed that the site was in use for second-hand car sales and also as a car washing facility. Also observed were two mobile food/ coffee outlets, though these were not in operation at circa twelve midday, these were additions to the uses on site since my last site visit. I also note that a For Sale sign was in place on the site.

Under the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022, the majority of the site is zoned A with the objective ‘To protect and/or improve residential amenity’. A new county development plan is due to come into force on the 21<sup>st</sup> of April 2022 and is zoned A with the objective ‘To provide residential development and/or protect and improve residential amenity’. The remainder of the site is zoned F and under the new County Development Plan this has the objective ‘To preserve and provide for open space with ancillary active recreational amenities’. I am satisfied that the zoning of the site and its objectives do not change from the 21<sup>st</sup> of April 2022 and that residential development is permitted in principle on the A zoned lands.

Permission was sought for 32 and the Planning Authority requested further information which reduced the number of units to 31. My report of the 17<sup>th</sup> of December 2020 recommended that permission be granted for 31 units in

accordance with the design submitted by way of further information to the Planning Authority on the 19<sup>th</sup> of June 2020, subject to 16 conditions. Condition no. 2 limits the development to 31 units.

Condition no. 3 required amendments to the design and finishes, but these were to be agreed with the Planning Authority. Condition no. 6 required the developer to carry out water supply and drainage works, including surface water drainage, in accordance with the requirements of the Planning Authority and Condition no. 7 required the developer to enter into water and/ or wastewater connection agreements with Irish Water.

### **Decision on Original Application:**

The Board issued a recommendation to refuse permission for the development and this order was referred to The High Court which decided to quash the decision to refuse permission and the file was remitted back to the Board for a fresh determination. The reference number for this appeal is now ABP Ref. 311106-21.

The applicant was requested to submit additional information in relation to surface water management in accordance with Section 132 of the Planning and Development Act 2000 as amended. Further submissions and observations were invited under Section 131 of the Planning and Development Act 2000 as amended.

### **Response of Applicant:**

Letter dated 30<sup>th</sup> of November 2021 by Downey Planning states that further information was submitted to the Board in response to the Section 132 notice in October 2021. The submitted information would address the concerns of the Planning Authority and would not be prejudicial to public health.

Letter dated 20<sup>th</sup> of October 2021 by Downey Planning is in response to the Section 132 notice issued by the Board. In support of the response the following were included:

- Cover Letter and Surface Water Design Strategy

- Drainage layout plan (Drawing no. 21314-C1000) which details a closed bottom concrete tank.
- Roof catchment drawing (21314-C1010) indicating a green roof, impermeable areas, and soft landscaping areas.
- Section through the proposed tank (Drawing no. 21314-C1110), long section of the proposed outfall and tank cross section.
- Attenuation calculation and tank sizing for the given head depth and outfall rate of circa 2 litres per second reduced to 1.9 litres per second.

The revised surface water management has been fully detailed and described in the Barrett Mahony Consulting Engineers (BMCE) submission in support of the development. The revised proposal includes a tank that is suitably sealed as to prevent inflow of ground water and also prevents the loss of water into the ground. The system ensures that 'the safety and condition of the adjoining structure to be unaffected'. The tank effectively forms part of the basement foundation. The tank is virtually maintenance free, but manholes are provided to allow for access and a petrol interceptor is also proposed.

#### **Response of Planning Authority:**

No new issues have been raised which would justify a change of attitude to the proposed development.

#### **Third Party Submissions:**

A total of four submissions were received on foot of the Section 131 notice.

**An Taisce:** Letter dated 6<sup>th</sup> September 2021 notes the request to provide details of a surface water drainage system that is accessible and maintainable. No details have been provided by the applicant that demonstrate such a system other than a reference to its provision in the open space area to the rear of the site. Refers to a previous application under ABP Ref. 247612 with a similar proposal and for which permission was refused. Subsequent letter dated 12<sup>th</sup> October 2021 requests that it can make further comments on the applicant's response to the Section 132 notice.

Letter dated 28<sup>th</sup> of March 2022 notes the submitted information. They are not in a position to comment on the proposed tank but consider it important that observations are received from the Drainage Planning Department of the Planning Authority. Some comment is made on the proposed development in the lands zoned 'F' to the rear of the site and the provision of the petrol interceptor. An Taisce consider that the provision of this infrastructure would be contrary to the 'F' zoning that applies here.

**Anne Troy on behalf of the Orwell Court Management Co. GLG:** Note the decision of the Planning Authority and the concerns raised in relation to the proposed surface water drainage system. Considers that the proposed development demonstrates overdevelopment of this site. Concern raised about the height of the development, impact on the area through loss of light/ passive heat, impact on building lines, impact on foul drainage in the area, availability of water supply, concern about fire safety and concern about the applicant including lands that are not within their control.

A second letter dated the 25<sup>th</sup> of March 2022 notes the further received documentation and trust that the submitted details will ensure that surface water is appropriately treated and does not give rise to flooding. The impact of climate change also needs to be considered.

**Dermot O'Rourke:** Notes the two reasons for refusal as issued by Dun Laoghaire-Rathdown County Council. The submission details why the Board should not have accepted the applicant's right to make the application due to the lack of clarity on who owns the lands. The applicant has not identified that they have the right to include these lands in their application.

Second letter dated 29<sup>th</sup> of March 2022 notes that the site is now for sale and does not incorporate the lands to the rear.

**John Sheahan:** The proposed attenuation tank does not demonstrate compliance with the Greater Dublin Strategic Drainage Study (GDSDS), concern is raised about the ramp/ vehicular access in relation to height, the proposed development represents overdevelopment of a restricted site and concern about the incorporation

of open space lands into the development site. It is noted that the site is now for sale.

**Assessment:**

**Surface Water:**

The primary issue of concern relates to the provision of a suitable surface water drainage system to serve this development. The applicant has provided revised details and supporting drawings that indicate that an attenuation tank is to be provided within the basement area of the development. This will be a closed tank, flow will be controlled/ restricted, and an additional petrol interceptor will be provided. A green roof will also be provided to serve this development.

I consider that the submitted information is acceptable. As per my original report, I note that at present the majority of the site/ 'A' zoned lands are covered in hard surfacing primarily concrete and the proposed development reduces the extent of this by introducing grass and planted areas. I am satisfied that the development can be carried out whilst providing for a suitable surface water drainage system which includes SuDS measures. Condition no. 6 requires the development to be carried out in accordance with the drainage requirements of the Planning Authority and final details can be agreed.

**Landownership:**

I have commented extensively on this issue in my original report and this matter was not raised in the Section 132 notice. I am satisfied that the applicant has sufficient legal interest to make this application. I note, as have a number of those who made submissions, that the site is now for sale. Although the site area for sale is not the same as that of the application area, this is not unusual in terms of land sales. The extent of the site area for sale does not suggest that the applicant does not have the right to make the application as submitted and subsequently appealed.

I disagree with the comments made by An Taisce in relation to the right to provide for infrastructure in the 'F' zoned lands. Although I would be cautious about the use of such lands to locate services to serve a development, I note that the existing combined sewer and water network crosses this area of open space, and it is therefore appropriate that suitable connections from the development to the existing infrastructure be located on these lands. I do not consider the provision of such infrastructure in this location is an attempt by the applicant to maximise the extent/potential of development on the 'A' zoned lands at the expense of the 'F' zoned lands. Other than the manhole openings, the remainder of the services are located sub-surface and will not impact on the quality or useability of this open space area.

I note that after nearly two years since this application was lodged to the Planning Authority, no one or body has come forward to demonstrate that they have legal ownership of these lands. The Planning Authority have not indicated that they own these lands.

**Other Issues:**

The revised details, which clarify the type of surface water system to be used, have no impact on the submitted Appropriate Assessment Screening. Having regard to the nature and scale of the proposed development and the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to give rise to a significant effect individually or in combination with other plans or projects on an European site.

I note that a new Dun Laoghaire-Rathdown County Development Plan comes into operation on the 21<sup>st</sup> of April 2022. There is no change in the zoning of the site and any changes to the zoning objective do not prevent the development of a residential scheme on this site.

The revisions to the development made by way of a further information response to the Planning Authority on the 19<sup>th</sup> of June 2020 are appropriate and revise the number of units to 31 in total.

## **Recommendation**

I recommend that permission be granted subject to the following conditions and reasons.

## **Reasons and Considerations**

Having regard to the provisions of the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022, relevant National Guidelines and the zoning of the site for a mix of residential and open space/ amenity purposes, to the location of the site in an established urban area within walking of frequent public transport and to the nature, form, scale, density and design of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential, visual or environmental amenities of the area. I have also noted that the contents and zoning objectives of the new Dun Laoghaire-Rathdown County Development Plan which comes into force on the 21<sup>st</sup> of April 2022. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **Conditions**

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 24 <sup>th</sup> day of June 2019 and as amended by the further plans and particulars submitted on the 19 <sup>th</sup> day of June 2020 and further amended by the further plans and particulars submitted on the 20 <sup>th</sup> of October 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
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	<p>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><b>Reason:</b> In the interest of clarity.</p>
2.	<p>This permission is for 31 no. residential units in the form of four no. one bedroom apartments, twenty-three no. two bedroom apartments and four no. three bedroom apartments. The site layout, elevations and five storey height shall be in accordance with the documentation lodged on the 19<sup>th</sup> of June 2020 with the Planning Authority.</p> <p><b>Reason:</b> In the interest of clarity.</p>
3.	<p>Prior to the commencement of development, the developer shall provide, for the written agreement of the Planning Authority:</p> <ol style="list-style-type: none"> <li>a) The elevation facing Landscape Road shall be revised such that the central section of 'Fibre Cement Render' be replaced with a brick of a different colour/ texture to the other proposed brick.</li> <li>b) All balconies to provide for a minimum depth of 1.5 m.</li> <li>c) Full details of the proposed external design/ finishes in the form of samples and on-site mock-ups. These details shall include photomontages, colours, textures, and specifications. The ground floor shall be finished in brick in a similar colour to the existing houses in Ely Square and the upper floors to be a mix of brick, though of a lighter colour to that used on the ground floor.</li> <li>d) The apartment terrace/ balcony railings/ supports shall be painted/ coated metal and shall not be unpainted galvanised metal railings.</li> <li>e) Full details of the access gates between the site and the open space to the south/ 'Badger's Glen' shall be submitted for agreement. Details to include the design of the access, any pathways required and management details. The developer shall fully consider the issue of public access to this area in their submission to the Planning Authority.</li> </ol> <p><b>Reason:</b> In the interest of visual amenity.</p>

4.	<p>The internal road network serving the proposed development, including turning bays, parking areas, footpaths and kerbs, the junction with the existing street network and access/ layout of the underground car park shall be in accordance with the detailed standards of the Planning Authority for such works.</p> <p><b>Reason:</b> In the interest of amenity and of traffic and pedestrian safety.</p>
5.	<p>Proposals for a development name, unit numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs and apartment unit numbers, shall be provided in accordance with the agreed scheme. The proposed name shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.</p> <p><b>Reason:</b> In the interest of urban legibility and to ensure the use of locally appropriate placenames for new residential areas.</p>
6.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the Planning Authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health.</p>
7.	<p>The applicant or developer shall enter into water and/or wastewater connection agreement(s) with Irish Water, prior to commencement of development.</p> <p><b>Reason:</b> In the interest of public health.</p>
8.	<p>a) No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts</p>

	<p>or other external plant, telecommunication aerials, antennas, or equipment, unless authorised by a further grant of planning permission.</p> <p>b) The access ladders to upper levels/ roof areas shall be incorporated into the design of the building and not be designed as an external addition to the buildings.</p> <p><b>Reason:</b> To protect the residential amenities of property in the vicinity and the visual amenities of the area.</p>
9.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between the hours of 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p><b>Reason:</b> In order to safeguard the amenities of property in the vicinity.</p>
10.	<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, a fully details Construction Traffic Management Plan, noise management measures and off-site disposal of construction/ demolition waste.</p> <p><b>Reason:</b> In the interests of public safety and residential amenity.</p>
11.	<p>That all necessary measures be taken by the contractor to prevent the spillage or deposit of clay, rubble, or other debris on adjoining roads during the course of the works.</p> <p><b>Reason:</b> To protect the amenities of the area.</p>
12.	<p>(a) The communal open spaces, including hard and soft landscaping, car parking areas and access ways, and all areas not intended to be taken in</p>

	<p>charge by the local authority, shall be maintained by a legally constituted management company</p> <p>(b) Details of the management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.</p> <p><b>Reason:</b> To provide for the satisfactory future maintenance of this development in the interest of residential amenity.</p>
13.	<p>All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site.</p> <p><b>Reason:</b> In the interest of orderly development and the visual amenities of the area.</p>
14.	<p>Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.</p> <p><b>Reason:</b> To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.</p>
15.	<p>Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or</p>

	<p>other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.</p> <p><b>Reason:</b> To ensure the satisfactory completion and maintenance of the development until taken in charge.</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><b>Reason:</b> It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

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Paul O'Brien  
Planning Inspector

14<sup>th</sup> April 2022