



An  
Bord  
Pleanála

## Inspector's Report

### ABP-314920-22

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<b>Development</b>	Permission for development, the construction of 7 no. dwellings and associated site development works.
<b>Location</b>	'Cintra', Leopardstown Road, Foxrock, Dublin 18.
<b>Planning Authority</b>	Dún Laoghaire-Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D22A/0572.
<b>Applicant</b>	Godfrey Carroll.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse.
<b>Type of Appeal</b>	First Party.
<b>Appellant</b>	Godfrey Carroll.
<b>Observers</b>	No. 5 observers, details provided in section 6.3.1.
<b>Date of Site Inspection</b>	5 <sup>th</sup> July, 2023.
<b>Inspector</b>	Terence McLellan

## 1.0 Site Location and Description

- 1.1. The appeal site refers to the dwelling and plot known as Cintra, which is located in an established residential area on Leopardstown Road. The existing dwelling is a substantial two storey period property, with a two storey rear wing and a semi-detached, part single/part two storey outbuilding, which was previously in use as a Doctor's Surgery. The rectangular plot measures approximately 0.21 hectares in area, with a 30 metre wide frontage onto Leopardstown Road where the access is located. The site is generally level, with several hedgerows and lines of trees, particularly along the boundaries and to the rear of the existing dwelling.
- 1.2. The appeal site is bounded to the north by the rear gardens of the dwellings on Torquay Wood, to the east by the adjacent dwelling and plot known as Lissadell, to the south by Leopardstown Road, and bounded to the west by the dwelling and plot known as Derryarc. The immediate surrounding context of the site is characterised by large, detached dwellings, situated within substantial plots accessed directly from Leopardstown Road (e.g., Lissadell and Derryarc). More recent housing developments are located on the secondary streets, characterised by more regularly sized dwellings and plots.
- 1.3. Leopardstown Road (R113) is a busy road linking Stillorgan Road (N11) with the Sandyford Business District/Urban Area. The road accommodates three lanes of traffic (two lanes eastward and one lane westward) in addition to segregated cycle paths. The closest Luas station is at Sandyford, approximately 1.3km away, whilst Go-Ahead Ireland bus service 114 serves Leopardstown Road. Additional bus services are available on the Stillorgan Road, which is a Core Bus Corridor.

## 2.0 Proposed Development

- 2.1. Planning permission is sought for the demolition of the existing dwelling and structures and redevelopment of the site to provide a total of seven dwellings, including a detached four bedroom home, four terraced four bedroom homes, and two semi-detached homes (a three bedroom and a four bedroom). All homes would be three storeys in height, with front and rear gardens and off-street parking provision for two vehicles each. Two visitor car parking spaces would be provided for the development.

The proposal would involve the relocation of the existing site entrance to sit immediately adjacent to the boundary with the adjacent plot (Lissadell).

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

3.1.1. Notification of the Decision to Refuse Permission for the proposed development was issued on 28 September 2022. The reasons for refusal are as follows:

1. The proposed development would result in additional turning movements onto Leopardstown Road which provides an important part of the link road between the N11 and the South County Business Park/Sandyford Industrial Estate. The proposed development would exacerbate unsafe movements of vehicles trying to perform a 'right in', having to cross the two eastwards lanes and as a result would endanger public safety by reason of a traffic hazard and would have a seriously adverse impact on the safety and free flow of traffic on Leopardstown Road.
2. The proposed development would set an unsuitable precedent for further multiple dwelling access points with consequent implications for public safety and free flow of traffic on Leopardstown Road. It is therefore considered that the proposed development is contrary to the proper planning and sustainable development of the area.
3. The proposal for 7 No. 3 and 4 bedroom dwellings would provide a poor mix of housing, inefficient use of metropolitan lands that are well served by public transport, and piecemeal development at low densities contrary to Policy Objective PHP18 and PHP27 of the County Development Plan, Section 5.8 of the Sustainable Residential Development in Urban Area Guidelines (DHPLG 2009); Objective 3b of the National Planning Framework (2019) and the Design Standards for New Apartments (2021). In addition, contrary to Section 12.3.7.6 of the County Development Plan 2022-2028 (Backland Development) and the proper planning and sustainable development of the area, the proposals may inhibit the future amalgamation of adjoining lands along the Leopardstown

Road for more comprehensive, sensitive, and appropriate development that also addresses transportation concerns around site access.

4. The proposed development fails to provide a sufficient level of public amenity space on site in accordance with the minimum development control standards set down under Section 12.8.3 of the Dún Laoghaire-Rathdown County Development Plan 2022-2028 (Open Space Quantity for Residential Development). The proposed development would, therefore, constitute a substandard development and be contrary to the proper planning and sustainable development of the area.
5. The proposed development, by reason of its height, configuration and siting, would seriously and adversely affect the residential amenities enjoyed by the occupants of Derrycarc and Nos. 6 and 7 Torquay Wood. The development provides insufficient separation distances between the rear building line and Derrycarc, as well as between the gable wall of the proposed unit No.7 and Nos. 6 and 7 Torquay Wood. As a result, the proposed development would impact on the future development potential of the adjoining site. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

### **3.2. Planning Authority Reports**

- 3.2.1. The report from the Planner's Report was issued on the 28<sup>th</sup> September 2022 and forms the basis of the Council's assessment and decision. The report indicates acceptance of the development in principle in terms of zoning, but notes that the primary concerns raised in the previous refusal of planning permission have not been satisfactorily addressed, as reflected in the identical reasons for refusal on the appeal scheme. The proposed housing was accepted as being of an acceptable standard of accommodation and the private open spaces were acknowledged as being policy compliant.
- 3.2.2. The report considers the development to be 'Backland Development' and raises issues regarding the amalgamation of sites to provide a more comprehensive form of development, as well as raising concerns that the development potential of adjacent sites would be inhibited by the proposed development. Whilst accepting the principle

of demolition of the existing dwelling, the planner's report notes that no justification for the demolition was given, nor has an energy statement been submitted.

3.2.3. The height of the proposed dwellings is noted as being higher than the existing and adjacent properties, however the report concludes under the section titled 'Site Layout and Standard of Accommodation', that, given the separation distance, the height of the proposed dwellings is considered acceptable. Notwithstanding, height and separation distance is then considered to be unacceptable later in the report under the section titled 'Impacts on Residential and Visual Amenity'.

3.2.4. Concerns are raised at the loss of trees and the report notes that additional information would have been requested were it not for the substantive reasons for refusal. Ultimately, the report concludes that the development would be unacceptable on transport/traffic safety grounds, poor quality housing mix, inefficient use of land due to low density, failure to provide public open space, and adverse amenity impacts to adjacent properties.

3.2.5. **Other Technical Reports**

3.2.6. **Environmental Health Officer (12.09.22):** No objection subject to conditions relating to a Construction Environmental Management Plan, Construction/Demolition Excavation Waste Management Plan, construction compound facilities, construction hours, construction noise and vibration, noise monitoring, and dust minimisation/monitoring.

3.2.7. **Drainage Planning (08.09.22):** The response from the Drainage Team sets out further information that is required in terms of outfall discharge rates, attenuation volumes, compliance with Council policies regarding permeable surfaces, gravity connections to existing sewers, and updates to the surface water drainage design.

3.2.8. **Environmental Section (21.09.2022):** Requests further information but notes appropriate conditions that should be applied if permission is granted based on the existing submitted documents/information. The relevant conditions relate to construction waste, liaison with the public, noise management, pest control, and operational waste management.

3.2.9. It is noted that neither the Parks Department nor the Transportation Planning Department submitted comments to the Planner's Report. They did however respond

to the previously refused scheme. Given the similarity between the previously refused scheme and the appeal scheme, it is of relevance to note these previous comments.

3.2.10. The Parks Department requested further information in relation to arboricultural surveys/impact assessments as well as recommending conditions relating to landscaping and play space.

3.2.11. The Transportation Planning Team responded to the previous application recommending refusal based on endangerment of safety due to the additional turning movements onto Leopardstown Road and the establishment of a potential precedent for similar developments.

### 3.3. **Prescribed Bodies**

3.3.1. **Irish Water:** Requires the developer to enter into a connection agreement prior to the commencement of the development as well as a commitment to carry out the development in compliance with Irish Water Standards, Codes and Practices. The observation also states that Irish Water Infrastructure capacity requirements and proposed connections to the Water and Waste Infrastructure will be subject to the constraints of the Irish Water Capital investment Programme.

### 3.4. **Third Party Observations**

3.4.1. An observation was received from Henrick W. van der Kamp, for and on behalf of Kevin Lynn of Lissadell, Leopardstown Road, Dublin 18. The observation raised the following points:

- Supports the principle of achieving infill residential development, however a similar proposal was refused on the Lissadell site and this was upheld on appeal. Additionally, a previous application for the same development on the appeal site was refused and not appealed.
- The applicant claims the proposal replaces a Doctors Surgery and that this had equal or higher traffic volumes on a 24-hour basis than the proposed development. However, the surgery was a secondary practice that was not operated on a full-time basis and closed approximately five years ago. The

Transportation Assessment is therefore based on incorrect trip generation comparison figures.

- The proposed dwellings would directly face the Lissadell site, and the access road would be alongside the property boundary. This would cause noise and disturbance.
- In the absence of in-depth residential development on the Lissadell site, the proposed development would be haphazard in form and would seriously injure the residential amenity of the adjacent dwelling and garden.
- The previous refusal made reference to the proposed density being too low and that the amalgamation of adjacent sites would provide a more appropriate development. The principle of redevelopment of an amalgamated site (Cintra and Lissadell) would be supported.
- The current proposal would represent uncoordinated, piecemeal development that would be contrary to the proper planning and sustainable development of the area.

3.4.2. An observation has been received from Kieran O'Malley and Co. Ltd., for and on behalf of:

- David and Mildred Gorman, 4 Torquay Wood, Dublin 18.
- Daniel and Linda Kitchen, 5 Torquay Wood, Dublin 18.
- Paul and Anne Waldron, 6 Torquay Wood, Dublin 18.
- Seamus and Mary Halford, 7 Torquay Wood, Dublin 18.
- Patrick and Patricia O' Connor, 8 Torquay Wood, Dublin 18.

3.4.3. The main points of this observation are similar to those made on the appeal and are set out in paragraph 6.3.2 below.

## 4.0 Planning History

### 4.1. *Subject site*

4.1.1. **Planning Authority Reference D21A/0294:** Permission was refused in June 2021 for: Demolition of the detached two storey dwelling, semi-detached two storey Doctor's

Surgery and single storey shed; the construction of 7 no. dwellings consisting of: 1 no. semi detached, three story, four bedroom dwelling; 1 no. semi detached, three story, three bedroom dwelling; 2 no. end terrace, three storey, four bedroom dwellings; 2 no. mid-terrace, three storey, three bedroom dwellings; and 1 no. detached, three storey, four bedroom dwelling; amendments to the existing site entrance, provision of a bicycle store, provision of two visitor car parking spaces, landscaping and associated site development works.

4.1.2. This application was refused for the same reasons as the appeal scheme, as set out in section 3.1.1 above.

#### 4.2. *Surrounding Sites*

##### Lissadell, Leopardstown Road (neighbouring site to the east)

4.2.1. **PA Reg. Ref D20A/0210:** Planning permission was granted in October 2020 for the erection of a two storey dwelling to the rear of the existing dwelling, in addition to the widening of the existing vehicular entrance from Leopardstown Road.

4.2.2. **ABP Reference PL06D.248803 / PA Reg. Ref D17A/0347:** Planning permission was refused by the Board in November 2017 for the demolition of the existing dwelling/shed and replacement with seven, three bedroom dwellings with access from Leopardstown Road. The reasons for refusal related to safety concerns and impacts on the free flow of traffic as a result of additional turning movements on Leopardstown Road, provision of substandard accommodation as a result of the failure to provide adequate private amenity space, and failure to provide an appropriate design solution or sufficient density which would be an inefficient use of the site and would harm residential and visual amenity.

4.2.3. **PA Reg. Ref D17A/0039:** Permission was refused in March 2017 for the redevelopment of the site to provide seven, four bedroom dwellings. The reasons for refusal related to safety and traffic impacts as a result of additional turning movements on Leopardstown Road, setting a precedent for similar developments on Leopardstown Road, inadequate provision of private open space, and lack of adequate visitor car parking.

4.2.4. **ABP Reference PL06D.238283 / PA Reg. Ref D10A/0581:** Permission was refused by the Board in April 2011, for six apartments and three houses. The reason for refusal



related to safety concerns and the impact on the free flow of traffic due to increased turning movements on Leopardstown Road.

- 4.2.5. **ABP Reference PL06D.236096 / PA Reg. Ref D09A/0345:** Permission was refused by the Board in June 2010, for the relocation of the entrance, approved under ABP Reference PL06D.226572, from Westminster Lawn to Leopardstown Road, on the basis safety of concerns and the impact on the free flow of traffic due to increased turning movements on Leopardstown Road.
- 4.2.6. **ABP Reference PL06D.226572 / PA Reg. Ref D07A/1266:** Permission was granted by the Board in June 2008 for redevelopment of the site to provide seven apartments and four townhouses. Notably, the vehicular entrance for this development was from Westminster Lawns and the existing entrance from Leopardstown Road was to become pedestrian only.
- 4.2.7. **ABP Reference PL06D.217126 / PA Reg. Ref D06A/0078:** Permission was refused by the Board in October 2006 for conversion of the existing dwelling into two, two bedroom apartments and provision of a three storey, eight unit apartment block. Vehicular access would be from Westminster Lawns and the existing access from Leopardstown Road would be closed. Permission was refused on the basis of amenity impacts as a result of visual obtrusiveness, overdevelopment, overlooking, and substandard amenity for future occupiers.
- 4.2.8. **ABP Reference PL06D.210957 / PA Reg. Ref D04A/1400:** Permission was refused by the Board in June 2005 for conversion of the existing dwelling into two, two bedroom apartments and provision of a three storey, 12 unit apartment block. Vehicular access would be from Westminster Lawns and the existing access from Leopardstown Road would be closed. Permission was refused on the basis of amenity impacts as a result of visual obtrusiveness, overdevelopment, overshadowing, overlooking, and substandard amenity for future occupiers.

Chadsley House, Leopardstown Road (opposite appeal site, to the south west)

- 4.2.9. **PA Reg. Ref D22A/0508:** Permission was granted in November 2022 for the provision of four, two storey four bedroom dwellings with access from Leopardstown Road. This decision is currently being appealed to the Board under reference ABP-315388-22 and is yet to be determined.

Acadia, Leopardstown Road (adjacent to Chadsley House, reference above)

- 4.2.10. **PA Reg. Ref D22A/0590:** Permission was refused in October 2022 for the provision of four, three storey, four bedroom homes with access from Leopardstown Road. The reasons for refusal relate to the impact of public safety due to the lack of visibility for vehicles entering Leopardstown Road, amenity impacts in terms of the overbearing nature of development and overlooking, poor standards of residential amenity.

Lands at 'St. Joseph's House' and adjoining properties at Brewery Road and Leopardstown Road

- 4.2.11. **ABP Reference TA06D.311540:** Permission was granted by the Board in April 2022 for the demolition of 10 buildings on site, retention and change of use of St Joseph's House to residential use and childcare, and the provision of 463 new homes across nine blocks. Condition 17(a) requires the access from Leopardstown Road to be left in/left out only. Additional access points are provided onto Brewery Road.

Dalwhinnie, Leopardstown Road.

**ABP Reference PL06D.249248 / PA Reg. Ref D17A/0337:** Permission was granted by the Board in May 2018 for the demolition of three houses, change of use of St. Joseph's House (a protected structure) and provision of 139 new homes. with all associated site works. Condition 3 requires the access from Leopardstown Road to be left in/left out only. Additional access points are provided onto Brewery Road.

## 5.0 Policy Context

### 5.1. Development Plan

#### **Dún Laoghaire-Rathdown County Development Plan 2022-2028**

- 5.1.1. The Dún Laoghaire-Rathdown County Development Plan 2022–2028 (CDP), categorises the site as zoning objective 'A', which seeks to provide residential development and improve residential amenity while protecting the existing residential amenities.
- 5.1.2. Chapter 3: Climate Action, sets out the detailed policy objectives in relation to climate and the role of planning in climate change mitigation, climate change adaptation and

the transition towards a more climate resilient County. The relevant policy objectives of this chapter are:

- CA5: Energy Performance in Buildings
- CA6: Retrofit and Reuse of Buildings
- CA7: Construction Materials.

5.1.3. Chapter 4: Neighbourhood – People, Homes and Place, sets out the policy objectives for residential development, community development and placemaking, to deliver sustainable and liveable communities and neighbourhoods. The relevant policy objectives from this chapter are:

- PHP18: Residential Density
- PHP20: Protection of Existing Residential Amenity
- PHP27: Housing Mix
- PHP35: Healthy Placemaking

5.1.4. Chapter 5: Transport and Mobility, seeks the creation of a compact and connected County, promoting compact growth and ensuring that people can easily access their homes, employment, education and the services they require by means of sustainable transport. The relevant policy objectives from this chapter are:

- T19: Car Parking Standards
- T23: Roads and Streets
- T35: Section 48 and 49 Levies

5.1.5. Chapter 12: Development Management, contains the detailed development management objectives and standards that are to be applied to proposed developments. The relevant sections of this chapter are:

- 12.3.3.1: Residential Size and Mix
- 12.3.3.2: Residential Density
- 12.3.4.2: Habitable Rooms
- 12.3.7.7: Infill
- 12.3.9: Demolition and Replacement Dwellings
- 12.4.5.1: Car Parking Standards
- 12.4.6: Cycle Parking

- 12.4.8: Vehicular Entrances and Hardstanding Areas
- 12.8.3: Open Space Quantity for Residential Development
- 12.8.3.1: Public Open Space
- 12.8.3.3 (i): Private Open Space for Houses
- 12.8.7.1: Separation Distances
- 12.8.7.2: Boundaries
- 12.8.8: Financial Contributions in Lieu of open Space
- 12.8.11: Existing Trees and Hedgerows

## 5.2. Regional Policy

### **Regional Spatial and Economic Strategy for the Eastern and Midland Region 2019-2031**

- 5.2.1. This strategy provides a framework for development at regional level. The RSES promotes the regeneration of our cities, towns, and villages by making better use of under-used land and buildings within the existing built-up urban footprint.

## 5.3. National Policy

### **The National Planning Framework - Project Ireland 2040**

- 5.3.1. The government published the National Planning Framework (NPF) in February 2018. Objective 3a is to deliver 40% of all new homes nationally, within the built-up footprint of existing settlements. Objective 11 is to prioritise development that can encourage more people to live or work in existing settlements. Objective 35 is to increase residential density in settlements and makes specific reference to infill development.

## 5.4. Natural Heritage Designations

- 5.4.1. The proposed development is not located within or immediately adjacent to any European site. The nearest European sites are the Dalkey Island SPA (Site Code 004172), the Rockabill to Dalkey Island SAC (Site Code 003000), South Dublin Bay and River Tolka Estuary SPA (Site Code 004024) and the South Dublin Bay SAC (Site Code 000210).

## **5.5. EIA Screening**

- 5.5.1. Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, 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 appeal has been lodged by Godfrey Carroll of Cintra, Leopardstown Road, Dublin 18, against the decision of Dún Laoghaire-Rathdown County Council to refuse permission for the provision of seven dwellings with associated site works including the provision of parking, landscaping and amended site entrance. The grounds of appeal are as follows:

- The Planning Authority have ignored the Transportation Assessment Report that concludes that the proposed dwellings would generate half of the traffic flow of the established Doctor's Surgery over a 24-hour period.
- The development would not set a precedent for further multiple dwelling access points, given the established and consented use of the site as a Doctor's Surgery.
- The reasons for refusal are conflicting and contradictory such as suggesting the site does not have capacity for additional residential use due to traffic concerns whilst also suggesting that additional density can be achieved on site.
- The decision to encourage amalgamation of sites by refusing permission is inappropriate. The policy relating to backland development should not apply to this site, which is clearly infill development.
- Further contradictions include granting permission for a two storey dwelling in the rear garden of Lissadell without regard for minimum densities or amalgamation of sites.

- Reason for refusal No. 1 which relates to additional turning movements on Leopardstown Road and the risk to traffic and pedestrian safety, could be suitably overcome by making the development left in/left out only. This could be achieved with signage and reflective bollards.
- Reason for refusal No. 2 relates to setting an unsuitable precedent for the creation of additional multiple dwelling access points (and associated impacts) on Leopardstown Road however a precedent would not be set given the existing Doctor's Surgery use and the historic traffic patterns.
- Reason for refusal No.3 states that the development would provide a poor mix of housing and an inefficient use of land as well as being piecemeal development at a low density. The development would increase the site density from 5u/hect to 33u/hect whilst having regard to the quality of accommodation. The proposal is an appropriate solution to the design constraints of the site and an appropriate density taking into account dimensional constraints and traffic volumes.
- Approval has been given for developments at lower densities on similar constrained infill sites, such as at Purbeck Lodge.
- The proposal would not impede the future development of adjoining sites and has been designed to facilitate connections to the adjoining properties to the east or west.
- Reason for refusal No. 4 could be overcome by the provision of a financial contribution towards open space. It is not feasible to provide the required amount of public open space due to the nature, size and configuration of the site and the competing development standards (density, private open space, car parking).
- Reason for Refusal No. 5, relates to the height of the proposed dwellings being unacceptable but the planners report states on page 16 that the height of the dwellings is acceptable, given the separation distances.
- Conditions could be imposed to screen or omit windows that do not meet the minimum separation distances and a condition could be imposed to omit the

upper level of house No. 7 as well as changing the roof from gable to hip-end and this would reduce any impact on the dwellings at Torquay Wood.

## **6.2. Planning Authority Response**

6.2.1. The Planning Authority consider that the grounds of appeal do not raise any new issues and refer the Board to the Planner's Report.

## **6.3. Observations**

6.3.1. An observation has been received from Kiaran O'Malley and Co. Ltd., for and on behalf of:

- David and Mildred Gorman, 4 Torquay Wood, Dublin 18.
- Daniel and Linda Kitchen, 5 Torquay Wood, Dublin 18.
- Paul and Anne Waldron, 6 Torquay Wood, Dublin 18.
- Seamus and Mary Halford, 7 Torquay Wood, Dublin 18.
- Patrick and Patricia O' Connor, 8 Torquay Wood, Dublin 18.

6.3.2. The main points of this observation are similar to those made on the planning application and are summarised as follows:

- The current proposal is a repeat of the previously refused application from 2021. None of the reasons for refusal have been identified or addressed.
- Leopardstown Road was not considered as an appropriate means of access for residential development on the adjacent Lissadell site and there is no material difference between the proposed entrance at Lissadell that was refused and the proposed entrance on the current proposal.
- The previous application was refused on the basis that the proposal would present a traffic hazard and the current proposal remains unchanged and should be refused for the same reason.
- The felling of trees along the boundary of Torquay Wood would result in adverse amenity issues as the trees provide screening and a sustainable visual/landscape buffer.

- There is no tree survey or justification for the removal of the trees which contribute to the character of the site and the visual amenity of the area, and an Arboricultural Impact Assessment is required.
- Proposed house No. 7 would be located approximately 1.4 metres from the boundary of Nos. 6 and 7 Torquay Wood, and the bulk, mass, scale, and profile of proposed house No.7 would have an injurious overbearing impact on Torquay Wood.
- Proposed house No.7 would overshadow and overlook the rear gardens at Torquay Wood. This would affect the privacy, amenity and enjoyment of these properties and their rear gardens. A BRE assessment has not been submitted.
- The Planning Authority is requested to consider the design of the front elevation of proposed house No.7 which includes substantial windows which are elevated and excessively large with unobstructed views into neighbouring gardens that would reduce privacy and amenity.
- The zoning objective of the site is to provide residential development and improve residential amenity whilst protecting the existing residential amenities. The development would have a detrimental impact on residential amenity in terms of overshadowing, overlooking and its overbearing nature. As such it does not comply with the zoning objectives.
- The Council's fifth reason for refusal relates to adverse impacts on residential amenity. Nothing has changed in this regard and permission should continue to be refused on this basis.
- Should permission be granted, conditions should be considered to omit house No. 7, the location of house No. 7 should be swapped with the visitor parking and the trees should be retained, and House type E at No. 7 should be replaced with a modified house type D that has no attic accommodation in addition to new trees on the boundary with Torquay Wood.
- The appellant is wrong to suggest that the Planning Authority did not consider the Transportation Assessment as this is addressed in the Planning Officer's Report.



- The Doctor Surgery use has ceased for at least five years so the baseline traffic should be that associated with a single dwelling.
- The applicant does not have sufficient legal interest to provide 14 reflectorised bollards along the centre line of Leopardstown Road and they would create a traffic hazard and have not been subject to public notification.
- The planning permission for the Doctor Surgery was not for the benefit of the current owner and so the use has ceased and the traffic position should be that associated with a single dwelling.
- The Council's third reason for refusal is entirely justified and Purbeck Lodge, a protected structure, cannot be relied upon as a precedent, which is not a material planning consideration.
- The proposed development is deficient in public open space. Omitting house No. 7 would address this deficiency.
- The appellant acknowledges concerns regarding height and the information provided to address this by way of an amended design for house No. 7 is insufficient. As this would be a compliance condition, the residents of Torquay Wood would have no input into that decision making process.

#### 6.4. Further Responses

6.4.1. None.

### 7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Transport Impacts
- Housing Mix and Density
- Design and Amenity
- Open Space and Trees

- Appropriate Assessment

## **7.2. Transport Impacts and Public Safety**

- 7.2.1. The principal issue raised in the appeal is that of the transport and safety impacts that would arise from having a multiple dwelling access point onto Leopardstown Road. This has been a core issue for both the appeal site and the adjacent sites where it has been a consistent reason for refusal. The Council consider that the additional turning movements on Leopardstown Road would endanger safety by reason of a traffic hazard and would have a seriously adverse impact on safety and the free flow of traffic on Leopardstown Road. The Council also consider that this would set an unsuitable precedent for further multiple dwelling access points, with consequent implications for public safety and the free flow of traffic on Leopardstown Road.
- 7.2.2. The appellant considers that this issue could be suitably addressed by making the development left in/left out only, and they have provided drawings showing a slightly amended entrance and bollards down the centre line of Leopardstown Road. I have considered the proposal for a left in/left out solution and I am mindful of the large scale planning approvals further to the southwest on Leopardstown Road, where left in/left out access was conditioned.
- 7.2.3. An important distinction to make between the appeal proposal and the consented developments referred to, is that the consented developments have additional entry and exit points onto Brewery Road, and as such are not reliant solely on Leopardstown Road. Additionally, these sites were the amalgamation of several plots, and the comprehensive development combined several existing access points onto Leopardstown Road into a single access point, which is a significant mitigating factor that the appeal site does not benefit from.
- 7.2.4. Whilst the provision of left in/left out at the appeal site would appear to directly address the reason for refusal, I am of the opinion that this restriction would simply displace the right turning vehicle movements to the adjacent junctions at Fey Yarra and Westminster Lawns. This would increase the pressure on these junctions by resulting in inappropriate vehicle movements close to the junction heads, compromising safety and the free flow of traffic. The development would be unacceptable in this regard.

- 7.2.5. Observations made on the appeal raise concerns that the appellant does not have sufficient legal interest to provide bollards on the centre line and that they would present a traffic hazard. I do not consider traffic bollards to be a hazard as they are common highway interventions and whilst I accept that the bollards would sit outside the red line, on land that the appellant does not control, a suitably worded condition could be applied, requiring the developer to agree a left in/left out scheme with the Council. In any event, this is unnecessary given that a left in/left out scheme is not considered appropriate for this site.
- 7.2.6. The appellant has raised concerns that the Council have ignored the information contained in the Transportation Assessment Report and that the proposed development would generate half the vehicle movements of the previous use as a Doctor's Surgery and for this reason would not set a precedent.
- 7.2.7. It is clear from the Planner's Report that this information has been considered, both on the appeal scheme and on the previous refusal. My own consideration of the Transport Report is that a use that terminated more than 5 years ago would not be a suitable comparator and that an up to date survey would be more representative of the existing/proposed trip generation on the site.

### **7.3. Housing Mix and Density**

- 7.3.1. The Council consider that the proposed housing represents a poor mix of units, too low a density, and that the proposals may inhibit the future amalgamation of adjoining lands along the Leopardstown Road. The appellant considers that the density is appropriate given the site constraints and has referenced other similar small scale development. Additionally, the appellant claims that the Council have contradictory views, firstly by approving a single dwelling in the garden of Lissadell, and secondly by suggesting the site does not have capacity for additional residential use due to traffic concerns, whilst also suggesting that additional density can be achieved on site. The appellant states that the site should not be considered backland, and that encouraging the amalgamation of sites by refusing permission is inappropriate.
- 7.3.2. Dealing with the issue of the site being treated as backland first, I would agree that it is not appropriate to apply Section 12.3.7.6: Backland Development, of the CDP. The site has very few attributes of a backland site, not least because it benefits from a 30 metre frontage onto Leopardstown Road, which is an arterial route. Furthermore,

Section 12.3.7.6 of the CDP specifically states that *'Residential development within the boundary of larger detached houses does not constitute backland development and will not be assessed as such.'*

- 7.3.3. On the back of this policy, the Council consider that the amalgamation of adjacent sites would lead to a more comprehensive and appropriate development that could address the transportation and site access concerns. In this respect I would broadly agree that amalgamation would be beneficial. However, for the reasons stated previously, the site is not a backland site and Section 12.3.7.6 should not apply.
- 7.3.4. The appellant considers the encouragement of site amalgamation through the refusal of planning permission to be inappropriate, as the proposal is not a backland site. As set out previously, the backland development policy of the CDP should not apply, however, policy objective PHP18 states that it is an objective of the Council to increase housing supply and promote compact urban growth through the consolidation and re-intensification of infill/brownfield sites. This provides the necessary policy mechanism to promote the consolidation of the sites, and in this respect, I do not consider it unreasonable that the Council gave this issue weight in terms of refusing permission, albeit under the wrong policy reference. I am also mindful of the appellant's claim that by granting permission for a single dwelling in the garden of Lissadell, the Council have acted without regard for minimum densities or the amalgamation of sites, however, the reasoning for the Council's decision on that application lies outwith the scope of this appeal.
- 7.3.5. The Council have raised concerns that the provision of three and four bedroom homes would not represent a choice of housing mix. Given the limited number of dwellings being proposed, I do not agree that the proposed mix would be unacceptable to the extent of justifying the refusal of planning permission on this point.
- 7.3.6. The Council note the density as being too low and that the proposal would be an inefficient use of the site. The CDP considers minimum densities to be 35u/ha or 50u/ha where a site is within 1km of a bus corridor. The proposed development would provide 33.3u/ha and is within 550m of the nearby Quality Bus Corridor on the Stillorgan Road. I note that all of the proposed dwellings are significantly oversized when compared against the minimum standards. On that basis, I would agree that a higher density could be achieved on site whilst still providing a high standard of

accommodation. This would also provide an opportunity to provide some smaller units which could address the Council's concerns regarding unit mix. I am mindful of the appellant's view that this is a contradictory position, given the traffic issues that have been raised, but I am clear that they are two separate points. The traffic issue relates to the principle of the provision of a multiple dwelling access point onto Leopardstown Road and the safety implications of the ensuing inappropriate vehicle movements and is not solely related to trip numbers. Furthermore, the examples of lower density development provided by the appellant are not comparable or relevant in this instance as they relate to development within the curtilage of protected structures where lower densities may be considered appropriate.

#### **7.4. Design and Amenity**

- 7.4.1. The fifth reason for refusal states that the height, configuration and siting of the development would impact the amenities of Derryarc and Nos. 6 and 7 Torquay Wood. The Council considers the separation distances to be insufficient and that the proposed development would impact on the future development potential of the adjoining sites.
- 7.4.2. The Planner's Report has conflicting positions on height and separation distances. I consider the height and separation distances to be acceptable in terms of the relationship of the appeal scheme to both Derryarc and Lissadell, and I am satisfied that there would be no significant amenity impacts resulting from height or separation distances, either in isolation or in combination. I note that the separation distance between proposed house No.1 and the boundary with Derryarc would be approximately 10 metres at the closest point, which is less than the 11 metre standard, however the upper level windows of this dwelling would be secondary, serving non habitable rooms and they would be obscure glazed. As such, I do not consider that this would have an adverse amenity impact, nor would it prejudice the development potential of the adjacent site.
- 7.4.3. Observations have been made on the appeal from residents of Torquay Wood on the basis that the positioning, bulk, mass, scale, and profile of house No.7 would have an injurious overbearing impact on Torquay Wood, including that house No.7 would overshadow and overlook the rear gardens at Torquay Wood. The observations also consider that the appellant's proposed amendment to the design of house No.7, to

omit the upper level and change the roof from gable to hip-end, would be insufficient and that residents of Torquay Wood would have no input into that decision making process as it would be achieved by way of a compliance condition.

7.4.4. The gable elevation of proposed house No. 7 would be close to the boundary with the dwellings on Torquay Wood (approximately 1.4 metres) and I consider that this would be particularly overbearing on the rear garden ground of Nos. 6 and 7 Torquay Wood. I do not consider that the appellant's proposed amendment to the roof would adequately deal with this issue, as a greater separation distance from the plot boundary is required. As such, I am satisfied that the proximity of house No. 7 to the plot boundary would have a significant adverse impact on the residential amenity of Nos. 6 and 7 Torquay Wood.

7.4.5. I acknowledge the concerns with regards to the upper level windows on the front elevation of house No. 7 and the potential for overlooking towards the rear garden ground of dwellings on Torquay Wood. This overlooking would be indirect due to the orientation of the proposed dwelling in relation to the rear gardens. I consider that a condition to remove the upper level and 'hand' the proposed dwelling could adequately mitigate the overlooking issue, as it would remove the largest upper floor window and would move the remaining large windows further from the plot boundary, thereby reducing the perception of being overlooked. Whilst there would be some overshadowing of the rearmost sections of the gardens on Torquay Wood, this would be limited to the morning hours and in my opinion, it would not be significant in amenity terms.

## **7.5. Open space and Trees**

7.5.1. The Council's fourth reason for refusal relates to insufficient provision of public amenity space on site. Section 12.8.3.1 of the CDP requires public open space equating to 15% of the site area, which in this case would result in a required provision of 315 sqm of amenity space, based on the site area of 0.21 hectares. The appeal scheme proposes 74sqm which is significantly below the minimum provision. Section 12.3.8.1 makes a dispensation for sites with an overall area of less than 0.25 hectares, stating that in these cases, the Council may consider a payment in lieu of public open space. Given the site constraints and the fact that all of the proposed dwellings have policy compliant private amenity space, I am satisfied that the issue of public amenity space

could be suitably addressed by way of a financial contribution and that this would be in line with current policy.

7.5.2. Observations made on the appeal raise the issue of tree removal and the impact this would have on amenity. The Planner's Report also references the trees and their importance to the character of the area, stating that an alternate design could be provided that would retain the trees. Tree removal does not feature as a reason for refusal, and it is noted that none of these trees are protected by way of a formal Tree Preservation Order.

7.5.3. The trees along the boundary with Lissadell and Derryarc could be retained and protected by way of a condition. A limited number of the trees along the boundary with Torquay Wood would likely require removal based on the currently proposed layout. However, as detailed in paragraph 7.4.4 above, the proximity of house No. 7 to the boundary with Torquay Wood is unacceptable in amenity terms and a greater separation distance is required. This would, in turn, provide an opportunity to retain the trees on this boundary. Notwithstanding, I do not consider that the loss of some of the trees on site should preclude the provision of a good quality housing development.

## 7.6. **Appropriate Assessment**

7.6.1. Having regard to the nature of the development, its location in a serviced urban area, and the separation distance to any European site, it is concluded that no appropriate assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 **Recommendation**

8.1. Having regard to the above, I recommend that planning permission should be refused for the reasons set out below.

## 9.0 **Reasons and Considerations**

1. The proposed development, by virtue of the provision of a multiple dwelling access point onto Leopardstown Road and the resultant additional vehicle turning movements to enter and exit the site, would interfere with the safety and

free flow of traffic on the public road. The proposed development would, therefore, endanger public safety by reason of traffic hazard and be contrary to the proper planning and sustainable development of the area.

2. The proposed development, being below the required minimum density, would result in the inefficient use of sustainable, well connected and serviced metropolitan lands and may inhibit the future consolidation of adjacent sites. This would be contrary to Policy Objective PHP18 of the County Development Plan 2022-2028 and the proper planning and sustainable development of the area.
3. The proposed development, by reason of its proximity to the site boundary with Torquay Wood, would provide an insufficient level of separation between the gable elevation of proposed dwelling No. 7 and the site boundary, resulting in an overbearing and injurious impact on the residential amenity of the dwellings and garden ground at Nos. 6 and 7 Torquay Wood. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Terence McLellan  
Senior Planning Inspector

19<sup>th</sup> July 2023