



Development	Construction of a 4-5 storey over basement apartment development comprising 37 No. units and 21 No. two storey dwellings.
Location	1.27 Ha site rear of 'Craughwell', 'Fairholme', & 'St. Benedict's', Brighton Road, Foxrock, D18, access/egress & works to 'Craughwell' Brighton Rd, Foxrock D18, Harcourt Street tramline & Leopardstown Racecourse to south Brighton Wood, north by 'Goleen'
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D21A/0051
Applicant(s)	The Brighton Road Partnership
Type of Application	Planning Permission
Planning Authority Decision	Grant with conditions
Type of Appeal	Third-Party Appeal First-Party Appeal
Appellant(s)	Embassy of the Kingdom of the Netherlands
Observer(s)	None

Date of Site Inspection

24th January 2022

Inspector

Susan Clarke

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1.0 Site Location and Description

- 1.1. The site is situated to the rear of three established residential properties located on Brighton Road, Foxrock, Dublin 18 and has a stated area of 1.27ha. The western boundary of the appeal site adjoins Leopardstown Racecourse and the former Harcourt Street tramline corridor. The three properties, namely from north to south, include St. Benedicts, Fairholme and Craughwell. These properties are all two-storey detached, individually designed and substantial in size with mature gardens. The subject backlands site also includes a sliver of land that extends to an overflow car park associated with Leopardstown Racecourse, adjacent to the M50.
- 1.2. Brighton Road is one of mature suburban residential development characterised by large individually designed detached dwellings set within substantial mature gardens giving a strong sylvan character. The plot sizes and shapes are irregular. There is a narrow entrance, located between Fairholme and Craughwell and this entrance provides access to the appeal site. Gorleen, a large detached dwelling and its associated garden is located north of the site.
- 1.3. The topography of the site slopes gently downwards from Brighton Road to the rear of the site adjoining the racecourse. The site is generally overgrown and is enclosed by mature hedging on the northern and western site boundary. There is a scattering of mature trees throughout the site and there is also some dense scrub / overgrown vegetation on the site. There is a small outbuilding (44 sq m) on the site.
- 1.4. There is a relatively new housing development, Brighton Wood, located to the immediate south of the appeal site. This new housing development comprises of 2-storey, terraced and detached houses.
- 1.5. There is a bus stop located adjacent to the site entrance at Brighton Road. The Carrickmines Luas stop is approximately 1.2km from the site and includes a park & ride facility.

2.0 Proposed Development

- 2.1. The proposed development consists of:
 - Demolition of an outbuilding (44 sq m),

- Construction of a part four storey and part five storey apartment block (4,022 sq m) over basement (2,072 sq m) containing a total of 37 No. units (four 1-bed units, 31 No. 2-bed units and two 3-bed units),
- Construction of 21 No. two storey dwellings (17 No. 3-bed units and four 4-bed units),
- Provision of 100 No. car parking spaces (58 No. at basement level and 42 No. at surface level) and bicycle parking spaces (44 No. at basement level),
- Repositioning and upgrade of the existing entrance laneway between Fairholme and Craughwell to form the access and egress to the development with an internal spur providing new access and egress to Craughwell,
- Drainage works, including outfall by gravity through the racecourse lands to an existing foul drain along the entrance road to the overflow car park of Leopardstown Racecourse,
- Private and communal open space
- Landscaping works, including tree felling, and boundary treatments, and
- Associated site works.

Subsequent to a **Request for Further Information**, the following key amendments were made to the scheme:

- Omission of one apartment unit, resulting in a total of 36 No. apartment units,
- Provision of a two-way ramp to the basement car park,
- Additional landscaping works and play equipment,
- Extension of the proposed north-south internal roadway to the northern boundary of the site,
- Provision of 72 No. bicycle spaces at basement level and 22 No. visitor bicycle spaces at surface level,
- Provision of four visiting car parking spaces at surface level, and
- Revised public lighting strategy to provide bat sensitive lighting.

Subsequent to a **Clarification of Further Information**, the following key amendments were made to the scheme:

- Amendments to the open space provision, resulting in a total of 1,558 sq m open space being provided for (representing 16.2% of the net developable area – in comparison to the originally stated 17.5%),
- Additional detail regarding the location of the proposed connection to the future greenway along the former Harcourt Street tramline corridor, and
- Additional drainage works detail provided.

2.2. **Documentation Submitted with Planning Application**

In addition to a Planning Application Form and Statutory Notices, the application included supporting documents (in association with architectural, engineering and landscaping drawings) as follows:

- Planning Report, which includes a Social and Community Infrastructure Audit, (December 2020)
- Engineering Service Report (November 2020)
- Traffic Impact Assessment (November 2020)
- Desktop Archaeological Report (December 2020)
- Construction and Demolition Waste Management Plan (November 2020)
- Site Specific Flood Risk Assessment (November 2020)
- Mobility Management Plan (November 2020)
- Operational Waste Management Plan (November 2020)
- Architectural Design Statement (December 2020)
- Landscape Presentation (November 2020)
- Verified Views (June 2020)
- Building Lifecycle Report (December 2020)
- Quality Audit (July 2020)
- Waste Management Plan (November 2020)

- Outline Construction Management Plan (November 2020)
- Screening Report for Appropriate Assessment (December 2020)
- Daylight Assessment (June 2020)
- Arboricultural Report (December 2020)
- Conservation Impact Assessment (December 2020).

Following the **RFI**, the Applicant submitted further documentation:

- Response to a Request for Further Information (June 2021) (Planning)
- Architectural Statement of Response to Planning RFI (April 2021)
- Outline Demolition and Construction Management Plan (April 2021)
- RFI Response Document (June 2021) (Engineering)
- Bat Assessment (2021)
- Response to DLRCC Reg. Ref. D21A/0051 - Request for Further Information (not dated) (Landscaping)
- Demolition and Construction Waste Management Plan (April 2021)
- Operational Waste Management Plan (April 2021), and
- Public Lighting Report (May 2021).

Following the **CFI**, the Applicant submitted further documentation:

- Cover Letter (August 2021) (Planning)
- CFI Response Document (August 2021) (Engineering)
- Public Lighting Report Walkways (August 2021)
- Public Lighting Report Roadway (August 2021).

3.0 Planning Authority Decision

3.1. Decision

Dun Laoghaire Rathdown County Council issued a Notification of Decision to Grant Permission on 20th September 2021 subject to 37 No. conditions. Conditions include *inter alia*:

- Omission of the southernmost pair of dwellings in the north-south row and replacement with landscaped area and additional play opportunities (No. 2),
- Provision of a 24 hour ungated and unimpeded permeability linkage for pedestrians/cyclists from Brighton Road to the adjacent greenway on completion of both the development and the greenway scheme (No. 13),
- Proposed cycle parking spaces shall be Sheffield stand cycle parking spaces with 50% of the short stay (visitor) surface cycle parking spaces should be covered (No. 14),
- Arboricultural requirements (No. 17),
- Tree Bond to a minimum value of €150,000 (No. 19),
- Bond/Cash Sum/Letter of Guarantee in respect of roads, footpaths, open spaces, public lighting, sewers, watermains, and drains value of €279,900 or cash sum of €173,000 (No. 37).

3.2. Planning Authority Reports

3.2.1. Planning Reports (18th March 2021, 8th July 2021, and 20th September 2021)

The Planning Officer considered that the principle of the development was acceptable and that the proposed density and height were compliant with planning policy. The Officer stated that the proposal did not impact the Foxrock ACA and raised no significant concerns in relation to the design and visual impact of the proposed development. The standard of accommodation was largely found to be compliant with the Sustainable Urban Housing: Design Standards for New Apartments (hereafter referred to as the Apartment Guidelines). The removal of trees was also considered acceptable.

Additional information was sought by the Local Authority (18th March 2021) in relation to 36 No. Items including *inter alia*: open space provision, access arrangement between the proposed development and future greenway for pedestrians and cyclists along the former rail line, potential future access to the lands located to the north of the site, provision of a two-way ramp to the basement car park, cycle parking, drainage details, landscaping details, privacy to Ground Floor Units of the apartment block, and separation distances between the proposed dwellings and the existing dwellings in Brighton Wood. Subsequent to the RFI, the Local Authority issued a Clarification of Further Information (CFI) (dated 8th July 2021) in relation to 11 No. items including *inter alia*: open space calculation, landscaping details, drainage, and public lightning. In summary, the Planning Officer recommended that planning permission be granted subject to condition.

3.2.2. Other Technical Reports

Housing (22nd February 2021): No objection subject to condition.

Drainage (26th February 2021, 7th September 2021): Initially recommends RFI in relation to 10 No. items. Latter report confirms no objection subject to condition.

Environmental Health Officer (23rd February 2021, 29th June 2021): No objection subject to condition.

Parks Department (11th March 2021, 8th September 2021): Initially recommended refusal due to the damaging nature of the proposal on the existing environment, impact on the sylvan character and nature of the Foxrock ACA, and the quality of the open space and play opportunities. Following responses to a RFI and CFI, no objection subject to condition.

Conservation Officer Report (10th March 2021): No objection.

Public Lighting (3rd July 2021, 8th September 2021): Recommends CFI. Latter report advises that the proposal is not acceptable.

Transportation Planning (12th March 2021, 29th June 2021, 8th September 2021): Recommends RFI and CFI. Latter report confirms no objection subject to condition.

3.3. Prescribed Bodies

Irish Water (10th March 2021, 7th July 2021, 7th September 2021): Initially recommends RFI and CFI. Latter report confirms no objection subject to condition.

An Taisce (27th February 2021): Excessive density, inadequate open space, inappropriate building height.

Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media: No objection subject to condition.

Department of Defence: No objection subject to condition.

Department of Housing, Local Government and Heritage: (8th September 2021): No objection subject to condition.

Failte Ireland: No response received.

The Heritage Council: No response received.

An Chomhairle Ealaion: No response received.

3.4. Third Party Observations

Four Third-Party Observations from local residents and businesses were made in respect of the application. The key points from the Observations can be summarised as follows:

- The apartment block is unsympathetic to the area due to its height and scale and will result in overshadowing and overlooking.
- The development will irreversibly damage the sylvan character of the Foxrock ACA.
- The development will result in a significant increase in traffic in an area already struggling to cope with volume.
- The development is inconsistent with the existing pattern of development in the area and will pose a security risk to the adjoining embassy residence.
- The proposed development will diminish the area's residential amenity and is not consistent with the site's land use zoning objective.

- The density is unacceptably high for a car-dependent location.
- Precedent developments exist whereby the Board granted permission for residential schemes with reduced densities in the area.
- The proposal falls short of the required open space provision.

A further Observation from the Embassy of the Kingdom of the Netherlands was made in respect to the proposal following the readvertisement of the public notices at CFI stage. In summary, the Observation requests that a condition requiring the extension of the internal road to the northern boundary of the site without a ransom strips is incorporated into any decision to grant permission for the development. Furthermore, it was requested that this condition must bind the applicant and their successors in title to enter into a Section 47 agreement with the planning authority, to preserve a full and unrestricted right of way over the internal road network of the application site, to provide for any future redevelopment of the lands to the north of the site.

4.0 Planning History

Subject Site

L.A. Ref. 18A/0846; ABP Ref. 303768-19: Permission refused by ABP in October 2019 (and DLRCC) for the development of 52 No. units comprising 14 No. houses and a five storey apartment block with 38 No. units. The reasons for refusal included (a) deficiencies in the existing foul sewerage system, (b) visually obtrusive and would result in overlooking and overbearing impacts, and (c) removal of trees from the site would seriously injure the sylvan character of part of the Foxrock ACA.

L.A. Ref. 15A/0719 – Permission refused by DLRCC in January 2016 for six detached houses on part of the appeal site. The reasons for refusal included (a) contrary to policy objective RES 3 as density too low, and (b) contrary to policy objective RES 7 as inappropriate mix of units.

L.A. Ref. 06A/1997; ABP Ref. 222502 – Permission refused by DLRCC in February 2007 for retention and completion of site development and boundary works. The refusal was appealed to ABP who subsequently refused permission in September 2007 for the following reasons (a) proposed access is premature pending the determination of the intended future layout and use of these lands, (b) would facilitate

the part creation of a new substandard vehicular access route to lands in the absence of a satisfactory proposal for the overall layout and use of these lands.

Neighbouring Lands

There is a number of planning applications relating to the residential development (c. 104 units) directly south of the site including *inter alia*: D13A/0285/PL06D.243193, and D15A/0501.

5.0 Policy Context

5.1. Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, including the associated Urban Design Manual (2009)

These Guidelines promote higher densities in appropriate locations. A number of urban design criteria are set out, for the consideration of planning applications and appeals. Increased densities are to be encouraged on residentially zoned lands, particularly city and town centres, significant 'brownfield' sites within city and town centres, close to public transport corridors, infill development at inner suburban locations, institutional lands and outer suburban/greenfield sites. Higher densities must be accompanied in all cases by high qualitative standards of design and layout. Quantitative and qualitative standards for public open space are recommended. Appendix A of the document sets out guidance for measuring residential density.

5.2. Sustainable Urban Housing Design Standards for New Apartments Guidelines for Planning Authorities, (DoHPLG, 2020)

These statutory guidelines update and revise the 2015 Sustainable Urban Housing: Design Standards for New Apartments Guidelines, and the 2018 Guidelines in relation to Shared Accommodation schemes. The objective is to build on the content of the 2015 apartment guidance and to update previous guidance in the context of greater evidence and knowledge of current and likely future housing demand in Ireland taking account of the Housing Agency National Statement on Housing Demand and Supply, the Government's action programme on housing and homelessness Rebuilding

Ireland and Project Ireland 2040 and the National Planning Framework, published since the 2015 guidelines¹.

Section 2.4 of the Guidelines states that ‘Intermediate Urban Locations’ are “*generally suitable for smaller-scale (will vary subject to location), higher density development that may wholly comprise apartments, or alternatively, medium-high density residential development of any scale that includes apartments to some extent (will also vary, but broadly >45 dwellings per hectare net)*”. This includes sites within walking distance (i.e. between 10-15 minutes or 1,000-1,500m) of high capacity urban public transport stops (such as DART, commuter rail or Luas) or within reasonable walking distance (i.e. between 5-10 minutes or up to 1,000m) of high frequency (i.e. min 10 minute peak hour frequency) urban bus services or where such services can be provided.

Appendix 1 of the Guidelines set out the required minimum floor areas and standards for apartments as follows:

Minimum overall apartment floor areas:

Studio	37 sq m (n/a)*
One bedroom	45 sq m (38 sq m)*
Two bedrooms (3 person)**	63 sq m (n/a)*
Two bedrooms (4 person)	73 sq m (55 sq m)*
Three bedrooms	90 sq m (70 sq m)*

* Figures in brackets refer to 1995 guidelines

**Permissible in limited circumstances

¹ The planning documentation, including the public notices, prepared in respect of the proposed development makes no reference to the development being a Build to Rent scheme. As such, this appeal is not assessed in accordance with the guidelines/requirements for such schemes.

Minimum aggregate floor areas for living/dining/kitchen rooms, and minimum widths for the main living/dining rooms:

Apartment type ***	Width of living/dining room	Aggregate floor area of living / dining / kitchen area*
Studio	4m**	30 sq m**
One bedroom	3.3 m	23 sq m
Two bedrooms (3 person)	3.6m	28 sq m
Two bedrooms (4 person)	3.6 m	30 sq m
Three bedrooms	3.8 m	34 sq m

* Note: An enclosed (separate) kitchen should have a minimum floor area of 6.5 sq. metres

**Note: Combined living/dining/bedspace, also includes circulation

*** Note: Variation of up to 5% can be applied to room areas and widths subject to overall compliance with required minimum overall apartment floor areas.

In terms of private and communal open space for apartments, the Guidelines provide the following standards:

Minimum floor areas for private amenity space

Studio	4 sq m
One bedroom	5 sq m
Two bedrooms (3 person)	6 sq m
Two bedrooms (4 person)	7 sq m
Three bedrooms	9 sq m

Minimum floor areas for communal amenity space

Studio	4 sq m
One bedrooms	5 sq m
Two bedrooms (3 person)	6 sq m
Two bedrooms (4 person)	7 sq m
Three bedrooms	9 sq m

5.3. Urban Development and Building Heights - Guidelines for Planning Authorities

These Guidelines note that increasing building height is a significant component in making the optimum use of the capacity of sites in urban locations where transport employment, services and retail development can achieve a requisite level of intensity for sustainability. Accordingly, the development plan must include the positive

disposition towards appropriate assessment criteria that will enable the proper consideration of development proposals for increased building height linked with the achievement of greater density of development.

The Guidelines advise that development should include an effective mix of 2, 3 and 4-storey development which integrates well into existing and historical neighbourhoods and 4 storeys or more can be accommodated alongside existing larger buildings, trees and parkland, river/sea frontage or along wider streets. Such development patterns are generally appropriate outside city centres and inner suburbs, i.e. the suburban edges of towns and cities, for both infill and greenfield development and should not be subject to specific height restrictions.

Taking into account the foregoing, the specific planning policy requirement of the above guidelines under SPPR1 is:

In accordance with government policy to support increased building height and density in locations with good public transport accessibility, particularly town/city cores, Planning Authorities shall explicitly identify through the statutory plans, areas where increased building heights will be actively pursued for both redevelopment, regeneration and infill development to secure the objectives of the National Planning Framework and Regional Spatial and Economic Strategies and shall not provide for blanket numerical limitations on building height.

Special planning policy requirement SPPR2 states that in driving general increases in building heights, Planning Authorities shall also ensure appropriate mixtures of uses, such as housing, commercial and employment development, are provided for in the statutory plan context. SPPR3 allows provision in certain circumstances for planning authorities to approve developments, even where specific objectives of the relevant development plan or local area plan may indicate other requirements to the Guidelines.

5.4. The following are also considered relevant:

- Rebuilding Ireland Action Plan for Housing and Homelessness
- Circular Letter: NRUP 02/2021- Residential Densities in Towns and Villages, as set out in Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009)

- Urban Design Manual, A best practice guide (DEHLG May 2009)
- Quality Housing for Sustainable Communities Best Practice Guidelines for Delivering Homes Sustaining Communities (2007)
- Development Management Guidelines for Planning Authorities June, 2007
- Smarter Travel – A Sustainable Transport Future 2009-2020
- Transport Infrastructure Ireland’s Traffic and Transport Assessment Guidelines May 2014
- Regulation of Commercial Institutional Investment in Housing – Guidelines for Planning Authorities²
- Quantitative methods for daylight assessment are detailed in the following documents:
 - BRE209 - Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice’ and;
 - BS 8206-2:2008 (British Standard Light for Buildings- Code of practice for daylighting

5.5. **Dun Laoghaire – Rathdown County Development Plan, 2016 – 2022**

Dun Laoghaire – Rathdown County Development Plan, 2016 – 2022, is the operational Development Plan. The following designations are relevant;

- The subject site is zoned Objective A ‘To protect and / or improve residential amenity’.
- Part of the subject site is located within the Foxrock ACA.

The following County Development Plan policy objectives are relevant;

Residential

- Policy RES3 Residential Density Policy
- Policy RES7 Overall Housing Mix Policy

² The purpose of these Guidelines is *to ensure that new ‘own-door’ houses and duplex units in housing developments are not bulk-purchased by commercial institutional investors in a manner that causes the displacement of individual purchasers and/or social and affordable housing including cost-rental housing’.*

- Policy RES9 Housing for All Policy
- Policy RES13 Planning for Sustainable Communities

Development Management

- Section 8.2.3.1 'Quality Residential Design'
- Section 8.2.3.2 'Quantitative Standards'.
- Section 8.2.3.3 'Apartment Development'.
- Section 8.2.4.5 'Car Parking'
- Section 8.2.4.7 'Cycle Parking'
- Section 8.2.4.8 'Motorcycle Parking'
- Section 8.2.11.2 'Architectural Heritage – Protected Structures'
 - (i) Works to Protected Structures
 - (iii) Development in Proximity to a Protected Structure

Foxrock Architectural Conservation Area

- Policy AR12(ii): Architectural Conservation Areas

5.6. **Natural Heritage Designations**

The nearest Natura sites are: 1) South Dublin Bay and River Tolka SPA (site code: 004024), approximately 4km north of the site, 2) the Special Area of Conservation: Rockabill to Dalkey Island SAC (site code: 003000), approximately 6km east of the site, and 3) Special Protection Area: Dalkey Islands SPA (site code: 004172), approximately 6.25km northeast of the site.

5.7. **EIA Screening**

On the issue of environmental impact assessment screening I note that the relevant classes for consideration are Class 10(b)(i) "construction of more than 500 dwelling units" and Class 10(b)(iv) "urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere". Having regard to the size of the site at 1.27ha and the number of units to be provided at 58 No., which is considerably below the 500 No. dwelling threshold, it is considered that, having regard to the nature and

scale of the proposed development, the characteristics and likely duration of potential impacts, that the proposal is not likely to have significant effects on the environment and that the submission of an environmental impact assessment report is not required. The need for an environmental impact assessment can therefore be excluded by way of preliminary examination.

6.0 The Appeal

6.1. Third-Party Appeal

A Third-Party Appeal was submitted to An Bord Pleanála on 14th October 2021 by the Embassy of the Kingdom of the Netherlands opposing the Local Authority's decision. The grounds of appeal can be summarised as follows:

- In the event of permission being granted for the subject development, the security of the property may well be compromised, and it may no longer be suitable for its current use.
- No reference is made to the omission of the ransom strip between the lands to the north and the proposed internal access road in the RFI Response, nor is there a notation on the revised plans submitted with the RFI or CFI in relation to the proposed seamless connection or the omission of ransom strips.
- The proposed development is not to be taken-in-charge. This could give rise to future problems in relation to rights-of-way over the proposed internal road network of the application site.
- It is important for clarity that a condition requiring the extension of the internal road to the northern boundary of the site without ransom strips is incorporated into any decision to grant permission for the proposal.
- Such a condition should bind the applicants and their successors in title to enter into a Section 47 agreement with the planning authority to preserve a full and unrestricted right of way over the internal road network of the application site to provide for any future redevelopment of the lands to the north.
- The Section 47 agreement should also provide for a future right of connection from the lands to piped and cabled services on the application site.

6.1.1. **First-Party Response to Third-Party Appeal**

The Applicant submitted a First-Party Response to the Third-Party Appeal. The key points raised in the Response can be summarised as follows:

- The Applicant has made a concerted effort to facilitate and enhance the development potential of the adjacent plot and ensure that the principles of permeability and connectivity are promoted with the subject scheme.
- Such a condition requested by the Third-Party is essentially requesting a change to the legal status of the subject lands that is beyond the powers of the planning system. And as such would be ultra vires.
- The provision of a right of way agreement would need to be the subject of a commercial agreement regarding costs for the provision and continual maintenance of the roadway. Such an agreement cannot be arranged as part of the planning process.
- The Applicant has obtained legal advice, which confirms that the Third-Party's request goes above and beyond what is envisaged by Section 47 of the Planning and Development Act 2000 (as amended). The legal advice is enclosed with the Response.

6.2. **First-Party Appeal**

A First-Party Appeal was submitted to An Bord Pleanála on 14th October 2021 by the Applicant in relation to Condition Nos. 2, 14 and 19 attached to the Notification of Decision to Grant Permission.

6.2.1. **Condition No. 2: Open Space**

Prior to the commencement of development, the applicant shall submit revised drawings for agreement with the Planning Authority identifying the omission of the southernmost pair of houses in the north-south row. The area in place of the 2 no. dwellings shall be landscaped and provide additional play opportunities. In the interests of clarity, the total number of units approved under this permission is 55 (19 no. houses and 36 no. apartments)

REASON: To accord with Section 8.2.8.2 of the County Development Plan and to improve the quality and quantity of open space provision.

The grounds of appeal in respect of this Condition can be summarised as follows:

- The Planning Officer erroneously calculated the quantum of public open space required for the proposed apartments in line with the Development Plan standards instead of the Apartment Guidelines.
- The total quantum of open space required is calculated by the Applicant to be 1,357.5 sq m to 1,725 sq m. The development proposes 1,558 sq m and as such is fully in accordance with the open space policy.
- Requiring the Applicant to provide excess open space would be a flawed assessment.
- Default 10% public open space has been accepted by the Local Authority for other developments in the County.
- The omission of two dwellings would reduce the scheme's residential density.

6.2.2. **Condition No. 14: Bicycle Parking**

Proposed cycle parking spaces shall be Sheffield' stand cycle parking spaces with 50% of the short stay (visitor) surface cycle parking spaces should be covered in accordance with the requirements of Dun Laoghaire-Rathdown County Council's Standards for Cycle Parking and associated Cycling Facilities for New Developments (January 2018). Revised details shall be provided on how this can be incorporated into the landscaping scheme.

REASON: In the interests of sustainable development.

The grounds of appeal in respect of this Condition can be summarised as follows:

- The RFI proposed 72 No. secure stacker type cycle parking spaces and 18 No. visitor cycle parking spaces to comply with the Apartment Guidelines' standards.
- The Transportation Department noted that original quantum of spaces (44 No.) is substantially short of what would be required by the Apartment Guidelines 2018, but would be appropriate if Sheffield spaces were provided.
- The Apartment Guidelines 2018 do not require that cycle spaces shall be Sheffield type. As such, the provision of stacked cycle parking is appropriate.

- The Applicant considers that it is more appropriate to provide a greater number of stacked spaces in accordance with the Apartment Guidelines than a lesser number of Sheffield space in accordance with the earlier drafted Development Plan policy.
- Precedent examples listed were stacked cycle parking was accepted, Reg. Ref. 301522.
- The use of stacked cycle parking is now the norm and is seen as a suitable design response in countries with a high bicycle modal share.
- The Development Plan policy refers to covered cycle parking to be 'considered where appropriate' and thus the reference to the 50% in the condition does not appear to have stemmed from any particular policy.
- The covered spaces will not easily assimilate into the landscape strategy and will have a greater and more bulky visual impact within the scheme.
- If covered spaces are required, it is suggested that 33% of the short stay spaces are covered.

6.2.3. **Condition No. 19: Tree Bond**

Tree Bond & Arboricultural Agreement (i) Prior to the commencement of development and related tree felling and construction activities, the applicant shall lodge a Tree Bond with the Planning Authority, as security for tree protection and a deterrent to wilful or accidental damages during construction. The Bond shall be based on a notional estimate of the combined value - amenity and ecosystems services - of retained trees; and taking account of the percentage tree loss(-es) due to direct impacts on healthy trees. The minimum value of the Tree Bond shall be €150,000. (ii) Lodgement of the Bond shall be part of an Arboricultural Agreement signed by the developer, empowering the planning authority to apply the Tree Bond, or part thereof, for satisfactory protection of all retained trees on and immediately-adjointing the subject site, or the appropriate and adequate replacement of any such trees which die, are removed or become seriously damaged or diseased within a period of 2-years from the substantial Practical Completion of the development. Sequestration of all or part of the bond shall be based on an estimate of the total costs of appropriate, compensatory tree planting at semi-mature sizes. Replacement planting shall be of

the same or similar species/varieties as those lost, or as may be specified by Dlr Parks & Landscape Services. (iii) Bond Release: 24 months - inclusive of at least two growing seasons (May - Sept.) - after Practical Completion of the permitted development, the developer shall submit to Dlr Parks and Landscape Services, an Arboricultural Assessment Report prepared by a qualified arborist. Any remedial surgery or other tree works recommended in that Report shall be undertaken by the developer at his/her expense, under the supervision of a qualified arborist. The Tree Bond shall not be released unless and until an Arboricultural Certificate - signed by a qualified arborist, stating that all tree works have been fully undertaken, trees on site alive and in good condition with useful life expectancy - has been submitted to and agreed with Dlr Parks + Landscape Services.

REASON: To provide security for the protection and long-term viability of trees to be retained on the site and give practical effect to the retention, protection and sustainability of trees during and after construction of the permitted development.

The grounds of appeal in respect of this Condition can be summarised as follows:

- Condition No. 19 requiring a tree bond is in addition to Condition No. 37 requiring a bond of €279,900 which is to be kept in force until roads, open spaces, car parks, sewers, water mains and drains are completed to the satisfaction of the Council.
- Having regard to the nature of the trees, it is considered that a bond of €150,000 is excessive.
- The bond serves to sterilise capital funding for the duration of the project.
- Precedence of ABP omitting tree bonds imposed by DLRCC, Ref. 304653.

6.3. Planning Authority Response

Dun Laoghaire Rathdown County Council has not submitted a response to the First-Party or Third-Party appeals.

6.4. Observations

None.

7.0 Assessment

Having examined the application details and all other documentation on file, including the Observations, Third-Party Appeal, First-Party Appeal, and First-Party Response, inspection of the site, and having regard to relevant local/regional/policies and guidance, I consider that the main issues in this appeal are as follows:

- Connection to Northern Lands
- Public Open Space Provision
- Bicycle Parking
- Tree Bond

In addition, this assessment will address;

- Principle of Development
- Residential Amenity
- Traffic and Access
- Drainage Proposal
- Bats, and
- Appropriate Assessment.

Each of these issues is addressed in turn below.

Section A

7.1. Connection to Northern Lands

Whilst the initial Site Plan (Dwg. RAU-1003, dated November 2020) illustrated planting between the proposed north-south internal road and the boundary of the subject site and the lands to the north, this planting was omitted at RFI stage (see Dwg. No. RAU-1003, dated April 2021). This was further illustrated on the 'Proposed Open Space' drawing (Dwg. No. RAU-1024) submitted at CFI stage. In addition the amendments to the site layout are documented in the Applicant's response (see *Response to DLRCC Reg. Ref. D21A/0051 – Request for Further Information*, prepared by Bernard Seymour Landscape Architects). Whilst there is no notation of the original subject planting being removed from this location on the drawings, Condition No. 1 attached

to DLRCC's decision requires that the development be constructed as per the plans and particulars submitted to the Local Authority, including those submitted at RFI and CFI stage. As such, I do not consider that there is any ambiguity regarding the omission of the planting and ransom strip between the internal road network and the boundary of the site. Should the Board be minded to grant permission for the development, I recommend that a similar natured condition be attached to the decision.

In relation to the Third-Party's request that the Applicant be conditioned to enter into a Section 47 agreement to preserve an unrestricted right of way over the proposed internal road network and a future right of connection to the subject development's piped and cabled services, I note that section 47 of the *Planning and Development Act 2000 (as amended)* states:

*47.— (1) A planning authority may enter into an agreement with any person interested in land in their area, for **the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be specified by the agreement, and any such agreement may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the planning authority to be necessary or expedient for the purposes of the agreement.***

(2) A planning authority in entering into an agreement under this section may join with any body which is a prescribed authority for the purposes of section 11.

(3) An agreement made under this section with any person interested in land may be enforced by the planning authority, or any body joined with it, against persons deriving title under that person in respect of that land as if the planning authority or body, as may be appropriate, were possessed of adjacent land, and as if the agreement had been expressed to be made for the benefit of that land.

(4) Nothing in this section, or in any agreement made thereunder, shall be construed as restricting the exercise, in relation to land which is the subject of any such agreement, of any powers exercisable by the Minister, the Board or the planning authority under this Act, so long as those powers are not exercised so as to contravene materially the provisions of the development plan, or as

requiring the exercise of any such powers so as to contravene materially those provisions.

(5) Particulars of an agreement made under this section shall be entered in the register. (Bold: My emphasis.)

The Applicant states in the planning application form that the proposed development is not to be taken-in-charge by the Local Authority, but is to be maintained by an estate management company.

The Applicant argues by way of making reference to case law ([2009] 2 IR 407, [2003] 2 IR 114, and [2016] IEHC 480) that such a condition would be *ultra vires* and would need to be the subject of a commercial agreement regarding costs for the provision and continual maintenance of the infrastructure. I concur with the Applicant in this respect. The Applicant has facilitated a physical connection to the lands in planning terms. In this instance I consider that attempting to impose a right-of-way on the lands, for the benefit of the potential future development of the northern lands, is beyond the scope of the provisions of Section 47 of the *Planning and Development Act 2000 (as amended)* and the associated *Planning and Development Regulations 2001 (as amended)*. Notwithstanding this, I do consider that it is within the interest of the area's permeability and proper planning that the internal road network is not restricted to use by the residents only, and that the public would be able to access the surrounding lands from the scheme. For example in the same manner that pedestrians and cyclists will be able to connect between Brighton Road and the future potential greenway via the proposed development, I consider that for permeability reasons that the public should be able to access the lands to the north via the scheme, should they be developed in the future.

7.2. Public Open Space Provision

The proposed development includes 1,558 sq m public open space, the majority of which is located to the north and south of the apartment block (see Dwg. No. RAU-1024). As outlined in the table below, I calculate that the required public open space provision, having regard to the number of dwellings and apartment units proposed (i.e. 57 No.), to be 1,352.5 sq m to 1,720 sq m. Therefore, the proposed scheme is compliant with Section 8.2.8.2 of the Development Plan and Apartment Guidelines 2020. I consider that the public open space, including the landscaping proposal and

the provision of play opportunities, is designed to an acceptable standard to provide a reasonable level of residential amenity for future residents. As such, I do not consider it necessary to omit the southernmost pair of houses in the north-south row to provide for additional open space.

Open Space Provision							
Proposed Houses – Section 8.2.8.2 of the County Development Plan							
Total No. Proposed	Occupancy Rate	Total Persons	CDP Min. Requirement	Total Required (15 sq m)	CDP Max. Requirement	Total Required (20 sq m)	
21 No. (3 & 4 bed units)	3.5	73.5	15 sq m	1,102.5 sq m	20 sqm	1,470 sq m	
Total Required Open Space Provision for Dwellings					1,102.5 sq m to 1,470 sq m		
Proposed Apartment (Total 36 No.) - 2020 Apartment Guidelines' Requirement (see Section 5.2 above)							
3 No.	1-bed	5 sqm		15 sq m			
31 No.	2-bed (4 Person)	7 sq m		217 sq m			
2 No.	3-bed (5 Person)	9 sq m		18 sq m			
Total Required Open Space Provision for Apartments				250 sq m			
Total Open Space Requirement for Dwellings and Apartments				1,352.5 sq m to 1,720 sq m			

7.3. Bicycle Parking Provision

Cycle Parking Type

As outlined above, the original scheme proposed 44 No. bicycle stacked parking spaces at basement level. The Transportation Department considered that this quantum complied with the Dun Laoghaire-Rathdown County Council's Standards for Cycle parking and Associated Cycle Facilities for New Developments (January 2018), but would only be acceptable if Sheffield stand were to be provided. Following a RFI, the Applicant proposed to maintain the stacking system, but increase the quantum of spaces to accommodate 72 No. bicycle spaces at basement level (and 18 No. visitor spaces at surface level) in line with the Apartment Guidelines. As stated above, Condition No. 14 requires that Sheffield stand parking be provided.

Section 2 of the Standards for Cycle parking and Associated Cycle Facilities for New Developments states “*Sheffield cycle stands shall also be provided within the compounds for added security*”. Furthermore, Section 3 states “*The preferred type of cycle parking stand is commonly known as the ‘Sheffield’ cycle stand.*” (Bold: My emphasis.) In addition, the Document states that stacked cycle parking is not recommended as many cyclists find such facilities difficult to use.

The Apartment Guidelines 2020 state that cycle storage facilities shall be provided in a dedicated facility of permanent construction, preferably within the building footprint or, where not feasible, within an adjacent or adjoining purpose-built structure of permanent construction. The Guidelines make no reference to Sheffield or stacked spaces.

As the subject spaces relate to the apartment units (as opposed to the dwellings), I consider it more appropriate that compliance is demonstrated with the Apartment Guidelines rather than the Local Authority’s own cycling policy. Whilst I acknowledge the Local Authority’s view that some cyclists may find it difficult to use stacked cycle parking in comparison to Sheffield spaces, I consider it is more beneficial to provide residents with a greater number of spaces than a lesser number. Subject to the correct instalment of the system, I foresee no reason why the stacked spaces would significantly deter residents from cycling. The proposal complies with the Guidelines by providing secure, indoor parking facilities and will maximise the space efficiency in the basement. In addition to the case study highlighted by the Applicant (Reg. Ref. 301522), I note that the Board has previously granted permission for basement tiered/stacked bicycle parking in a number of residential and student accommodation developments (Refs. 364346, 305993, and 348233). In conclusion, in my opinion, provision of the stacked cycle parking is acceptable in this instance.

Visitor Cycle Parking

In relation to the requirement for 50% of the short-term cycle parking spaces to be covered, again I refer to the Apartment Guidelines 2020, which does not contain such an obligation. Having regard to the nature of the spaces (i.e. use by visitors for short periods), I do not consider it necessary to provide covered facilities to protect bicycles from weathering.

7.4. Tree Bond

The planning authority has imposed a requirement (Condition No. 19) on the developer to lodge a bond of a minimum value of €150,000 as a deterrent to the wilful or accidental damage to trees on site during construction works. The Applicant makes the point that this requirement puts the economic viability of the project into doubt. A further Condition (No. 37) imposes a bond for the satisfactory completion of roads, footpaths, open spaces, public lighting, sewers, watermains, and drains. Section 34(4) provides for several types of conditions to be attached to a grant of planning permission. These include the provision of public open space, planting, maintenance and replacement of trees, and the giving of security for the satisfactory completion of the proposed development. Having regard to the number and quality of the existing trees to be retained on site, the tree protection measures proposed as part of the Arboricultural Assessment submitted with the application, and Condition No.37, I agree with the Applicant this condition is onerous and as such I recommend that, if the Board grants planning permission in this case, that a single bond condition be imposed.

Section B

7.5. Principle of Development

7.5.1. Land Use Zoning

The site is zoned for residential development (A - To protect and-or improve residential amenity) in the Development Plan. The proposed residential use on the site is compatible with the land use objectives, and as such it is my considered opinion that the proposed development, subject to quantitative and qualitative safeguards in respect of design and amenity, is acceptable in principle on the site. I foresee no reason why the proposed development would compromise the security or potential future development of neighbouring sites including the Embassy of the Kingdom of the Netherlands.

7.5.2. Density

The application has a density of 58 units per hectare based on a net area of 0.987ha and a total number of 57 units. Whilst I note that concerns were raised by Third-Parties

regarding the density, I consider it to be appropriate having regard to the Apartment Guidelines 2020 that promote net densities of greater than 45 dwellings per hectare (Section 2.4) for sites within walking distance (i.e. between 10-15 minutes or 1,000-1,500m) of high capacity urban public transport stops (such as DART, commuter rail or Luas). In addition, the Building Height Guidelines (SPPR1) promote higher densities in locations with good public transport accessibility. The site is located within 1.2km of the Carrickmines Luas Stop and 1.6km from the N11 QBC. In conclusion, I consider the principle of higher density development which would depart from the prevailing low residential density in the immediate area of the site to be acceptable.

7.5.3. **Architectural Design, Height and Scale**

The proposed development involves the construction of a part-four/part-five storey apartment block, with a parapet height of 16.6m. The apartment block is setback 2.634m and 16.37m at its closest points to the site's western and northern boundaries, respectively. The proposed two storey dwellings are located 26.265m to the south of the apartment block. Having regard to the separation distances between the apartment block and existing neighbouring dwellings and the proposed dwellings, I do not consider that the proposed height is excessive. Furthermore, I do not consider the overall scale and massing of the building to be overbearing. I am satisfied that the apartment block's height would be appropriate on the subject site next to the future greenway and racecourse, and is compliant with the Building Height Guidelines (Section 3.4). In reaching this conclusion, I consider that the site is within reasonable walking/cycling distance of public transport connections. I also consider that the site is not unduly constrained by adjoining developments, and as such, can largely establish its own character, without negatively impacting on the Foxrock ACA.

In terms of the proposed two storey dwellings along the southern boundary, I do not consider they will result in overbearing or overlooking impacts on the Brighton Woods residents. I note the Local Authority raised concern in relation to the separation distances (specifically 20.82m and 19.17m) between two of the proposed units and neighbouring existing dwellings. I consider the shortfall of achieving a 22m separation distance to be minor in this instance and would not result in a significant loss of privacy. Furthermore, the proposed dwellings along the eastern boundary of the site are all in excess of 24m from the existing detached dwellings fronting onto Brighton Road.

In terms of building materials, the apartment block will be constructed with light coloured brick, aluminium framed glazing, frameless guarding to balustrades and bronze cladding. The houses will be finished with brick, including feature brickwork details and bronze coloured metal clad canopies.

In summary, in my opinion the proposed development represents an appropriate architectural design response for the site. Whilst the character of the site will be altered, particularly due to the felling of the trees (notwithstanding that a number of the trees are in poor quality) and the construction of a four/five storey building, I do not consider that the proposal will adversely impact the visual amenity or character of the area.

7.5.4. Tree Felling

As outlined above, the Board previously refused permission for the redevelopment of the lands partially on grounds relating to the impact of tree felling on the site's sylvan character in the ACA (Reg. Ref. 303768).

The Applicant states that the site contains 134 No. tree items, eight of which comprise tree/shrub groups. The tree survey recorded 39 No. Category B trees, 60 No. Category C trees, and 35 No. Category U trees. The Arboricultural Report (dated December 2020) states that normally all Category U trees will be removed regardless of the development. The proposed development includes for the removal of 77 No. trees (57%) comprising 40 No. Category U trees, 10 No. Category B trees, and 27 No. Category C trees/items. The Applicant is proposing to replace the trees with approximately 195 No. trees. I concur with the Local Authority that the loss of the trees is regrettable, however it is necessary to facilitate the development of the residentially zoned site, which is in close proximity to public transport. Having regard to the proposed landscape masterplan, I consider that the proposed entrance will not adversely impact the character of the ACA and will be sympathetic to the sylvan character of the lands, particularly when compared against the previously refused scheme for the site. In conclusion, in my opinion, the proposed tree felling is acceptable in this instance.

7.6. Residential Amenity

7.6.1. Standard of Accommodation

- **Mix of Units**

The proposed development includes a total of 57 No. residential units comprising 21 No. dwellings (17 No. 3-bed units and four 4-bed units), and 36 No. apartments (three 1-bed units, 31 No. 2-bed units and two 3-bed units).

The Apartment Guidelines 2020 specify a maximum provision of 50% 1-bedroom units, with no requirement arising for 3-bedroom units. The proposed apartment unit mix complies with these standards.

In my opinion, the proposed development provides a reasonable mix of dwelling units which responds to the character of the adjoining residential developments. As such, I am satisfied that the proposed unit mix is acceptable in this instance.

- **Unit Sizes**

The proposed 1-bed apartments each measure 59.6 sq m, the 2-bedroom/4-person units range from 83 sq m to 99.6 sq m, while the 3-bedroom units range from 124.2 sq m to 128.2 sq m. I am satisfied that all apartment units exceed the minimum overall floor area requirements of the 2020 Apartment Design Guidelines.

The proposed 3-bedroom dwellings have an overall floor area of 113 sq m to 115.2 sq m and the 4-bedroom units measure 136.4 sq m. I am satisfied that the proposed dwelling houses exceed the minimum floor area requirements of the Dun Laoghaire County Development Plan.

- **Dual Aspect**

The Architectural Design Statement states that 78% of the units are dual aspect. However, this is based on the inclusion of some units that have living areas stepping out by approximately 2.5m beyond the balcony line and include corner windows, which the Applicant argues provides a second aspect. I note that the Planning Authority made reference to the Mayor of London's Draft London Plan, which states that "*a dual aspect dwelling is defined as one with openable windows on two external walls, which may be either on opposite sites of a dwelling or on adjacent sides of a dwelling where the external walls of a dwelling wrap around the corner of a building. The provision of*

a bay window does not constitute dual aspect." I consider that the proposed windows constitute a style of bay window and as such, I concur with the Planning Authority that the relevant units should not be considered to be dual aspect.

Notwithstanding the above, 20 No. units are dual aspect and as such are compliant with the Apartment Guidelines 2020 requirement that a minimum of 50% of apartment units shall be dual aspect.

- **Private Open Space**

The proposed units meet or exceed the Apartment Guidelines 2020 requirement with respect to private open space. Item No. 32 of the RFI requested the Applicant to confirm how privacy would be maintained to the terraces on the Ground Floor apartment units. The Applicant responded stating that a low brick wall with glazing would be provided in addition to buffer planting. It is stated that a dense planting buffer of c. 1-3m is provided to all ground floor terraces. However, no further details of the planting has been provided. In the interest of clarity and to ensure residents' privacy is protected, I recommend that these details be agreed with the Planning Authority prior to the commencement of the development, should the Board be minded to grant permission for the proposed development.

In addition, the proposed dwellings comply with the Development Plan's requirement for private open space.

- **Other Matters**

As outlined in the Schedule of Accommodation and architectural drawings, the proposed development is compliant with the Apartment Guidelines 2020 in terms of bedroom sizes, living/dining/kitchen room sizes, storage, floor-to-ceiling heights, lift and stair cores, waste facilities, and communal open space (see Section 7.2 above).

The planning application includes a Building Lifecycle Report, which sets out details of how the proposed development has been designed to minimise operation and energy costs. I note that the project is targeting an A2/A3 Building Energy Rating. I am satisfied that the information contained therein is acceptable.

Furthermore, the dwellings are compliant with the Quality Housing for Sustainable Communities Best Practice Guidelines for Delivering Homes Sustaining Communities (2007).

In conclusion, I am satisfied that the proposed development provides an acceptable standard of accommodation.

7.7. Sunlight and Daylight Impacts

In considering daylight and sunlight impacts, the Apartment Guidelines 2020 state that Planning Authorities should have regard to quantitative performance approaches outlined in guides like the BRE guide 'Site Layout Planning for Daylight and Sunlight' (2nd edition) or BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting' (Section 6.6 refers).

The Building Height Guidelines also seek compliance with the requirements of the BRE standards and associated British Standard (note that BS 8206-2:2008 is withdrawn and superseded by BS EN 17037:2018), and that where compliance with requirements is not met, that this be clearly articulated and justified.

The BRE "Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice" describes recommended values (e.g. ADF, VSC, APSH, etc) to measure daylight, sunlight and overshadowing impacts. However, it should be noted that the standards described in the BRE Guidelines are discretionary and not mandatory policy/criteria (para. 1.6). The BRE Guidelines also state in paragraph 1.6 that, "although it gives numerical guidelines, these should be interpreted flexibly since natural lighting is only one of many factors in site layout design".

The BRE note that other factors that influence layout include considerations of privacy, security, access, enclosure, microclimate, etc. In addition, industry professionals would need to consider various factors in determining an acceptable layout, including orientation, efficient use of land and arrangement of open space, and these factors will vary from urban to more suburban locations. I refer the Board to the Daylight Assessment prepared by BPG3.

Impact on Neighbouring Developments

The impact on daylight is measured in terms of Vertical Sky Component³. Table 1 demonstrates that the scheme complies with the BRE guidelines and that an

³ The BRE guidelines set out a two-stage guide for the vertical sky component (VSC).

acceptable level of skylight access will be retained by existing dwellings surrounding the site with the proposed development in place. Similarly Tables 2 and 3 demonstrates that acceptable levels of sunlight access would be retained by existing dwellings surrounding the site with the proposed development in place. The study included Goleen, St. Benedicts, Fairholme, Craughwell, Coolhaven and Nos. 13-15 Brighton Wood. Having regard to the height of the proposed apartment block and two-storey dwellings, and the separation distance between proposed development and surrounding existing development, and the orientation of the latter development, I am satisfied that the proposal will not cause undue loss of light for neighbouring residents.

Study C sets out the results of an assessment of the level of sunlight received by adjoining garden areas on 21st March. BRE guidelines recommend that for garden or amenity areas to appear adequately sunlight throughout the year, at least half of it should receive two hours of sunlight on March 21st. The submitted details show that the garden areas would receive over 2 hours of sunshine and that there would be no substantial overshadowing.

Proposed Development

In relation to daylight, the BRE 209 guidance, with reference to BS8206 – Part 2, sets out minimum values for ADF that designers/developers should strive to achieve, with various rooms of a proposed residential unit (2% for kitchens, 1.5% for living rooms and 1% for bedrooms). The Applicant states that the majority of rooms which are being proposed as part of the development on the Ground, First, Second and Third Floor Levels were assessed (92 No. in total). I consider it is reasonable to accept that levels of internal daylight amenity would be achievable within the equivalent units on the Fourth Floor Level and therefore a separate detailed assessment of these is not required. Table 6 demonstrates that all of the studied rooms satisfy the minimum ADF levels recommended in the BRE guidelines.

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1. Where the Vertical Sky component at the centre of the existing window exceeds 27% with the new development in place then enough skylight should still be reached by the existing window.
 2. Where the vertical sky component with the new development in place is both less than 27% and less than 0.8 times its former value, then the area lit by the window is likely to appear more gloomy, and electric light will be needed more of the time.

Sunlight access is assessed with respect to a measure called Annual Probable Sunlight Hours (APSH). As stated above, approximately 20 No. of the 36 No. proposed units are dual aspect. The Applicant's analysis demonstrates that an overall compliance rate of 84% is estimated when annual sunlight levels are considered and an overall compliance rate of 70% is estimated when winter sunlight levels are estimated. In respect to the units that fall short, the Applicant states "*it is important to recognise that good levels of internal skylight amenity are still predicted, see Study D. As an average daylight factor above 2% has been predicted for the open plan living/kitchen/dining rooms in these units, it is possible to maintain that a predominantly daylight appearance would be provided in these spaces, despite the shortfalls identified for access to direct sunlight.*" I note that the units that fall short are single aspect, north facing units. Due to the orientation of these units, I consider there is limited opportunities to increase the sunlight to the units without significantly altering the scheme. Where the guidelines have not been met, I am satisfied that the breaches are not so material as to warrant refusal of permission.

Finally, the Applicant's analysis states that over 90% of the outdoor space would be capable of receiving 2hrs of direct sunlight on the 21st March and as such argues that future residents would have access to good levels of outdoor sunlight amenity. I am satisfied that the contained therein is acceptable.

In summary, I consider that the proposed development is acceptable in terms of daylight/sunlight and overshadowing impacts and will not reduce the neighbouring dwellings' residential amenity.

7.8. Traffic and Access

The proposed development includes extinguishing the existing access to the site and Craughwell and constructing a new access/egress points approximately 12m south of the existing gate. Furthermore, a new access is proposed off the internal road to service Craughwell. A Traffic Impact Assessment was submitted as part of the application, which concludes that the proposed development can be supported by the surrounding road network. I note from my site visit that the entrance has acceptable sightline visibility in each direction. In addition, I note that the Transportation Department had no objection to the proposed development subject to conditions.

Separately, I note that Condition No. 3 requires the signage at the entrance to be reduced in size and agreed with the Planning Authority prior to the commencement of the development. I agree that a sign with a reduced scale would likely respect the character of the ACA and as such, recommend that the Board attach a similar condition if it is minded to grant permission for the development.

In terms of car parking, the proposed development includes 58 No. car parking spaces at basement level to service the apartment units. In addition, there are 42 No. surface spaces within the curtilage of the dwellings in accordance with the Development Plan's car parking standards (i.e. 2 spaces per 3+ bed units). In addition, four surface car parking spaces are provided for visitors. I am satisfied that this level of car parking provision is acceptable.

Furthermore, as outlined above, I am satisfied that the level of bicycle parking provision is acceptable and that appropriate provision has been made to facilitate a bicycle connection between the future greenway and Brighton Road.

In summary, I consider that the proposed development would not pose an unacceptable risk to traffic safety, nor would it cause excessive traffic congestion.

7.9. Foul Drainage

As stated above, the Board previously refused permission for the redevelopment of the site partially on the grounds relating to deficiencies in the existing foul sewerage system on Brighton Road. Having regard to the existing deficiencies, the Applicant proposes to outfall by gravity through the racecourse lands to an existing 375mm diameter foul drain along the entrance road to the racecourse's overflow carpark. A gravity foul pipe will be provided for within the site falling to the entrance at Brighton Road, to facilitate possible future connection of the proposed development to the Brighton Road network in the event of capacity and/or upgrade works being carried out on this network. As outlined above, Irish Water has no objection to the development, subject to condition. In summary, I consider the proposed foul drainage strategy to be acceptable.

7.10. Bats

The Planning Authority requested that a bat assessment be undertaken on the site as part of the RFI. A bat survey was undertaken in April 2021 which observed five species

(Common Pipistrelle, Leisler Bat, Soprano Pipistrelle, Brown Long-eared Bat, and Daubenton's Bat) foraging and commuting within the proposed development area. No bat roosts were recorded. The Assessment states that *'for a small survey area, this is a high level of bat biodiversity' and reflects that the proposed development site is located in an area with large mature trees connected in the landscape.* Ten trees, proposed to be felled as part of the development, were identified as having a Potential Bat Roost (PBR) value. Two commuting routes were recorded for bats on the site also – bats were found to commute through the site to areas including the dense treeline along the former rail line. The Assessment concludes that *'Overall in consideration of the level of bat activity and presence of suitable bat habitats in the immediate area, the potential impact quality and significance of the proposed development is considered to be Negative, but Moderate, if no bat mitigation measures are implemented.'* Subject to the implementation of mitigation measures, the Applicant states that the proposed development is considered to have a Negative but Slight impact, due to extensive landscaping and a reduction in LUX levels of the proposed lighting. One such mitigation measure includes a second assessment of trees identified as PBRs requiring a second assessment in consultation with a tree surgeon. With respect to lighting, I note that the Local Authority's Lighting Department raised concerns in relation to bollard lighting on road surfaces. I consider that this matter can be addressed by way of condition.

In summary, I concur with the Applicant's assessment, and I am satisfied that the potential for impacts on bats can be avoided and/or managed by measures that form part of the proposed scheme and with suitable conditions, to an acceptable extent.

7.11. Appropriate Assessment

As stated above, the nearest Natura sites are: 1) South Dublin Bay and River Tolka SPA (site code: 004024), approximately 4km north of the site, 2) the Special Area of Conservation: Rockabill to Dalkey Island SAC (site code: 003000), approximately 6km east of the site, and 3) Special Protection Area: Dalkey Islands SPA (site code: 004172), approximately 6.25km northeast of the site.

There are no European sites within or near the proposed development boundary, therefore there is no potential for direct impacts on any such site to occur. The

proposed development is not an ex-situ site for Qualifying Interest/Special Conservation Interest populations of any European sites.

The proposed development involves the construction of 21 No. dwellings and an apartment block (36 No. units) on a site of 1.27ha that adjoins the existing sewerage system. The potential impact of the proposed development on the quality and quantity of the effluent from city's sewers is negligible given its size relative to the urban development that the sewers already serve. So the hydrological links between the appeal site and the Natura sites could not be a pathway by which the proposed development would have the potential to have any effects on the applicable qualifying interests. Nearly all of the land between the appeal site and the Natura sites have been developed as part of the city. So there is no potential for development on the appeal site to give rise to any disturbance or displacement of habitats or species in the bay that could have an effect of the Natura 2000 sites.

7.11.1. In conclusion, having regard to the nature and scale of the proposed development, within an established area on serviced land, and the separation distance to the European sites to the subject site, I do not consider that the proposal would be likely to significantly impact the qualifying interests of the South Dublin Bay and River Tolka SPA, Rockabill to Dalkey Island SAC or Dalkey Islands SPA (or any other European site) during either the construction or operational phases of development. As such, I consider that no Appropriate Assessment issues arise. In conclusion, I do not consider that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site. I note that a screening statement prepared by Openfield Ecology was submitted with the planning application documentation, which comes to the same conclusion (i.e. Stage 2 Appropriate Assessment is not required).

8.0 Recommendation

I recommend that planning permission be granted, subject to the conditions outlined below.

9.0 Reasons and Considerations

Having regard to the A zoning objective pertaining to the site in the Dun Laoghaire – Rathdown County Development Plan, 2016 – 2022 and the policies and provisions contained in the National Planning Framework, Quality Housing for Sustainable Communities Best Practice Guidelines for Delivering Homes Sustaining Communities, Urban Development and Building Heights - Guidelines for Planning Authorities, and the Sustainable Urban Housing Design Standards for New Apartments – Guidelines for Planning Authorities, it is considered that the proposed development, subject to compliance with the conditions set out below will not adversely impact on the character or setting of the Foxrock Architectural Conservation Area, would not restrict the potential future development of the lands to the north of the site, would not seriously injure the amenities of the area or property in the vicinity in terms of visual impact, overlooking or overbearing impacts, would not cause adverse daylight/sunlight or overshadowing impacts on neighbouring properties, and would generally be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the plans and particulars submitted to the Local Authority on 14th June 2021 and 25 th August 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 the 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.	Details of the materials, colours and textures of all the external finishes to the proposed dwellings and apartment block shall be as submitted with the

	<p>application, unless otherwise agreed in writing with, the planning authority prior to commencement of development. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination. Reason: In the interest of visual amenity.</p>
3.	<p>(a) The landscaping scheme as submitted with the planning application and as amended by the plans and particulars submitted to the Local Authority on 14th June 2021, shall be carried out within the first planting season following substantial completion of external construction works. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, with a period of 5 years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p>(b) Prior to the commencement of development, the applicant shall submit detailed landscaping and screening plans to ensure appropriate privacy is provided to future residents of the Ground Floor Level apartment units proposed for agreement with the Planning Authority.</p> <p>(c) Prior to the commencement of development, the applicant shall submit elevations and sections showing accurate dimensions and levels of the western boundary treatment proposed for agreement with the Planning Authority.</p> <p>(d) The areas of public open space shown on the lodged plans shall be reserved for such use and shall be soiled, seeded, and landscaped in accordance with the detailed requirements of the planning authority. This work shall be completed before any of the dwellings are made available for occupation.</p> <p>(e) Prior to the commencement of development, the developer shall retain the professional services of a qualified Landscape Architect as Landscape Consultant throughout the life of the site development works and shall notify the Planning Authority of that appointment in writing.</p>

	<p>(f) When all landscape works are inspected and completed to the satisfaction of the Landscape Consultant, a Practical Completion Certificate shall be submitted for the written agreement of the Planning Authority, as verification that the approved landscape plans and specifications have been fully implemented.</p> <p>Reason: In the interest of residential and visual amenity.</p>
4	<p>The mitigation measures outlined in the Arboricultural Assessment submitted with the application, shall be carried out in full, except where otherwise required by conditions of this permission.</p> <p>Reason: To protect trees and planting during the construction period in the interest of visual amenity.</p>
5	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
6	<p>The applicant or developer shall enter into water and/or wastewater connection agreement(s) with Irish Water prior to the commencement of this development.</p> <p>Reason: In the interest of orderly development.</p>
7	<p>The following requirements in terms of traffic, transportation and mobility shall be incorporated and where required, revised drawings / reports showing compliance with these requirements, shall be submitted to, and agreed in writing with, the Planning Authority prior to the commencement of development:</p> <p>(a) The road layout including, junctions, parking areas, footpaths, cycle paths and kerbs, pedestrian crossings, car parking bay sizes and road access to the development shall comply with the requirements of the Design Manual for Roads and Streets and any requirements of the Planning Authority for</p>

	<p>such road works. A minimum width of 3 m shall be provided for any shared pedestrian/cycle routes.</p> <p>(b) All roads shown connecting to adjoining lands shall be constructed up to the boundaries.</p> <p>(c) The developer shall carry out at their own expense, the recommendations and alternative measures as accepted by the designer in the submitted Quality Audit Feedback Form. The developer shall carry out a Stage 2 and Stage 3 Quality Audit (which shall include a Road Safety Audit, Access Audit, Cycle Audit and Walking Audit), which shall be submitted to the Planning Authority for its written agreement. The developer shall carry out all agreed recommendations contained in the audits, at the developer's expense. Reason: In the interest of traffic and pedestrian safety.</p>
8	<p>The Applicant shall ensure that a 24 hour ungated and unimpeded permeability linkage is provided for pedestrians/cyclists from Brighton Road to the adjacent greenway on completion of both the development and the greenway scheme.</p> <p>REASON: In the interest of permeability and connectivity.</p>
9	<p>A minimum of 10% of the communal car parking spaces should be provided with EV charging stations/points, and ducting shall be provided for all remaining car parking spaces facilitating the installation of EV charging points/stations at a later date. Where proposals relating to the installation of EV ducting and charging stations/points has not been submitted with the application, in accordance with the above noted requirements, the developer shall submit such proposals to be agreed in writing with the Planning Authority prior to the occupation of the development.</p> <p>Reason: To provide for and/or future proof the development such as would facilitate the use of Electric Vehicles.</p>
10	<p>No additional development shall take place above the apartment block's roof parapet level, including lift motor enclosures, air handling equipment, storage</p>

	<p>tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.</p> <p>Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.</p>
11	<p>The development shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall: (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and (b) employ a suitably qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works. The assessment shall address the following issues: (i) the nature and location of archaeological material on the site, and (ii) the impact of the proposed development on such archaeological material. A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary archaeological excavation) prior to commencement of construction works. In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.</p>
12	<p>The mitigation measures outline in the Bat Assessment submitted as part of the RFI Response, shall be carried out in full, except where otherwise required by conditions of this permission. Reason: In the interest of the proper planning and sustainable development of the area.</p>
13	<p>All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located</p>

	<p>underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing overground cables shall be relocated underground as part of the site development works.</p> <p>Reason: In the interests of visual and residential amenity.</p>
14	<p>Comprehensive details of the proposed public lighting system to serve the development shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. The agreed lighting system shall be fully implemented and operational, before the proposed development is made available for occupation and shall comply with the requirements of the Bat Assessment submitted at RFI stage.</p> <p>Reason: In the interests of amenity and public safety.</p>
15	<p>Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 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>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
16	<p>The site development and construction works shall be carried out in such a manner so as to ensure that the adjoining streets are kept clear of debris, soil and other material and if the need arises for cleaning works to be carried out on the adjoining public roads, the said cleaning works shall be carried out at the developer's expense.</p> <p>Reason: To ensure that the adjoining roadways are kept in a clean and safe conditions during construction works in the interest of orderly development.</p>
17	<p>Proposals for an estate/street name, house numbering scheme and associated signage, including signage at the entrance to the development, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs,</p>

	<p>and house numbers, shall be provided in accordance with the agreed scheme. The proposed name(s) 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(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).</p> <p>Reason: In the interest of urban legibility and to ensure the use of locally appropriate place names for new residential areas.</p>
18	<p>The construction of the development shall be managed in accordance with a Construction Management Plan and Environmental Management Construction 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 hours of working, noise and dust management measures, traffic management arrangements/measures and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety.</p>
19	<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, including potential contaminated soil, 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>

20	<p>A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials, and for the ongoing operation of these facilities for each apartment unit 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: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.</p>
21	<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>
22	<p>The management and maintenance of the proposed development associated with the apartments following their completion shall be the responsibility of a legally constituted management company, or by the local authority in the event of the development being taken in charge. Detailed proposals in this regard shall be submitted to, and agreed in writing with, the planning authority prior to occupation of the development.</p> <p>Reason: To ensure the satisfactory completion and maintenance of this development.</p>
23	<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</p>

	<p>referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.</p> <p>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.</p>
24	<p>Prior to the commencement of any house in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house unit), pursuant to Section 47 of the Planning and Development Act, 2000, that restricts all houses permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.</p> <p>Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.</p>
25	<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. The application of any indexation required by this condition 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 for determination.</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>

	Development Contribution Scheme made under section 48 of the Act be applied to the permission.
26	<p>The developer shall pay to the planning authority a financial contribution in respect of the extension of Luas Line B1 – Sandyford to Cherrywood namely Luas Line B1 in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 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 Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.</p>
27	<p>Prior to commencement of development, the developer shall lodged with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, 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 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>Reason: To ensure the satisfactory completion of the development.</p>

Susan Clarke
Planning Inspector

21st February 2022