



An
Bord
Pleanála

Inspector's Report

ABP-312832-22

Development	To amend permitted development from 73 to 80 apartments with the addition of 1 storey to primary and secondary block. Associated site development works.
Location	Elmpark Green, Merrion Road, Dublin 4
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	3389/21
Applicant(s)	The Davy Platform ICAV on behalf of its sub fund Elm Estate Investment
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	<ol style="list-style-type: none">1. Susan Kemp and Robert Vincent2. Mary O' Sullivan3. Nigel Foley4. Suzanne Costello

5. Frances Gordon
6. Brackenstone Services Limited

Observer(s) None

Date of Site Inspection 22nd of March 2023

Inspector Karen Hamilton

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1.0 Site Location and Description

- 1.1. The subject site is located within a mixed-use campus (Elmpark Green) located to the west of Merrion Road, Dublin 4. The site is accessed from Merrion Strand with most of the vehicular traffic accommodated in the basement car park. The overall campus is bound by St Mary's Home and Caritas Convalescent Centre to the north, Elm Park Golf Course to the west and established suburban housing to the south.
- 1.2. The campus includes modern linear buildings (c.6) which range from 5 to 9 storeys in height and accommodate a mix of office and residential uses. To the south of the access road there are low rise apartments providing accommodation for the elderly (Heskin Court).
- 1.3. The subject site is at the south-western corner of the overall Elmpark Green campus site. A residential apartment block (The Links) is located directly north of the subject site. A two storey creche (Giraffe) is located to the east and the two-storey dwellings on Bellevue Park Avenue are located to the immediate south of the southern boundary of the site.
- 1.4. Permission has been granted ABP-307424-20 (Reg Ref 3743/19) on the site for a residential building providing for 73 no. apartments and all associated works. This apartment development is currently under construction, with substantial works complete.

2.0 Proposed Development

- 2.1. Planning permission is sought to amend the residential development permitted under ABP-307424-20 (Reg. Ref. 3743/19).

The proposed revisions to the scheme comprise:

- Increase in residential units from 73 no. to 80 no. (unit mix of 1 no. studio units; 17 no. 1 bed units; 8 no. 2 bed (3 person) units; 48 no. 2 bed (4 person) units and 6 no. 3 bed units)
- Internal revisions to permitted units

- The proposal provides for an additional floor to the primary block (10 total over basement) and an additional floor to the secondary block (5 total over basement)
- Elevational revisions and consequential revisions to the scheme
- Provision of new a single storey multi use amenity pavilion within the open space
- Increase in car parking provision from 73 no. to 80 no. within the existing basement footprint

3.0 Planning Authority Decision

3.1. Decision

Decision to grant permission subject to 15 no conditions of which the following are of note:

C4- The terms and conditions of the permission for the original development, which was issued under Reg Ref 3743/19 (ABP 307424-20) shall be fully complied with, except were notified by this permission.

C5- The proposed multi-use amenity shall be reserved for the exclusive use of the residents of the development and shall be in accordance with the Operational Management Plan submitted with the application, unless otherwise agreed in writing with the planning authority.

C6- Fritted glazing shall be fitted in all balconies and roof terraces on the southern elevation of the building as indicated in the further information drawings submitted on the 21/12/2021.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area reflects the decision to grant permission following the submission of further information as detailed below:

- Submission of a roof plan showing the location, height, and finish of the balustrades to the terraces and winter gardens on the southern elevation of the building, having regard to condition no 3 of the parent permission.
- Submission of a design to retain an additional 15 trees along the southern boundary and the submission of a revised Arboricultural Assessment.
- Submission of a Glint and Glare Assessment and the reduction of photovoltaic panels to 3 no. as per drawings.
- Revised development for the residential carparking showing the spaces closer to the proposed development.
- The addition of 2 no. cargo bicycle spaces.

The planning assessment has regard to the following:

- The open space areas within the overall campus
- The density, plot ratio and site coverage.
- The building height, the specific provisions of SPPR3, the visual impact assessment and the daylight and sunlight assessment.
- The communal open space and amenities.
- The unit mix.
- The apartment standards.
- The design and finishes proposed.
- Landscaping, the construction management plan, the tree removal, and the number of replacement trees.
- The additional 7 no parking spaces and reorganisation of the basement space.
- The overall impact of the residential amenity on the surrounding area, having regard to condition no 3 of the permitted development, the projecting balconies on the east facing elevation and the design and set back of the additional floors.

3.2.2. Other Technical Reports

City Archaeologist: No objection subject to the inclusion of condition No 4 of parent permission

Drainage Division: No objection subject to conditions

Transport Planning Division: No objection subject to conditions.

3.3. Prescribed Bodies

None received

3.4. Third Party Observations

16 no submissions were received from residents of the Bellevue Park Avenue estate to the south of the site. The issues raised are like those in the grounds of appeal which have been summarised in Section 6.1 below.

4.0 Planning History

4.1. Live applications on the site

ABP 315290-22 (Reg Ref 4879/22)

Permission was granted by DCC for the construction of additional floors, increase of dwellings to 78 and all associated site works.

The proposal is like the proposed development, whereas additional floors are proposed, and is currently before the Board for a decision.

Reg Ref 4848/22

Permission granted by DCC for revisions to ABP 307424-20 (Reg Ref 3743-19) for an increase in the residential units from 73 no to 77 no and increase in the height of the secondary block (5 over basement) and no increase in the height of the primary block (9 over basement) and other associated works.

The final grant notices are the 19th of December 2022, no appeal was received on this application.

4.2. Other planning history

ABP 307424-20 (Reg Ref 3743/19)

Permission granted for a residential building (73no. units) and associated works subject to 14 no conditions.

PL29S.243763 (Reg Ref 2773/14)

Permission granted for Retention of revisions to development permitted by reg.ref:1539/02 and permission for change of use from hotel and private hospital use to office use.

The permission included restrictions on the operation of Block HH where hours of operations had to be agreed and the control of any odour emissions.

PL29S.201622 (Reg Ref 1539/02)

Permission for a mixed-use scheme (416 units) Former lands of the Sisters of Charity, adjacent to St. Mary's Home, Merrion Road and Bellview Avenue, Dublin 4

5.0 Policy Context

5.1. National Guidelines

- Urban Development and Building Heights – Guidelines for Planning Authorities,
- Sustainable Urban Housing: Design Standards for New Apartments

5.2. Dublin City Development Plan 2022-2028

Zoning

The site is located on lands zoned Z1, Sustainable Residential Neighbourhoods, where it is an objective “To protect, provide and improve residential amenities”

Height Strategy

Policy SC14: Building Height Strategy: To ensure a strategic approach to building height in the city that accords with The Urban Development and Building Height Guidelines for Planning Authorities (2018) and in particular, SPPR 1 to 4.

Policy SC15: Building Height Uses: To support the development of an adequate mix of uses in proposals for larger scale development which are increasing height or proposing a taller building in accordance with SPPR 2.

Policy SC16: Building Height Locations

Policy SC17: Building Height (have regard to the performance-based criteria in Appendix 3)

Appendix 3: Height Strategy

- Table 3: Performance Criteria in Assessing Proposals for Enhanced Height, Density and Scale.

5.3. Natural Heritage Designations

- 5.3.1. The Elm Park campus is approx. 100m from the South Dublin Bay SAC (000210) and the South Dublin Bay and River Tolka Estuary SPA (004024). That part of the site that is subject to the proposed new build is approx. 500m from the SAC and SPA boundary

5.4. EIA Screening

Introduction

- 5.4.1. The proposed development includes alterations to a permitted apartment development to increase the proposal from 73 no units to 80 no. units and associated alterations to the car parking etc. The permitted development (ABP 307424-20 (Reg Ref 3743/19) is currently under construction.

Submissions and Observations

- 5.4.2. Third party submissions note the absence of any screening determination on the parent permission (ABP 307424-20 (Reg Ref 3743/19)) and the current proposal. In addition, the grounds of appeal consider the PA have not adequately screened the proposed development for EIA. A legal opinion has been submitted on behalf of the third parties to state the EIA screening is defective. A rebuttal legal opinion has been submitted on behalf of the applicant to state the EIA screening was sufficient, but should the Board require additional information, such as that Schedule 7A

information, they may do so under Article 109 of the Planning and Development Regulations 2001-2022.

Screening Assessment

- 5.4.3. The proposed increase in the number of units (a cumulative impact of 80 units) does not exceed the thresholds for mandatory EIA (i.e., 500 dwellings or an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere) as per Item 10(b) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended).
- 5.4.4. In terms of subthreshold development, Article 109 (2) (a) of the Planning and Development Regulations 2001-2022 states that;
- “Where an appeal relating to a planning application for subthreshold development is not accompanied by an EIAR, the Board shall carry a preliminary examination of, at the least, the nature, size or location of the development”
- 5.4.5. I note this article concludes that following on from a preliminary examination the Board concludes that there is no real likelihood of significant effects on the environment arising from the proposed development, it shall conclude that an EIA is not required.
- 5.4.6. The site is currently a greenfield site, located within a mixed-use campus with a golf course to the west and residential developments to the north and south. The site is zoned for residential development in the current development plan. The impact of the proposal on the Elm Park Stream, located c. 100m to the north of the subject site, is raised in the grounds of appeal. It was considered the impact on this stream was not properly assessed and therefore a determination that no EIA was required is unacceptable. The Board will note my assessment in Section 7.0 below, the impact on the Elm Park Stream, which concludes no significant impact of the proposal on this stream. With regards “poor” status of the stream (Water Framework Directive) I note the EPA data records anthropogenic pressures which would be mostly historical. Having regard to the design and layout of the surface water treatment I do not consider the discharge of water to the stream would cause any deterioration in the water quality.

Conclusion

5.4.7. Having regard to:

- (a) Characteristics of the proposed development,
- (b) The nature and scale of the proposed development, on zoned lands served by public infrastructure,
- (c) The types and characteristics of potential impacts,

it is concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment. Therefore, I consider the need for an Environmental Impact Assessment can be excluded.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are submitted from residents of the housing estate to the south of the site, Bellevue Park Avenue. One of the submissions has been submitted by an agent on behalf of the Bellevue Park Avenue Residents Association and is accompanied by a solicitor's letter. The issues raised throughout the submissions are similar and have been summarised under common themes below:

6.1.1. Site Notice

- Site notices erected in relation to Reg Ref 3743/21 and referenced in documents (2438 ELM-COA-RB3-22-DR-1-A 0501) where never erected.
- There was no site notice erected along the Elm Park Golf club.
- The site notices where not located where the public could easily access.
- The proposal does not comply with the site notice regulations.
- There were no site notices erected for the previous application (Reg Ref 3743/19), raised in grounds of appeal, and the Board did not address this

issue. Because of the discrepancy in the site notice DCC should not have granted permission.

- The applicant has not complied with Article 19 (2) of the Planning Regulations.

6.1.2. Previous planning permission and conditions

- Based on the discrepancies in the site notices, the Board should address the issues which relate to the previous permitted development and not only concern itself with the current amendments.
- The retention of the area as a green space was agreed between the original developer (Bernard Mc Namara) and the Bellevue Park Avenue Residents.
- 30 Scots pine were planted on the site along with an assortment of other species.
- Permission 3743/19 approved the felling of trees.
- All the trees along the south boundary have been felled.
- The proposal is designated as public open space in the initial parent permission for the campus PL29S.201622 and the applicant does not have sufficient interest to make an application.

6.1.3. Design and Layout

- The developer agreed to set the high-rise buildings back from the boundary wall with Bellevue Park by 100m.
- The new buildings are located within 10m from the boundary wall.
- The proposed works (pile driving etc) will cause structural damage to adjacent to properties.
- The proposal will remove valuable open space areas for the existing residents.
- Pavilion 3 is not valuable open space.
- The further intensification of the site is not acceptable, and the proposal is overdevelopment.

- The proposal will have a negative visual impact on the surrounding area.
- The open space should be enjoyed by the adjoining crèche.

6.1.4. Impact on Residential Amenity

- The energy equipment should be in the basement area of the residential and office blocks.
- The impact of the proposal on other buildings has not been considered (i.e., overlooking/ overbearing/ sunlight & daylight).
- There will be a loss of light on the properties and gardens in Bellevue Avenue.
- The proposal will have a negative impact on the privacy and amenity of No 29 Bellevue.
- The proposal will have an overbearing impact on properties in Bellevue Avenue.
- The edge of the southern pavilion is some 3.7m from the boundary of the properties with Bellevue Park and the proposed terrace seating is 1m.
- The proposal conflicts with a number of trees which are needed to provide screening along the boundary.
- An FI request was issued to fit fritted balustrades to mitigate overlooking and perceived overlooking and no provision was made for the 1st and 3rd floor level.
- The second FI request refers to the removal of a number of trees. The planners report notes the value of those to be removed and the need to retain 15 no trees along the southern boundary of the site.
- The impact of the proposal and the parent permission has a negative impact on the residential amenity and therefore non-compliant with the zoning objective on the site.
- The photomontages submitted includes a glass screen around the additional storey. No external space is proposed and there is concern the use of this space will lead to further negative impacts.

6.1.5. Height

- SPPR3 of the building height guidelines was not addressed in the previous Board decision.
- The site is located within the “Inner City” area where building heights of up to 28m for residential can be considered.
- The height, over 32m, is not within the heights allowed.
- The height will have a material impact on the character of the area.
- The height of the building is only acceptable where it can integrate or enhance the surrounding area. It is clear from the photomontages that this is not possible.
- The planning officer was incorrect in relying on the parent permission for its assessment against the national building height guidelines (SPPR3).
- A further increase in height cannot be classified as a marginal increase.

6.1.6. Elm Park Stream.

- The Elm Park Stream is located only 15m from the boundary of the site.
- The AA report notes the stream as “unassigned”.
- The EPA recognises Elm Park Stream as a polluted stream.
- No EIA screening, with the original application or the subsequent application, has addressed the impact on the Elm Park Stream.

6.1.7. Environmental Impact Assessment

- An EIA screening was not undertaken for the parent permission.
- The parent permission is unlawful because neither the PA nor the Board undertook an EIA screening assessment.
- The EIA Directive does not permit a case-by-case determination as to whether projects should be subject to EIA and Ireland has not identified any such thresholds or criteria.
- Dublin City Council incorrectly decided no screening for EIA was required for the proposal based, *inter alia*, on the distance from any environmental sensitive locations.

- The EIA screening has failed to recognise the connection between the development and the Brewery Stream. It is therefore impossible to assess the impact of the development.

6.1.8. Car Parking

- There appears to be a net reduction in the overall carparking provision in the campus and this would lead to an overspill of cars onto the adjoining streets.

6.1.9. Other

- The office building along the front of the site has remained vacant for the last 20 years and has a negative impact on the area.
- The proposal will devalue adjoining properties.
- There are huge environmental impacts from the use of concrete and the felling of trees on site.
- The removal of additional open space will impact the health and wellbeing of the surrounding residents.
- None of the original commitments from the developer or DCC have been delivered.
- There are ongoing issues in relation to anti-social behaviour on the site and noncompliance with conditions.

6.2. Applicant Response

An agent on behalf of the applicant has submitted a response to the grounds of appeal. The submission is also accompanied by the following:

- Hydrological & Hydrogeological Qualitative Risk Assessment
- Appropriate Assessment Screening Report
- Bat and Bird Technical Note
- Pedestrian Wind Comfort Study
- Design Note (Telecommunications)
- Traffic Capacity Assessment

- Response to third party concerns (Visual Impact)
- Legal Opinion

This submission is summarised below:

6.2.1. Height, Mass and Scale and Impact on Amenities

- The proposal is not a material contravention of the development plan.
- The proposal is in the Outer City and not the Inner City.
- Section 16.7 of the development plan refers height in relation to pre-existing heights, the permitted development has the same number of storeys as the pre-existing heights on the Elmpark Green site.
- The permitted development complies with the national guidance and the development plan.
- The proposal can meet the criteria for taller buildings.
- Under Section 28 the Board must have regard to any SPPRs.
- The proposed development represents an opportunity for increased density on the campus.
- A transport study has been submitted with the response which confirms the carrying capacity of the public transport to the site (DART and Bus).
- The proposal complies with the Apartment Guidelines.
- A Visual Impact Assessment accompanied the response from the applicant which concludes that the visual impact will not lead to any adverse effects.
- An Aecom report included photomontage drawings illustrating the proposal will integrate and respect the character of the area.
- The stepped height prevents a monolithic design.
- The proposal has been subject to a Site-Specific Food Risk Assessment which included negligible risk of flooding on the site.
- A daylight/ sunlight assessment has been submitted which indicates a potential to impact east facing bedrooms in The Links building on Floors 00, 01, and 02 although considering the building does not protrude forward of the

building line on the western façade it will not result in an undue adverse impact on daylight access. Any impacts are within the BRE guidelines.

- A Pedestrian Wind Comfort Study concludes that a comfortable environment will be available to residents.
- A Bat and Bird Assessment to state the building design will minimise the potential collision risk for bats and birds.
- A Design Note concludes the proposal will allow safe air navigation.
- A Glint and Glare Assessment as part of the further information confirmed no issues in relation to negative impacts.
- The proposal is compliant with the development management criteria set out in SPPR3 of the building guidelines.

6.2.2. Open Space

- The campus has been designed as a sequence of multi-use buildings.
- The development site represents an area which is underutilised and underdeveloped.
- The current site is not functional or accessible for residents.
- The open space at the links is also underutilised.
- The provision of communal open space is more than the requirements.

6.2.3. Environmental Impact, Ecology and Water Quality (Legal Opinion)

- A Hydrological and Hydrogeological Qualitative Risk Assessment was submitted with the application.
- The water quality of the Elm Park has since been assigned by the EPA as moderate.

6.2.4. Legal Opinion

- The validity of the parent permission Reg Ref 3743/19 was never challenged and the assertion that it is invalid is not correct.
- Compliance with Criteria 3.2 of the urban height guidance has been addressed in the planning documentation.

- The PA did not consider there was a material contravention and Section 37 does not apply.
- The Inspector on the previous application undertook a preliminary examination for the purpose of EIA screening as allowed for under Article 109 (2) (a). The Board is only required to have regard for at the least, the nature, size and location of the development.
- The Board has the power under Section 109 to request Schedule 7A information or the purpose of a screening determination should they consider it necessary.
- The presence of the Elm Park/ Brewery Stream in both the hydrological Assessment and the AA screening Assessment.
- It is asserted in the appeal that because of the unassigned status of the stream it is not possible to identify the impact on the proposed development. It has been submitted by the application that the impact on the water status of the stream is a long-term impact and the proposal will only impact the status through the temporary accidental release should any mitigation measures fail.
- There will be no impact on the status of the Water Framework Directive.

6.3. **Planning Authority Response**

None received

6.4. **Observations**

None received.

7.0 Assessment

I consider the main issues of the appeal can be dealt with under the following headings:

- Principle of Development
- Impact on Visual Amenity
- Impact on Residential Amenity
- Site Notices
- Appropriate Assessment

7.1. Principle of Development

Introduction

- 7.1.1. The proposed development includes alterations to a previously permitted development on the subject site. The development ABP 307424-20 (Reg Ref 3743/19) was granted by the Board for 73 no apartments and all other associated works. Upon site inspection it was noted that works to the permitted scheme are underway with the main spine of the residential block nearly up to parapet level. This proposal relates to alterations to that permitted development to include an additional 7 no apartments, (increase to 80 no units) in the form of an additional floor and other associated alterations and change of unit mix to accommodate an increase in units.
- 7.1.2. The grounds of appeal are submitted by the residents of the housing estate to the south of the site, Bellevue Park Avenue. It is considered that the PA was required to have regard to the previous permitted development on the site, rather than only those amendments proposed. The third-party submissions refer to the parent permission for the overall campus (PL29S.201622) and the permission for this residential block (ABP 307424-20). The appellants refer to a condition on the parent permission which designates the subject site as public open space.
- 7.1.3. Due to the absence of any in depth analysis by the PA and the terms of previous permissions, the grounds of appeal consider the principle of development is not acceptable and this application should not have been permitted. I have provided a background of the planning history on the site.

7.1.4. PL29S.201622: This permission was for the overall Elm Park Campus (mixed-use development). The report of the PA notes that proposal permitted on site and the third-party submissions received on the current proposal and it was stated that only those third-party submissions relating to the proposed alterations would be considered. Notwithstanding this assertion, the report of the PA noted the third-party submission relating to the designation of the subject site as open space. I have checked this planning history and note the Inspectors report on PL29S.201622 recommends a condition (condition No. 2) restricting the use of the site as a designated open space area. This condition was not included in the final Board Order. Therefore, I do not consider there are any restrictions in the original permission preventing this proposal.

7.1.5. ABP 307424-20: The third-party submissions also reference the previous proposal, permitted for 73 no units on the site, and consider many of those issues relating to the previous proposal should be assessed again, *inter alia*, building height, bulk scale and mass, impact on the Elm Park Stream. Many of the issues raised by the grounds of appeal where also raised by the appellant in the previous application. I note the Inspectors Report on the ABP 307424-20 addressed the principle of development, impact on residential amenity, traffic and parking and Appropriate Assessment. I consider a robust assessment of the previous application was undertaken by the Board and the permitted development is considered reasonable. I note no restrictions in this permission preventing the proposed development.

Land Use Zoning

7.1.6. The zoning on the site has remained unchanged between the Dublin City Development Plan 2016-2022 and the current development plan 2022-2028, as Z1, Sustainable Residential Neighbourhood. The proposal complies with the zoning.

Conclusion

7.1.7. Having regard to the planning history and land use zoning objectives, I have no reason to believe there are any serious restrictions or constraints relating to the principle of residential development at this location. Therefore, subject to all other planning considerations, I consider the proposed development is acceptable in principle.

7.2. Impact on Visual Amenity

Introduction

- 7.2.1. The permitted development includes two blocks interconnected. The proposal increases the height of the main building from 9 storeys to 10 storeys and from 4 storeys to 5 storeys on the secondary building. The highest point of the current permitted building is 36.47m whereas the proposed height is c. 40.36m. The height of the adjoining Links building to the north is 34.19m.
- 7.2.2. The report of the area planner notes the proposed height of both blocks exceed the height limit in Section 16.7.2 of the development plan (16m for the outer city) and has regard to the scale of the additional penthouse on the main building, the scale of the proposal, the design and set back and does not consider there are any new impacts which would render the proposal contrary to the provisions of SPPR3 of the urban height guidance.
- 7.2.3. The third-party submission specifically raised the need for proposed heights to comply with the criteria for taller buildings as set out in the national urban building height guidance. It is considered that compliance with SPPR3 had not been adequately addressed in the parent permission therefore the area planner cannot rely on compliance with the parameters of the national guidance for the contravention of the development plan.
- 7.2.4. The Dublin City Development Plan 2016-2022 was the plan in force during the planning application decision. Section 16.7 of the previous development plan set out guidance for building height in the city where a max height of 28m was permitted in the inner city, up to 24m at rail hubs and up to 16m at the outer city. The development plan has changed since the planning decision was made by the PA and the Dublin City Development Plan 2022-2028 is the current plan in place. The height restrictions for residential buildings have been removed and the criterion for assessing enhanced height is listed in Appendix 3. This is detailed further below.
- 7.2.5. The applicant's response to the grounds of appeal notes that the proposal is not reliant on SPPR3 and considers the proposal is compliant with the criteria in section 3.2 of the guidelines. I note the proposal is not reliant on the requirements of SPPR3 (i.e., there is no material contravention of the development plan or local area plan)

although I consider the proposal, which includes an additional storey up to 10 storeys, should be assessed against the development management criteria in 3.2 of the national guidance and Appendix 3 of the development plan, further detailed below.

Urban Development and Building Heights: Guidelines for Planning Authorities

7.2.6. Section 3.2 of this guidelines requires the applicant to demonstrate to the satisfaction of the PA/ABP, that the proposed development satisfies specific development management criteria. I have provided a summary of the proposed development having regard to these criteria.

At the scale of the relevant city/town
<ul style="list-style-type: none"> • The site is located within 100m from a bus stop and 800m train station (DART). • The site is not within an architecturally sensitive location and the visual impact assessment and photomontages illustrate the building generally in line with those buildings in the Elm Park Campus. • The proposal is located on a permitted scheme which provides for an infill development within a larger mixed use campus development.
At the scale of district/ neighbourhood/ street
<ul style="list-style-type: none"> • The permitted development includes a stepped approach with the reduced heights to the south. • The additional floors on the secondary block are stepped to match the permitted development, the additional floor on the primary block exceeds the prevailing building • The proposal includes alterations to the mix of units proposed and compliments the current apartments development in Elm Park and provide a balance to the suburban two storey dwellings to the south.
At the scale of the site/building
<ul style="list-style-type: none"> • The daylight and sunlight assessment notes a potential impact on bedrooms on The Links apartments to the north and notes the impact slight to moderate.
Specific Assessments
<ul style="list-style-type: none"> • Site Specific Flood Risk Assessment • Daylight/Sunlight Assessment • Visual Impact Assessment • Transport Capacity Assessment • Appropriate Assessment Screening Report

- Pedestrian Wind Comfort Study
- A Bat and Bird Technical Note
- A Design Statement
- A Glint and Glare Assessment
- Hydrological and Hydrogeological Qualitative Risk Assessment

7.2.7. Having regard to the design, layout, and scale of the proposal alterations to ABP 307424-20 (Reg Ref 3743/19) which includes an additional storey, I consider the proposal complies in general with the broader development management criteria in Section 3.2 of the national guidance for urban building heights. The Board will note my concerns below with regard the visual and residential amenity impact of the additional 10th floor, detailed below. In this regard I do not consider the additional height on the primary building can fully meet this management criteria.

Dublin City Development Plan 2022-2028

7.2.8. Appendix 3 of the current development plan, Dublin City Development Plan 2022-2028, includes a criterion for assessing enhanced height, density, and scale with eight objectives for which to assess against. This criterion is listed below;

- To promote development with a sense of place and character
- To provide appropriate legibility
- To provide appropriate continuity and enclosure of streets and spaces
- To provide well connected, high quality and active public and communal spaces
- To provide high quality, attractive and useable private spaces
- To promote mix of use and diversity of activities
- To ensure high quality and environmentally sustainable buildings
- To secure sustainable density, intensity at locations of high accessibility
- To protect historic environments from insensitive development
- To ensure appropriate management and maintenance

- 7.2.9. I have briefly assessed the proposed increase in height against those criteria for the purpose of development plan compliance. In general, I consider the principle of the taller building is acceptable in principle having regard to the overall mixed use campus development, the location of the site adjoining The Links residential block and the current permitted residential development.
- 7.2.10. In terms of the design and layout of the additional 10th floor on the main building, it is my opinion there would be a negative visual impact having regard to the design of the existing building and the extension above the established and permitted building height, as detailed below.

Design and layout of the additional floor.

- 7.2.11. The applicant's response to the grounds of appeal includes a response in relation to visual effects. It is argued that the main changes are to the permitted development ABP 307424-20 (Reg Ref 3743/19) and taken together they will not lead to additional visual effects.
- 7.2.12. The application is accompanied by plans and photomontage drawings illustrating the additional floor. These illustrations clearly indicate a change of design for the additional floor which extends above the height which is established by the adjoining Links apartment building and the permitted residential block. A new external treatment (coloured glass) has been introduced which I do not consider compliments the existing permitted external materials. Whilst the applicant's response considers the additional floor will not materially change the visual impact, I am concerned the proposed additions do not integrate visually with the existing and/or proposed buildings and as such would have a negative visual impact.
- 7.2.13. In the first instance, I note the design of the building permitted ABP 307424-20 (Reg Ref 3743/19) includes a stepped approach with a change of design for the upper floors and a flat roof in keeping with the adjoining established residential block. The proposed development (additional floor) alters these architectural features where it introduces a new design feature and external material which, in my opinion, does not compliment the permitted buildings.
- 7.2.14. In the second instance, I note the additional floor will reduce the sunlight/ daylight to bedroom (and balconies) of the existing Links building to the north of the site. No rationale for any compensatory design solutions has been included nor justification

why the proposal should have a negative impact on any adjoining properties, further discussed below. Therefore, I do not consider there is any planning justification for the additional floor on the primary building other than an increase in unit numbers.

Conclusion

- 7.2.15. Having regard to the design and layout of the additional 10th floor, which I do not consider this alteration compliments the permitted residential block or is it in keeping with the character of the prevailing apartment development in the vicinity. It is my opinion that the proposed additional floor would have a significant negative visual impact on the existing and proposed residential development in the area. To this end, it is my opinion that the proposal does not comply with the development management criteria for enhanced heights in the national guidance or the development plan.
- 7.2.16. The Board will note the proposed development includes additional proposals such as the additional floor on the secondary building, alterations to the layouts and unit mix and fritted glazing on the balconies of the permitted development ABP 307424-20 (Reg Ref 3743/19). I have no objections to these proposals and as such I consider a condition to remove the 10th floor is reasonable to prevent any significant visual impact on the surrounding area.

7.3. Impact on Residential Amenity

Introduction

- 7.3.1. The site is located to the south of The Links residential block and to the north of Bellevue Avenue Park estate. The submissions from the Bellevue Park residents consider the proposed development, in combination with the permitted development will have a significant impact on their residential amenity.

Sunlight/Daylight

- 7.3.2. The application was accompanied by a Sunlight and Daylight Access Analysis. The assessment uses the BRE and BS standards to assess the impact on the available sunlight to the existing properties in the vicinity. The assessment has regard to the impact of the proposal on The Links building to the north, The Bay building to the northeast and those dwellings along the northern boundary of Bellevue Park Avenue.

- 7.3.3. No potential Impacts are recorded on any properties along the south of the site, Bellevue Park. Having regard to the orientation of the building to the north of this estate, I consider this result is acceptable.
- 7.3.4. The report of the area planner noted the location of The Links building to the north of the site (dual aspect), which is the most sensitive to any impacts on sunlight and daylight. The increase in height to 5 storeys is referenced and it is considered the increase in height would be significant. The PA concluded no significant impact on the daylight and sunlight of those properties in the vicinity.
- 7.3.5. Table 4.1 of the submitted daylight and sunlight analysis records a potential slight to moderate impact on two of the bedrooms along the east of The Links building, on the lower floors (i.e., below 0.8 times its former value). The applicant's response to the grounds of appeal notes the potential impact on those bedrooms to the east of The Links although as the proposal does not protrude forward of the building line on the western façade, there will be no undue adverse impact on the daylight access. The daylight and sunlight assessment does not include any assessment to the impact on upper floors or the balconies along the eastern side of The Links apartment building. I consider these areas would be most at risk of a potential impact due to there location.
- 7.3.6. Section 3.2 of the national building height guidance states that where a proposal may not be able to meet all the requirements of the daylight provisions, there must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out. I note no such rationale for the reduction in the BRE standards has been submitted by the applicant.
- 7.3.7. Appendix 16 of the current development plan provides guidance for sunlight and daylight with reference to the BRE and BS standards. Section 2.2 of the BRE guidelines¹ provides guidance on the impact of a proposal to an existing building. Where the VSC is less than 27% (i.e., less than 0.8 times its former value) there will be a notifiable reduction in the amount of skylight available to that room. The applicants submitted sunlight analysis indicates that one of the rooms had the same VSC under the permitted scheme ABP 307424-20 (Reg Ref 3743/19) although it is not clear from the report which room is referenced, in addition the predicted average

¹ BRE: Site layout planning for daylight and sunlight, A guide to good practice

daylight factor has only been provided for one of the bedrooms affected. I note three of the bedrooms can not meet the minimum BRE standards. In addition, having regard to the location of balconies along the eastern elevation of The Links building the proposal has the potential to impact the daylight/sunlight to these spaces.

7.3.8. Therefore, having regard to the results of the applicant's sunlight and daylight analysis and the design of the 10th floor, it is considered the proposed development would reduce the available sunlight to a minimum of three bedrooms in The Links Building below the recommended BRE standards. In the absence of any rationale or justification for the need for this additional floor, I do not consider this reduction is acceptable and the proposal would have a significant negative impact on the residential amenities of those residents in these apartments.

7.3.9. Having regard to my assessment above in relation to the design and layout of the additional 10th floor and my recommendation to include a condition removing this floor, I consider the impact would be greatly reduced.

Overlooking

7.3.10. The impacts of the overlooking and perceived overlooking have been previously addressed in the Inspectors Report for the permitted development. The location of the additional private amenity space on the 10th floor will be located c. 35m from the southern boundary, adjacent to Bellevue Park Avenue. There will be no direct overlooking into the windows of any properties.

7.3.11. Condition No 3 of the parent permission ABP-307124-20 (Reg Ref 3743/19) required the glass balustrades to the terraces to be fitted with fritted glass. The proposal as submitted includes this fritted glass. The proposed development also includes a 1.15m high fritted glass balustrade around the upper terrace. I consider the use of the fritted glass will remove any perception of overlooking from the terrace areas.

7.3.12. Having regard to the distance of the 10th floor from the adjoining residential estate, the location of the terrace and the design of the balustrade, I do not consider there is any potential for any overlooking on any adjoining residential properties.

Overbearing

7.3.13. As stated above the permitted development is currently under construction with a substantial amount of works undertaken. Having regard to the location of the subject

site within a campus of high-rise development and the stepped down approach to the design, I do not consider there will be any overbearing impact on those properties to the south. A comprehensive assessment of the visual impacts of the 10th floor in included above in Section 7.2. within this assessment and I have concluded that the additional 10th floor would have a negative visual impact on the permitted residential development and the surrounding area. Therefore, I have recommended a condition to remove this additional floor.

Tree Removal

7.3.14. The impact of tree removal along the southern boundary has also been raised by those residents of Bellevue Park Avenue. There is concern the removal of trees will lead to overlooking etc.

7.3.15. On foot of a further information request the applicant submitted a revised tree removal plan indicating those trees which where required to be removed for construction access. A revised Arboricultural Assessment and tree retention/ removal plan illustrated the trees to be retained along the northern boundaries of those dwellings in Bellevue Park Avenue. Additional tree planting and herbaceous planting are proposed between these stands of trees to be renitent. I consider the retention of the trees and the additional planting will prevent any significant impact on the adjoining residential amenities.

7.4. Elm Park Stream

7.4.1. The proposed development includes alterations to the existing permitted development to include an additional 7 no units. The grounds of appeal do not consider the impact on the Elm Park Stream has been adequality assessed and have raised issues relating to the EIA screening (previously assessed under Section 5.4 above).

7.4.2. The Elm Park Stream runs through the Elm Park Golf course along the north of the site (culverted under The Links residential block) and north of the campus. The stream flows east and discharges into Dublin Bay.

- 7.4.3. The Elm Park Stream is referred to as Brewer Stream_010 in the EPA Maps² and is in the catchment area of Liffey and Dublin Bay sub catchment of Dodder_SC_010 for the purpose of the Water Framework Directive. The stream had unassigned classification until 2013 and the most recent monitoring programme for the WFD notes the status as “poor”. The threats are identified as anthropogenic³.
- 7.4.4. Third party submissions note the location of the Elm Park Stream on the site and the WFD classification detailed above. They consider the location of the site is particularly sensitive having regard to the connection with the stream and the potential impact on the water body.
- 7.4.5. The proposal incorporates SuDS and the storm water discharge will be limited to 1.0l/s and will incorporate a stone filter attenuation to clean the storm water before discharge to the Elm Park Stream. It is proposed the foul and water supply will connect to the public system. The report of the Drainage Department noted no objection to the proposal subject to the use of standard conditions and compliance with the surface water management conditions of the parent permission.
- 7.4.6. I note the scale of the works proposed, both the increase of 7 units and the cumulative impact of the 80 units, and the discharge of clean surface water, and I do not consider the proposal will lead to any significant impact on the water quality of the Elm Park Stream (Brewer Stream_010).
- 7.4.7. The Board will note Section 5.4 of my assessment addresses the third-party submissions which consider the impact of the proposal on this stream has not been considered in the EIA screening. It is my opinion that the design and layout of the proposal will ensure no significant negative impact on the Elm Park Stream and therefore no conflict with any objectives of the WFD.

7.5. Site Notices

- 7.5.1. The grounds of appeal have raised concern in relation to the site notices erected for the previous application ABP 307424-20 (Reg Ref 3743/19) and the current applicant. It is stated that the site notices were not available on the previous application and hence no submissions from Bellevue Avenue residents. It is also

² <https://gis.epa.ie/EPAMaps/>

³ [Subcatchment Assessment \(catchments.ie\)](#)

argued that the site notices were not readily available for this proposed development.

- 7.5.2. In this first instance, the grounds of appeal have raised concern that they were not aware of the initial application ABP 307424-20 (Reg Ref 3743/19). They reference the third-party submission on this application, which also referenced the site notice. The Board will note the area planners report (DCC) on the previous application, records the site notice as being in order on the 16th of September 2019 and included reference to the third-party submission which raised the location of the site notice. In this regard, I am satisfied that the PA were aware of the third-party concerns relating to the site notice and would have the opportunity to address any issue of concern during the planning process.
- 7.5.3. Similarly, I note the planners report on the current application also recorded the sites notices as legible and in place on the 23rd of September 2021. The submitted plans illustrate 6 locations for the site notices. These include locations around the site which adjoin a public road. The planner's report does not refer to any issues raised in the observations/ third party submissions relating to the site notice although this was raised in the observations. This aside, having regard to the planning authority inspection of the site and the location of the 6 site notices erected around the site I am satisfied the public would have been reasonably aware of the proposed development. In addition, the Board will note the significant number of third-party submissions received on the planning application and the appeal which I consider represents a public awareness of the proposed development.
- 7.5.4. Therefore, having regard to the planning authority reports and the information contained with the proposed development, I find no reason to invalidate the proposed application.

7.6. **Appropriate Assessment**

Introduction

- 7.6.1. The proposed development is for alterations to a permitted development ABP 307424-20 (Reg Ref 3743/19) to include an additional 7 no residential units and associated works. The application was accompanied by an Appropriate Assessment

(AA) Screening report. This AA screening considered the impact of the proposed development on European Sites within a 15km radius of the site.

7.6.2. The PA undertook an AA screening, noted the location of the South Dublin Bay and River Tolka SPA and the South Dublin Bay SAC, c.333m to the east of the site and concluded the additional 7 no units would not give rise to any significant impact, either individually or in combination with other plans or projects.

7.6.3. The site is located c. 300m to the west of Dublin Bay and those European Sites South Dublin Bay and River Tolka SPA and the South Dublin Bay SAC. The Elm Park Stream runs c. 100m north of the subject site and joins the European Sites at the edge of the Bay. I note the list of European Sites within the AA screening report although having regard to the location of the site and the characteristics and the absence of any other source-pathway-receptor I consider the potential for any impact only on those European Sites listed below.

European Site	Qualifying Interest and Conservation Objectives
South Dublin Bay SAC (site code 000210)	To maintain the favourable conservation condition of those habitats: <ul style="list-style-type: none"> • Mudflats and sandflats not covered by seawater at low tide [1140]* priority habitat • Annual vegetation of drift lines [1210] • Salicornia and other annuals colonising mud and sand [1310] • Embryonic shifting dunes [2110]
South Dublin Bay and River Tolka SPA (site code 004024)	To maintain the favourable conservation condition of those habitats <ul style="list-style-type: none"> • Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046] • Oystercatcher (<i>Haematopus ostralegus</i>) [A130] • Ringed Plover (<i>Charadrius hiaticula</i>) [A137] • Grey Plover (<i>Pluvialis squatarola</i>) [A141] • Knot (<i>Calidris canutus</i>) [A143] • Sanderling (<i>Calidris alba</i>) [A144] • Dunlin (<i>Calidris alpina</i>) [A149] • Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157] • Redshank (<i>Tringa totanus</i>) [A162] • Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179] • Roseate Tern (<i>Sterna dougallii</i>) [A192]

	<ul style="list-style-type: none"> • Common Tern (<i>Sterna hirundo</i>) [A193] • Arctic Tern (<i>Sterna paradisaea</i>) [A194] • Wetland and Waterbirds [A999]
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Assessment of likely Significant effects

- 7.6.4. The site is in the urban area of Dublin City on lands zoned for residential use. There is a recent permission on the site for a residential block of 73 no units. The proposed development includes an increase in the number of units by 7 and the same services, i.e., connection to public water and wastewater are included in the proposal.
- 7.6.5. As stated above the Elm Park stream runs along the north of the site and connects into Dublin Bay some c. 300m to the east. The impact on this stream is raised in the third-party submissions and I have addressed the impact of deterioration of the stream above, with regards WFD. It is proposed the surface water will discharge to this stream. The AA screening report identified the connection with the stream and the hydrological link to the European Sites. The use of standard construction measures to protect the water quality of the stream is included in the screening assessment i.e., preventing the release of any hazardous materials during construction, control of soil excavation etc. All surface water design will be in keeping with the Greater Dublin Strategic Drainage Study and incorporate SuDS. I do not consider there are any specific mitigation measures required to prevent any effect on the conservation objectives of any European Site.
- 7.6.6. The AA report states that the subject site does not contain any suitable habitat to support those species of qualifying interest in the adjoining SPA and there is no potential for any bird strike or collision having regard to the design of the proposed building.
- 7.6.7. I consider the information contained in the AA screening report reasonable to undertake an assessment of the likely significant effects on any European Site. I consider in the absence of any suitable habitat for wintering bird species and design and layout of the surface water, it can be concluded that the proposed development would have no potential for likely significant effect on the following European Sites, or any other European Sites:

- South Dublin Bay SAC
- South Dublin Bay and River Tolka SPA

Screening Determination

7.6.8. Having regard to the nature and scale of the proposed development within a serviced area and separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on the conservation objectives of any European site.

8.0 Recommendation

8.1. I recommend that planning permission should be GRANTED, subject to conditions, for the reasons and considerations as set out below.

9.0 Reasons and Considerations

Having regard to the nature, scale and design of the proposed development, the policies and objectives of the Dublin City Development Plan 2022-2028, in particular the Z1, Sustainable Residential Neighbourhood zoning, it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable residential development in this location, would not seriously injure the residential or visual amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development
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	<p>shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity</p>
2.	<p>The proposed development shall be amended as follows:</p> <p style="padding-left: 40px;">a) The 10th floor on the main residential building shall be removed.</p> <p>For clarity, the permission shall relate only to 77 no residential units.</p> <p>Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interests of visual and residential amenity</p>
3.	<p>Prior to the commencement of development and at least 30 days before the erection of any cranes, the applicant shall provide written evidence to the planning authority of any notification of crane operation to the Irish Aviation Authority.</p> <p>Reason: In the interest of air traffic safety.</p>
4.	<p>Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission(s) granted under ABP 307424-20 (Reg Ref 3743/19) and any agreements entered into thereunder.</p> <p>Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission(s).</p>
5.	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
6.	<p>The applicant shall comply with the requirements of Irish Water.</p> <p>Reason: In the interest of public health.</p>
7.	<p>The internal road network and all those car parking requirements serving the proposed development, including turning bays, junctions, parking</p>

	<p>areas, footpaths and kerbs, shall be in accordance with the detailed construction standards of the planning authority for such works and design standards outlined in DMURS. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In the interest of amenity and of traffic and pedestrian safety.</p>
8.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures, construction traffic management and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity</p>
9.	<p>The management and maintenance of the proposed development, following completion, shall be the responsibility of a legally constituted management company, which shall be established by the developer. A management scheme, providing adequate measures for the future maintenance of the development; including the external fabric of the buildings, internal common areas (residential and commercial), open spaces, landscaping, roads, paths, parking areas, public lighting, waste storage facilities and sanitary services, shall be submitted to and agreed in writing with the planning authority, before any of the residential or commercial units are made available for occupation.</p> <p>Reason: To provide for the future maintenance of this development in the interest of residential amenity and orderly development</p>
10.	<p>Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000,</p>

	<p>as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.</p> <p>Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.</p>
11.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission</p>

Karen Hamilton
Senior Planning Inspector

29^h of March 2023