



An
Bord
Pleanála

Inspector's Report

ABP-311809-21

Development	Demolition of commercial unit and construction of 78 build to rent apartments with communal open space, car & bicycle parking and associated site development works.
Location	Site at Nos. 133-152, Ballyogan Road, Carrickmines, Dublin 18 (D18 F882 and D18 FN24)
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D21A/0717
Applicant(s)	Ultra Dawn Ltd.
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Ultra Dawn Ltd.
Observer(s)	William & Rosario Kelly

Date of Site Inspection

07/04/2022 and 11/04/2022

Inspector

Gillian Kane

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1.0 Site Location and Description

- 1.1.1. The subject site is located on the southern side of Ballyogan Road, in the south Dublin suburb of Carrickmines. The Luas line runs along the northern side of Ballyogan Road with two stops approx. 500m from the site – Leopardstown Valley and Ballyogan Wood.
- 1.1.2. The roughly rectangular shaped site currently has three structures: a residential dwelling at no. 152, a single storey former dwelling no. 133, now part of the commercial marble / stone works which also includes a double height workshop and other small structures. A section of the site is used for storage for materials associated with the existing business and a section to the rear (south) is overgrown and appears unused.
- 1.1.3. The site is bound to the north by Ballyogan Road, by residential dwellings to the east (no.s 83,84 and 84a), by Dun Laoghaire Rathdown Operations Centre to the south and by two residential properties to the west. Further west are a range of commercial operations – Greenstar Recycling, Dimples Creche, GoQuest, Ballyogan Family Resource Centre. The green line Luas runs along the northern side of Ballyogan Road, with the Samuel Beckett Civic Campus and Stepside ET national school and Gaelscoil Shliabh Rua on the northern side.

2.0 Proposed Development

- 2.1.1. On the 11th of August 2021, planning permission was sought for a development comprising the demolition of all structures on site: namely a single storey commercial unit (1150sq.m.) and a single storey dwelling (220sq.m.) and the construction of a BTR development of 78 no. units in two blocks: A and B ranging from single to 6 storey. Block B includes a communal amenity space (lobby and reception) of 49sq.m., a gym (52sq.m.), function room (35sq.m.), lounge (69sq.m.), and a cinema room (33sq.m.). In terms of unit mix, 50% (39 no.) of the proposed 78 no. units are to be one-bedroom, 5.1% (4 no. units) are two-bedroom, three person and 44.9%(35 no. units) are two-bedroom four person units.
- 2.1.2. Proposed works to Ballyogan Road comprise the removal of the existing hatching to provide a new right turn storage area, removal of the existing three-way road marking and replacement with a new bifurcation arrow and new two-way road

markings. It is proposed to provide 62 no. car spaces and 159 no. cycle spaces, 748sq.m. of open space.

2.1.3. Details provided in the application form include:

- Gross floor area of existing buildings: 1,350sq.m.
- Gross floor area of proposed works: 6,809sq.m.
- Gross floor area of proposed demolition: 1,350sq.m. (200sq.m. of which is residential)
- Proposed 39 no. two-bed apartments, 39 no. one-bed apartments, 62 no. car spaces

2.1.4. The application was accompanied by the following:

- Planning report
- Architectural Design Statement
- Civil Engineering Planning Report
- Construction and Demolition Waste Management Plan
- Site Specific Flood Risk Management
- Landscape Design Rationale
- AA Screening Report
- Bat Survey
- Tree Survey
- Traffic Impact Assessment
- Quality Audit Report
- Operational Waste Management Plan
- Construction Environmental Management Plan
- Microclimate Assessment
- Energy and Sustainability Statement
- Lighting Layout
- Noise Impact Assessment
- Archaeological, Architectural and Cultural Heritage Impact Assessment
- Daylight and Sunlight Analysis
- Verified View Montages and CGI's
- Part V compliance proposal

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 5th of October 2021, the Planning Authority issued a notification of their intention to REFUSE permission for the following two reasons:

- 1 The proposed development comprises a high intensity, highly vulnerable residential development on existing low intensity developed or “undeveloped land” within Flood Zone B, thus the site’s susceptibility to flooding in itself and/or the potential impact that the development may have on flooding elsewhere in the catchment; results in the proposed development failing to accord with the Ballyogan & Environs Local Area Plan 2019-2025 SFRA or the County Development Plan 2016 -2022, in particular Appendix 13.
- 2 The subject development by reason of the proposed height and massing would have an unsatisfactory relationship with the adjacent dwelling to the east having a negative visual impact and also resulting in an overbearing impact over No. 84 Ballyogan Road The proposed development is therefore contrary to Policy RES5 of the Ballyogan LAP. The position of the front building line with respect to neighbouring buildings coupled with the proposed height, which would largely exceed that of other structures in the vicinity would also cause an overly dominant effect when seen from the public road.

3.2. Planning Authority Reports

- 3.2.1. **Drainage Planning:** Refusal recommended. Drainage planning do not consider the lands to be developed – it is an area of existing low intensity development. These areas do not pass the justification test and only water compatible development can be permitted in Flood Zone B. The applicant has proceeded that the lands are an existing developed area and has assessed the development against section 1.9V of the Ballyogan LAP SFRA. The development should be assessed against section 1.8i of the plan. Ten items of further information required.
- 3.2.2. **Environmental Health:** application is acceptable subject to 8 no. conditions.
- 3.2.3. **Municipal Services:** Proposed lighting scheme does not meet the requiremenst of Dun Laoghaire Rathdown Public Lighting Specification. Lighting Design Report required.

- 3.2.4. **Environment Section:** Proximity of large waste management facility, recycling depot, recreational and educational facilities, large electricity transformer station is such that high levels of noise attenuation are essential. Submitted Noise Plan is seriously deficient. Careful consideration of ventilation system required. Should permission be granted, environmental monitoring, waste management, operational waste management conditions recommended.
- 3.2.5. **Parks & Landscape Services:** Further information required on 10 no. items.
- 3.2.6. **Transportation Planning:** Five items of Further information required: increase in cycle and car parking, revised drawing showing Ballyogan Road layout, Construction management plan and Traffic Management Plan for construction Phase, details of compliance with Quality Audit.
- 3.2.7. **Planning Report:** Residential development is acceptable in principle, caution raised regarding Ballyogan and Environs LAP (BELAP) which notes the municipal services, light industrial and warehousing uses in the area. Density at 162 units per ha is higher than the LAP recommendation of 55 no. units per ha. Planning Authority has concerns regarding the impact of the density on the existing surrounding uses. Breaching of the established building line by Block B, coupled with the increase in height would result in a significant negative visual effect. Impact of 10.5m high block B next to the 4m high dwelling at no. 84 Ballyogan Road is too abrupt. The 19m separation between Block b (highest point of 19m) to no. 134 Ballyogan Road is sufficient to minimise any negative effects. Overlooking from unit B5085 towards no. 84 can be overcome with a privacy screen. Issues raised re noise are noted. Development considered not to be compliant with Policy RES5 of the LAP. Planning report notes that the LAP aligns with the 2018 Height Guidelines. Proposed development does not comply with the S28 Guidelines due to its failure to respond to the characteristics of the receiving environment. Regarding visual impact, development is considered to be visually incongruous. Regarding residential amenity, report notes overlooking of no. 84 from unit no. B508 and of no. 84a from unit no. A406. Sunlight and Daylight assessments accepted as accurate. Proposed development complies with unit mix, floor areas, dual aspect, floor to ceiling heights, lift & stair cores, private and community amenity areas, recreational amenities, open space provision. Notes the request for further information from the Transportation

Department. Proposed car parking provision is acceptable. Notes the serious concerns raised by the Drainage Section. Recommendation to refuse permission.

3.3. **Prescribed Bodies**

- 3.3.1. **Department of Defence:** Operation of cranes should be coordinated with Air Corps Air Traffic Services. Obstruction lights should be of a type visible to Night Vision Equipment, must emit light at the near IR range of electromagnetic spectrum specifically at or near 850nm of wavelength. Light intensity to be of similar value to that emitted in the visible spectrum of light.

3.4. **Third Party Observations**

- 3.4.1. Five submissions to the Planning Authority raised the following issues:
- Height, and compliance with LAP
 - Overlooking, overshadowing
 - Insufficient car parking
 - Asbestos on site,
 - Noise
 - Out of character with area

4.0 **Planning History**

- 4.1.1. None on the subject site.

5.0 **Policy Context**

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

- 5.1.1. This national policy seeks to support the future growth and success of Dublin as Irelands leading global city of scale, by better managing Dublin's growth to ensure that more of it can be accommodated within and close to the city. Enabling significant population and jobs growth in the Dublin metropolitan area, together with better management of the trend towards overspill into surrounding counties.
- 5.1.2. The NPF recognises that at a metropolitan scale, this will require focus on a number of large regeneration and redevelopment projects, particularly with regard to underutilised land within the canals and the M50 ring and a more compact urban form, facilitated through well designed higher density development.

5.1.3. National Strategic Outcome 1, Compact Growth, recognises the need to deliver a greater proportion of residential development within existing built-up areas.

Activating these strategic areas and achieving effective density and consolidation, rather than sprawl of urban development, is a top priority.

5.1.4. Of relevance to the subject application are the following:

- **National Policy Objective 2a:** A target of half (50%) of future population and employment growth will be focused in the existing five cities and their suburbs
- **National Policy Objective 5:** Develop cities and towns of sufficient scale and quality to compete internationally and to be drivers of national and regional growth, investment and prosperity.
- **National Policy Objective 6:** Regenerate and rejuvenate cities, towns and villages of all types and scale as environmental assets, that can accommodate changing roles and functions, increased residential population and employment activity and enhanced levels of amenity and design quality, in order to sustainably influence and support their surrounding area.
- **National Policy Objective 13:** In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high-quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.
- **National Policy Objective 33:** Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.
- **National Policy Objective 35:** Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-base regeneration and increased building heights.
- **National Policy Objective 27:** seeks to ensure the integration of safe and convenient alternatives to the car into the design of our communities, by

prioritising walking and cycling accessibility to both existing and proposed developments and integrating physical activity facilities for all ages.

- **National Policy Objective 33:** seeks to prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.

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

- 5.2.1. Reflecting the National Planning Framework strategic outcomes in relation to compact urban growth, the Government considers that there is significant scope to accommodate anticipated population growth and development needs, whether for housing, employment or other purposes, by building up and consolidating the development of our existing urban areas.
- 5.2.2. The first of the 10 National Strategic Outcomes in the National Planning Framework that the Government is seeking to secure relates to compact urban growth. Securing compact and sustainable urban growth means focusing on reusing previously developed 'brownfield' land, building up infill sites and either reusing or redeveloping existing sites and buildings, in well serviced urban locations, particularly those served by good public transport and supporting services, including employment opportunities.
- 5.2.3. While achieving higher density does not automatically and constantly imply taller buildings alone, increased building height is a significant component in making optimal use of the capacity of sites in urban locations where transport, employment, services or retail development can achieve a requisite level of intensity for sustainability. Accordingly, the development plan must include the positive disposition towards appropriate assessment criteria that will enable proper consideration of development proposals for increased building height linked to the achievement of a greater density of development.
- 5.2.4. **SPPR1:** In accordance with Government policy to support increased building height in locations with good public transport accessibility, particularly town / city cores, planning authorities shall explicitly identify, through their statutory plans, areas where increased building height will be actively pursued for both redevelopment and infill development to secure the objectives of the National Planning Framework and

Regional Spatial and Economic Strategies and shall not provide for blanket numerical limitations on building height.

- 5.2.5. **SPPR3:** It is a specific planning policy requirement that where;
- (A) 1. an applicant for planning permission sets out how a development proposal complies with the criteria above; and 2. the assessment of the planning authority concurs, taking account of the wider strategic and national policy parameters set out in the National Planning Framework and these guidelines;
- then the planning authority may approve such development, even where specific objectives of the relevant development plan or local area plan may indicate otherwise.
- (B) In the case of an adopted planning scheme the Development Agency in conjunction with the relevant planning authority (where different) shall, upon the coming into force of these guidelines, undertake a review of the planning scheme, utilising the relevant mechanisms as set out in the Planning and Development Act 2000 (as amended) to ensure that the criteria above are fully reflected in the planning scheme. In particular the Government policy that building heights be generally increased in appropriate urban locations shall be articulated in any amendment(s) to the planning scheme
- (C) In respect of planning schemes approved after the coming into force of these guidelines these are not required to be reviewed.

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

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

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

- 5.4.1. MASP Housing and Regeneration policy object **RPO 5.4** states that “Future development of strategic residential development areas within the Dublin Metropolitan area shall provide for higher densities and qualitative standards as set out in the ‘Sustainable Residential Development in Urban Areas’, ‘Sustainable Urban

Housing; Design Standards for New Apartments' Guidelines, and 'Urban Development and Building Heights Guidelines for Planning Authorities"

- 5.4.2. **RPO 5.5** goes on to identify that "Future residential development supporting the right housing and tenure mix within the Dublin Metropolitan Area shall follow a clear sequential approach, with a primary focus on the consolidation of Dublin and suburbs, and the development of Key Metropolitan Towns, as set out in the Metropolitan Area Strategic Plan (MASP) and in line with the overall Settlement Strategy for the RSES. Identification of suitable residential development sites shall be supported by a quality site selection process that addresses environmental concerns"
- 5.4.3. **RPO 3.3:** Local authorities shall, in their core strategies, identify regeneration areas within existing urban settlements and set out specific objectives relating to the delivery of development on urban infill and brownfield regeneration sites in line with the Guiding Principles set out in the RSES and to provide for increased densities as set out in the 'Sustainable Residential Development in Urban Areas', 'Sustainable Urban Housing; Design Standards for new Apartments Guidelines' and the 'Urban Development and Building Heights Guidelines for Planning Authorities'.
- 5.4.4. **RPO 4.3** seeks to "support the consolidation and re-intensification of infill / brownfield sites to provide high density and people intensive uses within the existing built-up area of Dublin City and suburbs and ensure that the development of future development areas is co-ordinated with the delivery of key water infrastructure and public transport projects."
- 5.4.5. **Section 5.3** identifies guiding principles for development of the metropolitan area, which include:
- Compact sustainable growth and accelerated housing delivery – To promote sustainable consolidated growth of the Metropolitan Area, including brownfield and infill development, to achieve a target to 50% of all new homes within or contiguous to the built-up area of Dublin City and suburbs, and at least 30% in other settlements. To support a steady supply of sites and to accelerate housing supply, in order to achieve higher densities in urban built up areas, supported by improved services and public transport.

5.5. **Dun Laoghaire Rathdown County Development Plan 2016-2022**

- 5.5.1. The operative Development Plan is the Dun Laoghaire Rathdown County Development Plan 2016-2022. The majority of the site is zoned objective A – to protect and/or improve residential amenity. A section of the site along the southern boundary is zoned Objective E, which has the stated objective to provide for economic development and employment.
- 5.5.2. The Board will note that the Dun Laoghaire Rathdown Draft County Development Plan 2022-2028 was adopted by the Elected Members at a Special County Development Plan meeting held on the 10th March 2022. The adopted Plan will come into force 6 weeks after it was adopted, namely the **21st April 2022**.

5.6. **Ballyogan and Environs LAP 2019-2025**

- 5.6.1. The Core Strategy of the 2016-2022 County Development Plan (CDP) identifies Stepside-Ballyogan and Carrickmines as two of the eight 'Primary Growth Nodes' within the County, which will provide 'a significant portion of the supply of residential units' up to the 2022 horizon.
- 5.6.2. The subject site is located in Ballyogan South, in the 'Ballyogan Quarter' of the BELAP. Chapter 3 of the LAP states regarding the Ballyogan Quarter – 'The Plan will encourage the further development of the Samuel Beckett Civic Campus as a focus for community facilities for the whole BELAP area. New housing at Ballyogan Court will be progressed, and a framework for comprehensive and integrated development at Racecourse South will be set out by way of a Site Development Framework. A new pedestrian and cycle crossing of the M50 near Junction 15 will be critical, along with additional links to Foxrock and Cherrywood'.
- 5.6.3. Policies of relevance to the subject application include:
- 5.6.4. Policy **BELAP RES8 – Build to Rent**: To permit 'Build to Rent' schemes – as defined by Government Guidelines - in parts of the BELAP area with good access to transport and services, namely Glencairn North, Kilgobbin East, Kilgobbin South, The Park Carrickmines, Old Glenamuck Road, and Racecourse South (see Figure 11.1), subject to compliance with Policy BELAP RES6 above. In recognition of the BELAP's location at the edge of the built footprint of the Metropolitan Area, there will be a cautionary approach taken to 'Build to Rent' schemes that propose levels of car

parking significantly below what might be expected from a 'traditional' apartment scheme.

- 5.6.5. Policy **BELAP EMP3 – Ballyogan South**: To support the existing cluster of municipal, communication, light industrial and utility uses at Ballyogan South and to encourage comparable uses within this area. **Section 6.6.2** of the LAP chapter on Employment notes that the Ballyogan South quarter is characterised by a range of municipal and utilities employers such as An Post, ESB Networks, and DLR County Council. There is also a range of small businesses in former residential plots/properties, as well as the Ballyogan Business Park which accommodates a range of manufacturing, light industrial, and warehousing uses. 'Given the nature of employment uses in situ, many of which are not compatible with being proximate to residential uses, a cautionary approach will be taken to additional residential development in this area'.
- 5.6.6. Policy **BELAP RES3 – Building Height by Neighbourhood**: The building heights of residential schemes shall be informed by the considerations set out in Table 5.5, unless otherwise indicated by the detailed provisions of any Site Development Frameworks, where applicable, and subject to Policy BELAP RES4 below.
- 5.6.7. **Policy BELAP RES4 – Locations for Higher Buildings**: The locations identified as 'RES4' in Glencairn North, Kilgobbin South, Mimosa-Levmoss, Racecourse South, The Park Carrickmines, and Old Glenamuck Road are considered as suitable locations for higher buildings within the BELAP area (see Figure 11.1). It is anticipated that all bar one of these locations would be suitable for residential buildings, consistent with the prevailing zoning objective. The designation at The Park Carrickmines is subject to 'E' Zoning Objective, where residential is 'open for consideration' under the County Development Plan and as such, any proposed use mix would need to display compliance with this zoning objective.
- 5.6.8. **Policy BELAP RES5 – Building Height by Scheme**: Any planning application for a scheme which proposes buildings in excess of 4 storeys shall be accompanied by an analysis of building height and positioning of buildings with reference to the following issues: • Impacts on the immediate and surrounding environment – streetscape, historic character. • Impacts on adjoining structures, with a focus on overlooking and impact on residential amenity. • Relationship to open spaces and public realm. •

Views and vistas. • Daylight and sunlight, including shadow analysis where appropriate. • Wind and microclimate analysis • Impacts on residential amenity of these buildings from noise sources such as motorway noise. • Placemaking and the ability of taller buildings to assist with legibility and wayfinding within a Neighbourhood.

- 5.6.9. Policy **BELAP SI10 – Flood Risk Assessment**: To require all proposed developments to carry out a Site-Specific Flood Risk Assessment that shall demonstrate compliance with: • The Planning System and Flood Risk Management, Guidelines for Planning Authorities (DEHLG / OPW, 2009), as may be revised and/or updated. • The prevailing Dún Laoghaire-Rathdown County Development Plan. • Any SSFRA shall not be required to carry out a Plan-Making Justification Test, given that this exercise was already carried out at County Development Plan-level. A review of this process was also undertaken as part of the preparation of this Local Area Plan (LAP). • The SSFRA shall pay particular emphasis to site specific mitigation measures and any necessary management measures, as per Appendix B4 of the above 2009 National Guidelines.

5.7. **Natural Heritage Designations**

- 5.7.1. The subject site is approx. 7km from the Rockabill to Dalkey Island SAC (003000) and Dalkey Island SPA (004172), 5km from the South Dublin Bay and River Tolka Estuary SPA (004024), South Dublin Bay SAC (00210), 6km from the Wicklow Mountains SAC (002122) and Wicklow Mountains SPA (004040) and 5km from Knocksink Wood SAC (000725) and Ballyman Glen SAC (000713).

5.8. **EIA Screening**

- 5.8.1. The subject proposal refers to a brownfield site of 0.48ha, which is mostly zoned Objective A 'to protect and improve residential amenity'. Permission is sought for the demolition of all structures on site and the construction of an up-to 6 storey building with commercial uses at ground level and 78 no. Build-To-Rent apartments on the upper floors.
- 5.8.2. The development is within the class of development described at 10(b) of Part 2 of Schedule 5 of the planning regulations. An environmental impact assessment would

be mandatory if the development exceeded the specified threshold of 500 dwelling units or 10 hectares, or 2ha if the site is regarded as being within a business district.

- 5.8.3. The nature and the size of the proposed development is well below the applicable thresholds for EIA. I note that the uses proposed are similar to some of the land uses in the area and that the development would not give rise to significant use of natural resources, production of waste, pollution, nuisance, or a risk of accidents. The site is not subject to a nature conservation designation and does not contain habitats or species of conservation significance.
- 5.8.4. Having regard to nature and scale of the development and the built-up suburban location of the site there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. An agent for the applicant has appealed the decision of the Planning Authority to refuse permission. The appeal notes that the assessment of the application by the Planning Authority found many positive aspects of the scheme, with the principal area of concern relating to the transition of the scheme from the single storey dwelling at no. 84 Ballyogan Road to the three-storey element of the proposed development.
- 6.1.2. The appeal is accompanied by a Legal Opinion and a report titled 'Redevelopment of 133 and 152 Ballyogan Road, ABP Appeal Re Flood Risk'.
- 6.1.3. The grounds of the appeal can be summarised as follows:

Reason no. 1

- Enclosed with the appeal is a report 'Redevelopment of 133 and 152 Ballyogan Road ABP Appeal Re. Flood Risk' and a legal opinion as to why the Planning Authority were incorrect in defining the lands as undeveloped or existing low intensity developed lands.

- There is no flood risk on the subject site. The reason for refusal relates to the site being undeveloped. The lands cannot be considered 'undeveloped' for a number of reasons:
 - Paragraph 1.9(iii) of the LAP SFRA states that undeveloped lands are primarily zoned Objective F, with additional undeveloped lands zoned Objective A and Objective E. the detailed description of 'undeveloped lands' makes no reference to the subject site.
 - Paragraph 1.9(v) identifies 'a quantum of already developed land' to the south of the Ballyogan Road that are located in Flood Zone B. there is no doubt that the subject site falls within this description and so must be considered to be 'developed'.
- The lands cannot be considered 'low intensity development', as they are zoned for development. It is unquestionable that there is existing development on the site.
- The SSFRA was undertaken in full compliance with the Flood Risk Management Guidelines, the County Development Plan and policy BELAP S110 – Flood Risk Assessment.
- The extent of the site in Flood Zone B is limited to the southern position and is significantly less than indicated on the current CFRAM mapping.
- The SSFRA includes a development management Justification Test which demonstrates that the development will not increase flood risk elsewhere outside of the site and that flow paths have been maintained. Flood compensatory storage has been provided, even though there is no requirement to do so.
- It is evident that the proposed development can be accommodated on the subject site without any impact on future or existing dwellings.

Reason no. 2

- It is clear that the Planning Authority are satisfied with most elements of the scheme, including – the overall height, car parking, cycle parking, lack of any material impacts from a daylight / sunlight and microclimate prospective and the lack of any impact on no. 134 Ballyogan Road.

- The key element behind reason no. 2 is the impact of Block B on the adjoining no. 84 Ballyogan Road. Secondary issues include the building line and quantum of dual aspect units.
- The design response emanated from seeking to minimise impacts on adjoining single-storey properties, whilst providing appropriately compact development.
- Proposed scheme is 5-storey with 6-storeys at Ballyogan Road. Ballyogan Road is 18.5m wide and has the potential to absorb taller buildings.
- The proposed development steps down to three storeys adjoining the single storey property at 84 Ballyogan Road. This 10.9m gable is blank and is a reasonable transition in this core urban area.
- There will be a difference in scale with any development on site, due to the requirement to comply with national and regional policy for infill sites. The proposed development succeeds this challenge as there will not be any material impacts on residents. The visual transition must be expected.
- The scale, height and massing of the proposed development is 500m from the Ballyogan wood Luas stop, 510m from the Leopardstown Valley Luas stop, 1km from Leopardstown Shopping Centre, proximate to Carrickmines Retail Park, and opposite the Samuel Beckett Civic Campus. Having regard to the existing low-density site, the site has potential to densify.
- National policy requires higher density development to address current housing challenges. The subject site is under-utilised, brownfield, infill site with access to high quality public transport, significant employment opportunities leisure and social facilities. The subject site is on zoned land and the proposed development is a direct response to national policy.
- An Bord Pleanála has granted higher development next to single or two storey dwellings: ABP-360102-19, 8-storey SHD at Howth Road, ABP-307221, Bailey Gibson Site up to 16 no. storeys. This demonstrates the ability of areas to accept increased height without being over-development or overbearing.
- There is a presumption of greater heights in The Building Height Guidelines. The appellant disagrees with the Planning Authority's assessment that a transition from the 4m no. 84 to the proposed three-storey development (10.9m) is

overbearing. The An Bord Pleanála decision for St Pauls (ABP-307444-20) permitted a 6.5m high transition. The Board report acknowledged that a continuation of the low prevailing height was not appropriate. The decision under ABP-306682 also acknowledged the changing nature of urban areas.

- These comparables demonstrate that set-backs from the adjoining lower-scale properties are entirely appropriate. Another example can be seen 3-4 storey student scheme beside a two-storey dwelling in Farrenlea, Cork (ABP-300846-18)
- The building line of Block B accords with DMURS. The design response is to establish a building line closer to the back of the footpath along the south of Ballyogan Road, to create a greater sense of containment to the road. It is likely this side of Ballyogan will be further re-developed and therefore a DMURS compliant building line is proposed. PL29S.246433 and PL29S.248501 demonstrate where a DMURS building line is the appropriate site response. The building line should not be dictated by the existing building line, particularly where those site are likely to be redeveloped.

Dual Aspect

- The Planning Authority, in their planning report did not accept that the subject site is a 'central and accessible urban location' and therefore required a minimum of 50% dual aspect units. The 2020 Apartment Guidelines define a central site as one within reasonable walking distance of a high-capacity urban public transport stop. The subject site is 500m from two Luas stops and therefore only needs 33% dual aspect units. The proposed development has 47% dual aspect.
- With the exception of 4 no. apartments facing Ballyogan Road, all of the dual aspect units have two full facades. The other 4 units have a minimum 3m return. This was accepted by the Board in ABP-307332-20. The proposed development will provide a very high living environment for the residents.

Proposed Amendments

- If the Board considers appropriate, the applicant proposes the following amendments:
- Option 1 Eastern elevation: the height of the band on the parapets can be reduced by 900mm, reducing the height to 9.95m and the use of a lighter brick option to further soften the appearance of the gable.
- Ballyogan Road: the presence can be emphasised by redistributing the brick finishes around the northern corner of Block B. By using a single brick colour, it is possible to pick out a single 'object' in mass in this location. this can be enforced further by changing the portion of the façade net to no. 84 to the lighter buff brick.
- Overlooking from unit B508 terrace: introduction of a privacy screen to prevent overlooking of no. 84 Ballyogan Road. Or reduce the terrace from 58sq.m. to 34sq.m. The width of the terrace varies from 2.3 to 2.7m.
- The Board is requested to grant permission.

McCann FitzGerald Submission

- The Planning Authority was wrong to apply the flood risk assessments carried out for the preparation of the County Development Plan and the LAP to the proposed development. The Council ought to have assessed the development in light of the Flood Risk Management Guidelines.
- It is noted that the reason for refusal does not state that the contravention was material and therefore the Board can grant permission.
- The Council was wrong to afford the plan-making assessments any greater status than expressly stated within the County Development Plan and the LAP.
- The policies in relation to flood risk management are paragraph 8.2.10.4 of the County Development Plan and 10.1.4 and Policy BELAPSI10 of the LAP. These require flood risk to be assessed on a site-specific basis. Therefore, site-specific analysis must have priority over plan-making assessment.
- The subject site is not located on 'undeveloped land' or within 'areas with very low intensity development'. The Council was wrong to conclude that the proposed development fails to accord with the plan-making assessments.

- Paragraph 5.1.1 and Figure 5.1 of the LAP (extracted from the County Development Plan) show that part of the site zoned Objective A as being “Established Residential”. It is not shown as “Undeveloped Residential” one of the other options for classification.
- The LAP’s SFRA description (paragraph 1.9) of what is considered ‘undeveloped’ and where such lands are, contain no mention of the subject site. Therefore the Council was wrong to characterise the site as undeveloped land within Flood Zone B.
- Paragraph 1.9(v) of the LAP SFRA identifies a quantum of already developed Objective E and Objective A zoned lands to the south of the Ballyogan Road that are located within Flood Zone B. There is no doubt that the subject site falls within this description and so must be considered to be ‘developed’ for the purposes of the LAP.
- The site should not be considered ‘low intensity development’ or ‘very low intensity development’. The site is zoned for development so the intensity of existing development is irrelevant. The Council has not explained what it means by low or very low intensity development.
- The subject site and surrounding area comprise much industrial and commercial development and cannot be considered to be low or very low intensity.

6.2. **Planning Authority Response to First Party Appeal**

- The first reason for refusal should have made a clear reference to County Development Plan Policy CC15: Flood Risk Management, section 8.2.9.7 New Developments-Environmental Impacts and section 8.2.10.4 Flood Risk Management. The first reason for refusal is grounded in considerations relating to the proper planning and sustainable development of the area, namely the risk of flooding that could affect a highly vulnerable development.
- Appendix 13 of the County Development Plan is the SFRA. It states that the SFRA can be used to assist other planning decisions.
- The appeal submission does not include a response to the Noise Issue. The concerns raised by the Environment Section have not been addressed and still stand.

- The Planning Authority considers that the information contained on the first party appeal does not satisfactorily address the substantial issues raised by the Planning Authority and the Board is requested to refuse permission.

Drainage Planning Response

- Appendix 13 SFRA is part of the County Development Plan and therefore is a statutory document. The LAP is a legal document, prepared and adopted in the same manner as a County Development Plan.
- The SFRA states that it is a consultation document that should be used to inform a plan, enabling the implementation of the Sequential Approach.
- Using the sequential approach for a highly vulnerable development in Flood Zone B, a justification test is required. It is the opinion of the Drainage planning Department that the site does not pass the justification test based on the contents of Appendix 13 SFRA.
- The level of development on the site is considered to be 'undeveloped lands' as per section 5.1 of the County Development Plan Appendix 13 SFRA which includes areas of low intensity development.
- If the site was considered to have passed the Justification Test (as stated by the AECOM appeal response), there remain significant deficiencies in the submitted SSFRA. The SSFRA lacks appropriate detail in the following areas:
 - The extent of buildings that will be present in the Flood Zone B post development,
 - Detailed modelling to demonstrate the compensatory storage provided
 - Existing site levels are to be maintained
 - Flow paths have been maintained
 - Flood risk has not increased elsewhere outside the site.
- The 3D Modelling software used by the AECOM to establish the extent of flooding is an inappropriate method of flood risk assessment as it lacks detail and does not give due regard to the hydraulic modelling required to accurately assess the potential flooding on site. The impact of level changes or building location have not been considered. Therefore the estimation of the revised flood zone within the site cannot be taken as accurate.

- An extensive list of FI matters were required on the general drainage plans for the site. These issues have not been addressed in the appeal. Therefore uncertainty remains whether the requirements of Appendix 13 of the County Development Plan and Box 5.1 of the Flood Risk Management Guidelines can be fully satisfied.
- Drainage must therefore be guided by the precautionary principle as set out in section 5.24 of the Flood Risk Management guidelines and thus recommend a refusal of permission.
- The Board is requested to refuse permission. However, should the Board decide to grant permission 11 no. conditions are recommended.

6.3. First Party Response to Planning Authority Response

6.3.1. The First party response to the submission of the Planning Authority can be summarised as follows:

Response to Environmental Section Comments

- Regarding noise impacts: Both attended and unattended measurements were taken for a period of approx. 8 days.
- The noise impact report (figure 8 refers) characterises levels on site as medium noise risk category, not low as stated by the Environment section of Dun Laoghaire Rathdown.
- The Environment section states that the noise plan recommends 'no special measures'. This is not correct, the NIA report provides a clear specification for noise control measures, namely high-performance acoustic glazing and acoustically attenuated ventilation provisions. (section 5.2.2 of the RSK report)
- Noise from the electricity transformer station was judged as 'not dominant', in lieu of traffic noise which was more prevalent.
- Industrial noise was discussed in section 3.2.2 of the report with the conclusion that the proposed development is in an area of medium risk. Mitigation measures were proposed and calculations carried out to ensure internal ambient noise levels within the apartments will be acceptable.
- The Environmental Section recommendations for measures to avoid the creation environmental nuisance has been complied with.

Response to Environmental Section Comments

- Regarding the submission that the 3D modelling used by AECOM is inappropriate, AECOM simply used AutoCad software to accurately illustrate the flood extents based on the CFRAM fluvial hydraulic modelling results.
- Extracts from the CFRAM Carysfort Maretimo Fluvial Flood Risk map shows the extent of the 10%AEP, 1%AEP and 0.1%AEP flood events. The CRFAM study is not based on site specific topographic information, but was undertaken at catchment level using Lidar mapping.
- The maps gives the flood depths at various nodes. The upstream node (no. 1060M007121) was used as the channel to the south does not encroach onto the site. Flood levels are 90.06mOD for the 0.1%AEP event and 90.03mOD for the 1%AEP event. The mapping indicates site flood risk raises from overland flow to the west and south of the site.
- Using this information and a topographic survey of the site, a more accurate flood extents map was created (figure 9 of the AECOM ABP Flood Risk Appeal Report). This shows a small area to the south of the site which is lower than predicted flood levels, associated with a drainage ditch. There is no flow path for flood water to enter the site via the western boundary as it is above the flood level, or the via the southern boundary as the ditch no longer extends beyond the site boundary.
- As requested by condition no.s 3 and 4 of the Drainage Department report, the following are appended to the response:
 - Drawing showing the extent and depth below the 1.0% AEP and 0.1% AEP event, overlain with the existing and proposed development scenario
 - Cross sections of the site showing pre and post development topography, showing where site levels are below the 1.0% AEP and 0.1% AEP events.
- Using the fluvial water levels created above the predicted volumes below the flood levels are: 83m³ below the 0.1% AEP event and 74m³ below the 1% AEP event.
- The volume of compensatory flood water storage is 58m³ above ground and 76m³ below ground for the 0.1%AEP and 53m³ and 76m³ for the 1%AEP event.

- This demonstrates that no adverse impact such as increased flood risk elsewhere will arise.
- The Planning Authority assertion that the site is undeveloped is questioned. Whether the site is within flood zone B is also questioned as there is no flow path for flood water to enter the site.
- Section 4.7.1.2. of Appendix 13 SFRA permits highly vulnerable development in flood zones A and B so long as the requirements can be met.
- The lands were not identified as being at risk of flooding in the development plan. It is submitted that there is no existing flood risk on the site and that the proposed development will not increase flood risk. Compensatory storage has been proposed even though it is not required.

6.4. **Observations**

6.4.1. **William and Rosario Kelly, 83 Ballyogan Road**

- The proposed development goes against the LAP for three and four storey buildings.
- The proposed development is over-bearing, over scaled and out of character with the existing cottages.
- It will have a negative visual impact on no. 83.
- Lack of parking will lead to parking on Ballyogan Road.
- The site is susceptible to flooding and does not accord with the LAP.

6.5. **Further Responses**

6.5.1. **William & Rosario Kelly, Response to First Party Appeal**

- The site is classified as Flood Zone B, therefore there is moderate possibility of flooding.
- Disputes the legal opinion that the existing development is significant.
- The AECOM 3D modelling is not an appropriate method as it lacks detail and 'does not give due regard to the hydraulic modelling required to accurately assess the potential flooding present on the site.'
- The development should be refused on the grounds of section 5.4 of the Flood Risk Guidelines – where the presence of unacceptable flood risk remains.

- The proposed development is contrary to the County Development Plan.
- The proposed development is contrary to policy BELAPRES5. It will impact residential amenity, interrupt the ecosystem and encroach on sunlight.
- The Board is requested to refuse permission.

7.0 Assessment

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

- Principle of development
- Build To Rent
- Flood Risk
- Visual and Residential Amenity
- Urban Design - Height, Density
- Sunlight and Daylight
- Noise Impact Assessment
- Appropriate Assessment

7.2. Principle of the Proposed Development

7.2.1. The majority of the subject site is zoned for residential development and is located in a prime location with regards to public transport, social and community facilities. The subject site is currently under-used; the existing buildings fail to maximise the opportunities presented by the site in terms of visual amenity and use of zoned serviced land.

7.2.2. I note that the BELAP does not include the subject site in the list of areas that are suitable for BTR developments. The LAP identifies the majority non-residential uses in the Ballyogan South quarter and advises a cautionary approach to residential development (section 6.6.2 of the BELAP refers). The LAP states that there are a range of municipal and utilities employers in the area, a range of small businesses in former residential plots and a range of manufacturing, light industrial, and warehousing uses in the Ballyogan Business Park. That section of the LAP states

that the Council recognise the important function that the current cluster of municipal, communication, light industrial, and utility uses serve for both the local and wider catchment, and the fact that these uses are broadly 'good neighbours' to one another in terms of the impacts from their activities.

- 7.2.3. The subject site and its immediate neighbours form a pocket of residentially zoned lands in a wider swathe of Objective E lands. That the site is currently under-used is unquestionable. Likewise, that it is surrounded by uses (low density residential bungalow and light industrial / commercial / municipal) that do not readily absorb a high-density residential development is notable. A balance must be struck, that allows the subject site to be developed to its full potential, whilst protecting the more sensitive residential development to the east and providing an acceptable residential environment for future residents of the proposed development.

7.3. **Build to Rent**

- 7.3.1. The Dun Laoghaire Rathdown Development Plan 2016-2022 has no policies in relation to BTR. The recently adopted 2022-2028 plan (which is scheduled to become operative on April 21st 2022) has a specific section on BTR – section 12.3.6. This section states that “BTR accommodation will only be permitted in suitable locations in accordance with Policy Objective PHP27”. It states that “All proposed BTR accommodation must comply with SPPR 7 and SPPR 8 as set out within the Design Standards for New Apartments, 2018 (and any amending SPPR as appropriate)”
- 7.3.2. **Policy PHP27** of the new plan, regarding BTR and Shared Accommodation states “It is a Policy Objective to facilitate the provision of Build-to-Rent and Shared Accommodation in suitable locations across the County and accord with the provisions of ‘Sustainable Urban Housing: Design Standards for New Apartments’, 2018 (and any amendment thereof). Proliferation of these housing types should be avoided in any one area”. “Both BTR and Shared Accommodation shall be located within a 10-minute walking time from high frequency public transport routes. BTR and Shared Accommodation will be considered as a component part of achieving an appropriate mix of housing”.
- 7.3.3. The Ballyogan LAP has a policy on BTR, namely Policy **BELAP RES8**. The policy is “To permit ‘Build to Rent’ schemes – as defined by Government Guidelines - in parts

of the BELAP area with good access to transport and services, namely Glencairn North, Kilgobbin East, Kilgobbin South, The Park Carrickmines, Old Glenamuck Road, and Racecourse South (see Figure 11.1), subject to compliance with Policy BELAP RES6 above. In recognition of the BELAP's location at the edge of the built footprint of the Metropolitan Area, there will be a cautionary approach taken to 'Build to Rent' schemes that propose levels of car parking significantly below what might be expected from a 'traditional' apartment scheme. The subject site is located in the Ballyogan South quarter, as per the BELAP. The Ballyogan South part of the Ballyogan Quarter is not included in the list of areas suitable for BTR development.

- 7.3.4. In terms of national policy, the Sustainable Urban Housing: Design Standards for New Apartments 2020 identifies the types of locations in towns and cities that may be suitable for apartment development, using broad descriptors. The first class is 'Central and / or Accessible Urban Locations'. These areas are described as being generally suitable for small to large-scale and higher density developments. The applicant proffers that the subject site qualifies as an accessible location as it complies with the first two criteria of the designation: that it is walking distance from significant employment locations and that it is within 1000m of a high-capacity urban transport stop. The Planning Authority disagree and consider the area to be suburban.
- 7.3.5. The subject site is within 500m of two Luas stops – Ballyogan and Leopardstown Valley. There are a number of employment centres in the wider area, whether they qualify as significant requires greater analysis however.
- 7.3.6. The guidelines set out Specific Planning Policy Requirements (SPPRs) that must be complied with. Conventional build to sell apartments must comply with a wide range of SPPRs, however, BTR schemes do not have to meet all Apartment Guideline criteria and have a different set of requirements in the interests of accelerating the delivery of new housing at a significantly greater scale than at present.
- 7.3.7. Specific Planning Policy Requirement 7 (SPPR 7) requires that the proposed development is advertised as such in public notices, this has been done by the applicant. SPPR 7 requires restrictions in relation to ownership, operation and sale for a period of 15 years, this can be conditioned if permission is granted. The second

part of SPPR 7 refers to detailed proposals for supporting communal and recreational amenities. These elements are split in to two categories, as follows:

(i) Resident Support Facilities - comprising of facilities related to the operation of the development for residents such as laundry facilities, concierge and management facilities, maintenance/repair services, waste management facilities, etc.

(ii) Resident Services and Amenities – comprising of facilities for communal recreational and other activities by residents including sports facilities, shared TV/lounge areas, work/study spaces, function rooms for use as private dining and kitchen facilities, etc.

7.3.8. The supporting documentation submitted with the application states that the applicant will comply with the management structure which will remain in place for a minimum of 15 no. years. The applicants agent has states that should the Board grant permission, they are willing to accept a 15-year covenant agreement. According to the applicants planning report, regarding residential support facilities, the proposed development includes a concierge and a central management office, central waste management facilities and bike storage areas. For residents services and amenities, communal areas will comprise both internal and external spaces. Internally, it is proposed to provide a gym, function room, cinema room, and lounge.

7.3.9. I am satisfied that the requirements of SPPR7 are fulfilled. Section 5.14 of the 2020 guidelines states that when the requirements of SPPR 7 are fulfilled, the proposed BTR development will qualify for assessment by the planning authority as a specific BTR scheme, where a number of distinct planning criteria may be applied. SPPR 8 relaxes certain requirements that build to sell apartments must meet, as follows:

- No restrictions on dwelling mix
- Flexibility in relation to storage, private amenity space and communal amenity space; on the basis of the provision of alternative, compensatory communal support facilities and amenities within the development.
- Minimal or significantly reduced car parking provision and a strong central management regime to establish and operate shared mobility measures.

- The requirement that the majority of all apartments in a proposed scheme exceed the minimum floor area standards by a minimum of 10% shall not apply.
- The requirement for a maximum of 12 apartments per floor per core shall not apply, subject to overall design quality and compliance with building regulations.

7.3.10. The prevailing housing stock in the area provides for mostly three and four bedroom housing units, with newer developments largely catering to the apartment for sale market. The introduction of an alternative form of development (one and two bedroom units specifically for rent) provides more choice for would-be residents.

7.3.11. All of the proposed BTR units meet and, in some cases, exceed the standards set out in relation to storage and private amenity space. All of the proposed apartments in the scheme have their own private amenity space in the form of balconies, terraces or gardens. All private open space areas meet or exceed the minimum requirements of the guidelines and development plan, including a minimum depth of 1.5m.

7.3.12. The applicant states that all apartments meet the minimum floor standards, and in some cases exceed the minimum floor area by 10%, the latter is not a criteria of BTR. The applicant has submitted a Schedule of Areas and Housing Quality Assessment (section 8.2 of the Design Statement). In summary, of all the apartment units proposed, it is stated that the majority of units are larger than the 10% required by the guidelines.

7.3.13. The accessibility of the subject site, its proximity to public transport services and the proposed management regime are such that the provision of 0.8 spaces per unit parking is in compliance with SPPR8(iii) and the development plan . The aim for such a well serviced site should be to actively encourage the use of the many public transport, walking and cycling options available.

7.3.14. The proposed development complies with the requirements for BTR development. Some questions remain however, over the suitability of the site for such a model of development. The BELAP is clear on where and how residential development in the area should occur. Likewise it is reasonably clear about where a cautionary approach to residential development should occur. The subject site is such an area. There is an established pattern of non-residential development in the Ballyogan South Quarter. The residentially zoned land that covers the subject and immediately

neighbouring sites is a recognition of the existing residential use of those lands, rather than a predictor of the most appropriate future use.

- 7.3.15. The appellant submits that the subject site is likely to be the first of others to transition to higher density development. This may be so but currently, it is not supported by policies or objectives of the BELAP. Any development on the subject site therefore must strike the careful balance of integrating with the surrounding divergent land uses and being capable of being a stand-alone higher density residential development should future re-development of the neighbouring sites not occur.
- 7.3.16. The subject site is surrounded by more sensitive uses and this is recognised in the BELAP. It is acknowledged that the subject site complies with the requirements for a BTR and / or apartment development. The Guidelines offer flexibility however, acknowledging that these criteria are not exhaustive and local assessment that further considers these and other relevant planning factors is required. That the LAP for the area does not envisage the subject site and immediate neighbours developing for high density development must be acknowledged. Each of the bungalows surrounding the subject site are in habitable use – even one that was noted by the Planning Authority as being vacant (no. 84 Ballyogan Road). This very low-density residential use is slightly at odds with the surrounding business / utility / industrial uses, but nonetheless as an established existing use, it is recognised in the development plan and the LAP as being worthy of protection. There are multiple areas within the wider BELAP area that have been identified by the Planning Authority as being suitable for higher density residential development.
- 7.3.17. I retain a concern about the suitability of the subject site for a high density apartment development of significant height, at marked odds to the immediate pattern of development and in an area not identified at local level of being suitable for such development.
- 7.3.18. The impact of the proposed development on the residential amenity of the surrounding areas is discussed in greater detail below.

7.4. Flood Risk

- 7.4.1. The Planning Authority's first reason for refusal relates to flood risk. The Planning Authority consider the proposed development to be a high intensity, highly vulnerable residential development on existing low intensity development or undeveloped land.
- 7.4.2. The appellants takes issue with the classification of the site as 'undeveloped' and also with the risk associated with the proposed development.
- 7.4.3. The application was accompanied by a Stage 2 Site Specific Flood Risk Assessment (SSFRA). The report notes that the site is to the north of the Ballyogan Stream which ultimately discharges to the Carrickmines River. CFRAM mapping available for the site indicates that the site may be susceptible to fluvial flooding during a 0.1%AEP event and as such is classified as Flood Zone B. Modelling for the CFRAM eastern region study had not been finalised by the time of the adoption of the 2016 Dun Laoghaire Rathdown plan and so in the County Development Plan (Flood Zone Map 9) , the site is shown as being in Flood Zone C. On that matter, I draw the Boards attention to the recently adopted 2022 Development plan (which is planned to come into operation on April 21 2022) Flood Zone Map 9 which shows part of the subject site as being in Flood Zone B.
- 7.4.4. The applicants SSFRA notes that while Appendix 13 of the development plan discourages highly vulnerable development on Flood zones A&B, as long as certain requirements are met, highly vulnerable development can be permitted in "existing developed areas". The SSFRA submits that section 5.2 of the Appendix applies to the subject site as it is an "existing developed area". The applicants SSFRA outlines the policy for flood risk in the BELAP and the BELAP SFRA. The SSFRA concludes that as the subject site was indicated as being in Flood Zone C in the 2016 County Development Plan, the lands are not referenced in section 1.8 of the current development plan and are not considered to have passed the Justification Test. The SSFRA refers to section 1.9(v) of the BELAP SFRA for planning applications for large highly vulnerable development on Flood Zone B lands in already developed areas.
- 7.4.5. The SSFRA details the initial flood risk assessment (stage 2) undertaken for the proposed development. Table 2 shows a freeboard of 0.85m for the 1 in 100 year

(1%AEP) and 0.82m for the 1 in 1000 year (0.1%AEP) fluvial flooding events over the FFL of the proposed development (90.88m). Using the Finished Ground Level (FGL) of 90.35m, the free boards are 0.32 for the 1%AEP and 0.29 for the 0.1%AEP. The report notes that as part of the site is in Flood Zone B, it is proposed to provide compensatory storage within the landscaping of the site layout to store floodwaters which may be offset by the proposed development. Two 0.5m depressions will provide 178m³ above ground storage and the layout of the site will direct water to those areas, avoiding the buildings.

- 7.4.6. Section 6.2 of the SSFRA classifies the subject site as 'brownfield' and carries out a Justification Test for the proposed highly vulnerable development on Flood Zone B lands. The results of the Justification Test are that the site is zoned for development, the compensatory storage proposed will result in no increase in flood risk elsewhere, and that mitigation measures are proposed which will ensure that the residual risks can be managed to an acceptable level. The conclusion is that the proposed development complies with the Development Management Justification Test.
- 7.4.7. The Board will note that while the SFRA states that mitigation measures are discussed in section 5.5, there is no section 5.5 in the SSFRA.
- 7.4.8. On receipt of the application, the Drainage Department of Dun Laoghaire Rathdown commented on the SSFRA. The report from the departments engineer states that unlike the first party applicant, the Drainage Department do not consider the site to be developed as much of the site is undeveloped and that section that has development is considered to be 'low intensity development'. Therefore the appropriate section of BELAP SFRA is section 1.8. The drainage report states that section 1.8 states that 'areas of existing low intensity development' do not pass the Justification Test and only water compatible development can be permitted in Flood Zone B according to the plan-making justification test. The drainage report states that as the subject site is undeveloped land in Flood Zone B, the applicant is required to fulfil the requirements of section 1.9iii of the BELAP SFRA. The report does however acknowledge that a site specific FRA with modelling based on more locally accurate information may demonstrate a greater or lesser level of risk. The report recommends that permission be refused and notes that the SSFRA submitted with the application is seriously deficient in six areas. Despite the recommendation to refuse permission, the report includes ten items of Further Information.

- 7.4.9. In their first party appeal, the applicant goes to considerable length to address the concerns of the Planning Authority. Chiefly, the assertion that the lands are 'undeveloped'. As noted above, the first party appeal includes a legal opinion on why the site constitutes developed lands.
- 7.4.10. With regard to the legal opinion that Figure 5.1 of the LAP (which shows the site as being an established residential area as opposed to an undeveloped residential), this refers to the residential use of the lands. The classification of the subject site and its immediate neighbours is a broad stroke recognition of the stretch of residential bungalows on the subject site and immediate neighbours. It does not, in my opinion, infer or confer any meaning regarding the intensity of development on the site.
- 7.4.11. Likewise, the reference to paragraph 1.9 of the BELAP SFRA is not meant to be read as an exhaustive or prescriptive list of all undeveloped lands in the BELAP. The applicants SSFRA submitted with the application acknowledges that the County Development Plan and the BELAP SFRA were both drawn up before the most up to date CFRAM and the subject site was included as Flood Zone C in those documents. The subject site being in Flood Zone C, would therefore never have been included in paragraphs 1.9iii or 1.9v as they refer *only* to flood zones A and B.
- 7.4.12. I do not accept the applicants argument that the structures on site, or the development of the wider area characterises the subject site as being 'developed'. There is no residential use on the subject site and therefore the residential use of the site is 'undeveloped'. The majority of the site is under-used and overgrown, so by any common understanding of the word, the existing buildings and use must be considered to be low intensity.
- 7.4.13. As noted by the Drainage department, a site specific FRA based on more locally accurate information can demonstrate a different level of risk. To that end, the appeal documentation included a response to the Drainage Report. The response document states that using 3D modelling software, a topographic survey of the site and the CFRAM water levels, the extent of the site within Flood Zone B is shown to be significantly less than current CFRAM mapping (Figure 10 of the appeal response refers). The response states that the justification test demonstrates that the proposed development will not increase flood risk elsewhere outside of the site and

that flow paths have been maintained. Further, compensatory storage is proposed which is not required in Flood Zone B.

- 7.4.14. Disputing the sufficiency of this conclusion, the Planning Authority's Drainage Department responded to the first party appeal. They draw attention to the fact that the new flood zone extent map is shown on the existing land use rather than the proposed development. The report states that the extent of buildings that will be present in Flood Zone B post development is unknown. They also criticise the software modelling used by the applicants consultant, stating that it lacks detail and does not give due regard to the hydraulic modelling required to accurately assess the potential flooding present on site. The report states that it is not clear how the flow paths will be maintained as the building on the southern side of the site appears to block the flow paths. The Drainage Department report states that it must adopt a precautionary approach and therefore must recommend a refusal of planning permission. The Drainage department states that it is not satisfied that the proposed development has passed the Justification Test and has not complied with the requirements of the Flood Risk Management Guidelines. Notwithstanding their recommendation for refusal, the report states that should the Board decide to grant permission, then 11 no. conditions are recommended.
- 7.4.15. There are certain elements about the flood risk assessment that can be agreed – that a portion of the site is in Flood Zone B and that the proposed development is a highly vulnerable use. I have outlined above that I consider the site to be low intensity under developed land. If one goes back to first principles, the spirit and intent of the Flood Risk Guidelines is to avoid, substitute, justify, mitigate and proceed in a sequential order. The final option of 'proceed' should only occur where a Justification Test has been passed.
- 7.4.16. It is at that point that two of the parties to the appeal diverge. Where a situation has arisen, where qualified professionals are at odds with one another over technical software and analysis of results, it is a difficult position for the Board. Essentially, being asked to accept the bone fides of one set of analysis over another. Neither of which relate to the planning principle of avoiding risk as the first port of call. Adopting the precautionary approach to flood risk management, it is considered that some questions remain. It is possible that with further information, the outstanding issues could be resolved and that may be the route the Board wish to take. Without such

information however, it is not considered prudent to state that the flood risk of the proposed development on the subject site has been robustly and comprehensively resolved. This is particularly so, where substantive issues remain regarding the principle of development on the site.

7.5. Visual and Residential Amenity

- 7.5.1. The Planning Authority second reason for refusal refers to the impact of the proposed development on the adjacent dwelling to the east – no. 84 Ballyogan Road. The reason states that the proposed development is therefore contrary to policy RES5 of the development plan. The second reason also notes the dominant effect of the proposed building created by a forward building line coupled with the proposed height.
- 7.5.2. Responding to the Planning Authority, the appellant states that the proposed building presents a blank gable to no. 84 thereby protecting the residential amenity of the site but also allowing for any future development of the site. The appellant notes the width of Ballyogan Road and the stepping down of the proposed buildings to address the lower height residential properties to the east and west. The crux of the appeal is that the subject site is zoned for residential development and the proposed development complies with national and local policy.
- 7.5.3. The proposed development, in isolation, is a good example of high density development on a narrow site. The design approach of graduated facades, differing finishes and heights allows the blocks to provide maximum density whilst providing good residential amenity for future occupants. In isolation, or indeed on paper, the proposed development is a good development. My concern, however arises from its juxtaposition with the low density, low height bungalows immediately to the east and west. Were this entire stretch to be developed, as part of a larger development or indeed identified in the LAP, the opportunity to significantly increase height and density would be unconstrained. That is not the case however, and for the moment the proposed development would sit in stark contrast to its immediate and wider neighbours. I am not satisfied that the site is large enough to create a stand alone identity. Particularly in a neighbourhood where the immediate prevailing height is so low. I accept the appellants argument that there will always be an abrupt transition when redeveloping a site in a low density area, however, it is considered in this

instance that the transition is too significant. I concur with the Planning Authority that the break in building line, coupled with the significant increase in height create a stand-out building. One that could integrate well in a higher-density, taller neighbourhood. But one that, directly adjoining a series of single storey dwellings, creates an unwelcome neighbour.

7.5.4. As an example, I draw the Boards attention to VVM and VVM3 which show the difference in height between the proposed building and the adjoining bungalow. VVM 4 shows the abrupt transition in height the proposed development would introduce on the southern side of Ballyogan Road. The drawing of Contextual Elevations no. HKR-XX-XX-DR-A-2003 also shows the abrupt transition from the single storey dwellings to the proposed up-to-6-storey building.

7.5.5. I raise a concern that the expanse of fenestration on the western elevation would create overlooking of the adjoining childcare facility and associated open space to the immediate west. There is a high degree of natural screening along the eastern boundary, which coupled with the blank eastern façade would reduce impact on residential amenity to the east. The western boundary however, is more open, with little vegetation.

7.5.6. That the subject site is under used is acknowledged above. Its proximity to two stations on the high-capacity Luas line and that the site is zoned for residential use, require a more intensive use of this site. As noted above, however, the Planning Authority have decided that this section of residential land is not suitable for a high density BTR scheme. I find that policy reasonable.

7.6. **Urban Design - Height, Density,**

7.6.1. SPPR1 of the Building Height Guidelines (2018) provides for increased height and density in locations with good public transport accessibility, particularly town/ city cores. The subject site is within 500 of two Luas stops – Ballyogan Wood and Leopardstown Valley. I am satisfied that the proposed development complies with SPPR1.

7.6.2. SPPR 3 provides criteria against which proposals for taller buildings are to be assessed; namely at the town scale, district / neighbourhood / street scale and last at the scale of the site / building.

Scale of the city / town

- 7.6.3. There are three elements to the town scale assessment: public transport, the character and public realm of the area and on larger urban redevelopment sites: place making. The subject proposal is not a large urban redevelopment scheme but is located in an area with excellent public transport. The proposed higher density, apartment development adds welcome variety to the predominate form of housing in the immediate area – namely semi-detached dwellings in a traditional cul-de-sac layout, heavily dependent on and dominated by cars / roads.
- 7.6.4. The scale of the district / neighbourhood / street there are 5 no. criteria. The first, is that the proposed building makes a positive contribution to the urban neighbourhood and streetscape. I have outlined in section 7.5 above that I consider the visual impact of the proposed development to be adverse. The second criteria refers to the design of the building. The proposed development is not monolithic, avoids long uninterrupted walls of building and is well considered. I am not satisfied however that the proposed development responds positively to the surrounding built environment or makes a positive contribution to the urban neighbourhood. The third criteria refers to flood risk. As addressed above, it has yet to be comprehensively demonstrated that the proposed development complies with the Flood Risk Guidelines.
- 7.6.5. The fourth criteria is that the proposed development makes a positive contribution to the legibility of the wider area and integrates in a cohesive manner. As above, I am not satisfied that the proposed development makes a positive contribution to the neighbourhood. The proposed development does not integrate into the area in a cohesive manner but does increase legibility within the site. This legibility is a very localised impact however. Lastly, it is required that the proposal positively contributes to the mix of uses and / or building typologies in the neighbourhood. As noted above, the BELAP considers the subject site unsuitable for a BTR model and I find such a policy reasonable.
- 7.6.6. At the scale of the site / building, it is required that the proposed development is carefully modulated to maximise access to natural daylight / ventilation and views, and minimises overshadowing and loss of light. The proposed development succeeds on this requirement. Likewise, daylight provision is compliant with the BRE Guidelines.

- 7.6.7. In summary, I consider that the proposed development has not demonstrated compliance with SPPR3, namely that the proposed development will not successfully integrate with existing development in the vicinity and would therefore be contrary to the advice given by section 3.2 of the Urban Development and Building Heights – Guidelines for Planning Authorities.
- 7.6.8. I note the density of the proposed development at 171 no. unit to the hectare is significantly at odds with the immediate pattern of development. In a suburban location, immediately abutting a series of dwellings that are 10-15 units per ha or possible lower, it is considered that the proposed development does not appropriately respond to its context. Of the 12 criteria of the urban design manual, the first two are that the development seems to evolve naturally from its surroundings and that the increase in density respects the form of buildings and landscape around the sites edges and respects the amenity of neighbouring uses. While the prevailing height of the wider area will undoubtedly change in the future, a proposed development must first integrate successfully with its immediate environment. This is particularly where it is the first re-development in the area, the precedent for the wider area will be set.
- 7.6.9. I am not satisfied that the proposed building will have a positive, or even a neutral impact on the Ballyogan area. Having closely examined each of the views examined and having carried out a comprehensive and wide-scale site inspection of my own, I am of the view that, on balance, the visual impact of the proposed development will be negative. Further, one cannot ignore the significant excess in density. On simple metrics alone, that calculation suggests an over development of the site.
- 7.6.10. I am satisfied that the proposed development is contrary to the advice set out in section 3.2 of the Urban Development and Building Heights – Guidelines for Planning Authorities: issued by the Department of Housing, Planning and Local Government in December 2018. The proposed development would therefore be contrary to the above-mentioned plan and Ministerial Guidelines issued to planning authorities under section 28 of the Planning and Development Act, 2000, as amended, and would be contrary to the proper planning and sustainable development of the area.

7.7. Sunlight and Daylight

- 7.7.1. Section 6.6 of the Apartment Guidelines and Section 3.2 criteria under the Building Height Guidelines (SPPR 3) refers to considerations on daylight and overshadowing. When taking into account sunlight and daylight analysis the guidelines refer to the Building Research Establishments (BRE) and BS standards/criteria for daylight, sunlight and overshadowing.
- 7.7.2. A Daylight and Sunlight Assessment report was submitted with the application. The impact assessment undertaken includes VSC, APSH and sun light analysis. Neighbouring properties assessed include the Samuel Beckett Civic Campus , 83,84,134,135,135a, 135b Ballyogan Road, Lis na Shee, and Ogham, Ballyogan Road.
- 7.7.3. The results overview of the report shows that the effect on the VSC of neighbouring properties is imperceptible or not significant on all but three windows which will experience a slight effect (one window in dwelling no. 84, one window on the ground floor of Ogham and one window and one door in no. 134 Ballyogan Road.) The APSH study for annual demonstrated an imperceptible impact on 103 no. windows, a slight impact on two windows (no. 84 and no. 134 Ballyogan Road) and a moderate impact on 1 no. window (also no. 134 Ballyogan Road). The APSH winter study showed an imperceptible impact on all 106 no. windows. All 9 no. gardens of existing properties and the 2 no. amenity areas for the proposed development will meet the sunlight guidelines. For the proposed development itself, 110 no. of the proposed 195 no. rooms were assessed. Assigning a 2% ADF there is a 97% compliance rate with three rooms not meeting the guidelines. Using a 1.5% ADF, all rooms meet the guidelines.
- 7.7.4. I am satisfied that the assessments carried out are accurate and reflect the likely impacts of proposed development on the surrounding area. The proposed development is acceptable in relation to daylight and sunlight impact upon neighbouring residents.

7.8. Noise Impact Assessment

- 7.8.1. A noise impact assessment (NIA) was submitted with the application. An Environmental Enforcement report dated Sept 2021 noted the proximity of the site to a large waste management facility and recycling depot, large electricity transformer

station and recreational and educational facilities. The report states that the absence of a consideration of continuous low frequency noise and intermittent noise levels is a deficiency.

- 7.8.2. The applicant responded to these concerns stating that attended and unattended measurements were undertaken at the site for a period of 8 no. days. The report confirms that the site is categorised as being within the medium noise risk category and noise control measures are proposed. These include high performance acoustic glazing and acoustically attenuated ventilations provisions to the facades. Regarding the absence of consideration of low frequency noise, the response states that the dominant noise source at the site is background traffic. Industrial noise was addressed and internal ambient noise levels were shown to be acceptable within the proposed apartments.
- 7.8.3. I am satisfied that the concerns of the Planning Authority have been addressed. The subject site is located in a busy mixed-use area. A degree of noise from the surrounding uses, busy road and high capacity public transport Luas is to be expected in such areas.

7.9. **Appropriate Assessment**

- 7.9.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U and section 177V of the Planning and Development Act 2000 (as amended) are considered fully in this section.
- 7.9.2. The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given. The proposed development is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of

Article 6(3). The applicant has submitted a Screening Report for Appropriate Assessment as part of the planning application (July 2021)

- 7.9.3. The Report provides a brief description of the proposed development and states that the site is not located within or directly adjacent to any Natura 2000 site. The report identifies ten SAC's and four SPA European Sites within a possible zone of influence (15km) of the development. Potential pathways between the subject site and one of the designates sites was identified: Rockabill to Dalkey Island SAC (0300).
- 7.9.4. The screening report notes the presence of the Barnacullia Stream 90m to the south of the site. This flows into the Shanganagh River approx. 4km to the southeast, ultimately discharging into Killiney Bay. The status of the Shanganagh River was Good in the EPA 2020 report. The screening report notes that there is a weak hydrological pathway via the Shanganagh River during the construction and operational phases.
- 7.9.5. In assessing the likely significant effects the screening report identifies the following possible risks during the construction phase :
- Uncontrolled release of pollutants to air, water bodies, ground water,
 - Waste generation,
 - Increased noise, dust, vibrations, air emissions and lighting.
- 7.9.6. During the operational phase, the possible risks are surface water drainage, increased lighting and increased human presence. The screening report states that there will be no habitat loss, alteration or fragmentation. The potential for any surface water generated at the site to reach the Rockabill to Dalkey Island SAC and significant effects is negligible due to the Shanganagh-Bray WwTP and the dilution of surface water during heavy rainfall events. There is no potential for negative impacts on the qualifying interest in the site (Harbour Porpoise) due to the intervening distances between the site and the SAC. No in-combination effects are predicted.
- 7.9.7. The AA screening report concludes that the possibility of any significant impacts on any European Sites, whether arising from the project itself or in combination with other plans and projects, can be excluded beyond a reasonable scientific doubt on the basis of the best scientific knowledge available.

7.9.8. Having reviewed the documents and submissions, I am satisfied that the submitted information allows for a complete examination and identification of all the aspects of the project that could have an effect, alone, or in combination with other plans and projects on European sites.

Assessment

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

- Knocksink Wood SAC (000725), South Dublin Bay and River Tolka Estuary SPA (004024),
- North Bull Island SPA (004006),
- Howth Head SAC (000202), Howth Head Coast SPA (004113),
- South Dublin Bay SAC (000210),
- Ballyman Glen SAC (000713),
- Wicklow Mountains SAC (002122), and Wicklow Mountains SPA (004040),
- Dalkey Islands SPA (004172),
- Rockabill to Dalkey Island SAC (0300),
- Bray Head SAC (000714)
- North Dublin Bay SAC (000206),
- Glenasmole Reservoir SAC (001209),
- Glen of the Downs SAC (000202)

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

- Knocksink Wood SAC (000725), South Dublin Bay and River Tolka Estuary SPA (004024),
- North Bull Island SPA (004006),
- Howth Head SAC (000202), Howth Head Coast SPA (004113),

- South Dublin Bay SAC (000210),
- Ballyman Glen SAC (000713),
- Wicklow Mountains SAC (002122), and Wicklow Mountains SPA (004040),
- Dalkey Islands SPA (004172),
- Bray Head SAC (000714)
- North Dublin Bay SAC (000206),
- Glenasmole Reservoir SAC (001209),
- Glen of the Downs SAC (000202)

7.9.11. The nearest Natura Site from this discharge point and of most relevance is the Rockabill to Dalkey Island SAC (003000). Detailed conservation objectives for this sites are available on the NPWS website and may be summarised as follows:

Site Name and Site Code	Conservation Objectives and Qualifying Interests (Habitats and Species)	Location / distance to European site and Potential Pathways
Rockabill to Dalkey Island SAC (003000)	<p>Conservation Objectives 07 May 2013</p> <p>To maintain the favourable conservation condition of reefs and harbour porpoise, which is defined by a list of attributes and targets. Qualifying interests Reefs Phocoena phocoena (Harbour Porpoise)</p>	<p>Approx. 7km to the west of the appeal site</p> <p>Hydrological</p>

Assessment of Likely Effects

7.9.12. As the site is not within a designated site no direct impacts will arise.

7.9.13. The Ballyogan Stream runs to the south of the subject site, joining to the Carrickmines Stream and ultimately discharging to Killiney Bay via the Shanganagh WWTP.

7.9.14. The proposal is designed to ensure that site clearance and preparation together with construction works will be undertaken in a manner that will allow potential impacts to

be managed to prevent impacts on the water environment. The measures to be used entail standard best practice measures in terms of construction and would be integral components of the construction phase given the overall approach proposed and the distances involved. I would concur with the conclusions of the screening report submitted that no indirect impacts are envisaged. The implementation of the Greater Dublin Strategic Drainage Study policy will see broad compliance with environmental and planning requirements in an integrated manner. It is stated that there can be no negative impact to the surface water quality leaving the site due to the attenuation measures which are planned. There are no other discharges from this proposed development.

- 7.9.15. In terms of cumulative impacts I have regard to the location of the site on serviced and zoned lands. As set out in the Screening Report there are no projects which can act in combination with this development which can give rise to significant effects to Natura 2000 areas within the zone of influence.

AA Screening Conclusion

- 7.9.16. It is reasonable to conclude that on the basis of the information on file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on Rockabill to Dalkey Island SAC (0300), or any European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required. In reaching this conclusion I took no account of mitigation measures intended to avoid or reduce the potentially harmful effects of the project on any European Sites.

8.0 Recommendation

- 8.1. I recommend permission be REFUSED for the following reasons:

- 1 It has not been satisfactorily demonstrated that the proposed development would successfully integrate into or enhance the character and public realm of the area, having regard to prevailing heights in the surrounding area. The height of the proposed building would not make a positive contribution to place-making and does not respond in a positive way to adjoining developments. At the scale of the site and the neighbourhood, the proposed

development would not successfully integrate with existing development in the vicinity and would therefore be contrary to the advice given by section 3.2 of the Urban Development and Building Heights – Guidelines for Planning Authorities: issued by the Department of Housing, Planning and Local Government in December 2018. The proposed development would therefore be contrary to the above-mentioned plan and Ministerial Guidelines issued to planning authorities under section 28 of the Planning and Development Act, 2000, as amended, and would be contrary to the proper planning and sustainable development of the area.

- 2 The proposed development, by reason of its height relative to surrounding buildings, scale, massing and bulk at this prominent site, would constitute overdevelopment of the site and would be out of character with the pattern of development in the vicinity. The proposed development would constitute over development of the site by virtue of its height, scale and massing and would result in an unacceptable negative visual impact on this prominent site along Ballyogan Road.

Gillian Kane
Senior Planning Inspector

13 April 2022