



An  
Bord  
Pleanála

## Inspector's Report

### ABP-315139-22

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<b>Development</b>	Revision of F20A/0715. Construction of 4 apartments and all associated site works
<b>Location</b>	The Elphin, 36 Baldoyle Road, Baldoyle, Dublin 13
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F22A/0469
<b>Applicant(s)</b>	LDC Developments Ltd.
<b>Type of Application</b>	Permission (s. 34)
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party (s. 37)
<b>Appellant(s)</b>	LDC Developments Limited
<b>Observer(s)</b>	Ed Lindsay Cecilia Mullen Adele Sleator
<b>Date of Site Inspection</b>	6 <sup>th</sup> April 2023
<b>Inspector</b>	Philip Maguire

## 1.0 Site Location and Description

- 1.1. This backland appeal site is located off, and east of, Baldoyle Road and north of the R105 (Dublin Road) in Sutton, Dublin 13. The Elphin public house (No. 36) and Nos. 31-34 Baldoyle Road bound the site to the west. The pub car park and Nos. 86-93 Dublin Road adjoin the site to the south. Houses, Nos. 15-19A and 92 Binn Eadair View, bound the site to the east and north respectively. The surrounding area is predominantly residential. The streetscape along the Baldoyle Road is characterised by single-storey buildings of similar form and appearance. The Binn Eadair View estate to the north and east is predominantly two-storey terraced houses. Sutton Dart Station lies 550m northeast of the appeal site with Sutton Cross some 900m east.
- 1.2. The appeal site is flat and has a stated area of 0.28ha. It is accessed via a laneway which runs east from the pub car park and provides a pedestrian link to the Binn Eadair View estate. It also provides access to the rear of some of the houses on the Dublin Road. The site is roughly rectangular shaped and consists of an active construction site with foundations *in situ* and precast subfloors being laid on the day of inspection. Structural steel uprights, electrical and drainage ducting and scaffolding was also evident. The laneway boundary is defined by mesh panel fencing which also serves as the construction site access. The eastern and northern boundaries are defined by block walls of varying heights. The western boundary is defined by block walls and timber panel fencing. A building south of the laneway, opposite the pub, which is identified as an existing shed, and which is to be reduced in length by 2m to improve the width of the laneway, is also included, in its entirety, within the red line boundary.

## 2.0 Proposed Development

- 2.1. Planning permission is sought for modifications to a previously permitted development under PA ref. F20A/0715 (ABP-309777-21) consisting of an additional third floor, comprising 4 no. apartments (1 no. 1-bed and 3 no. 2-bed units), and bicycle spaces.
- 2.2. The proposed development would result in 25 no. dual aspects apartments in a four-storey building. The additional units would be contained within a smaller footprint than the permitted development, each with private amenity space in the form of balconies and accessed via a vertical extension to the permitted stair/lift cores. The southern core would access 14 no. units and the northern core would access 11 no. units.

- 2.3. The permitted building has maximum dimensions of c. 55m north-south and 22m east-west. At the northern end it extends closer to boundaries, being c. 2m from the northern boundary at the nearest point and 4m from the eastern boundary. The additional floor has maximum dimensions of c. 51m north-south and 16m east-west.
- 2.4. The smaller footprint allows for some additional set-back from site boundaries, including a separation distance of 7.20m from the eastern boundary. The set-back from the northern boundary is unchanged at c. 2m with a parapet level of 17.20m, compared to a ridge level of the adjoining house at Binn Eadair View of 12.18m.
- 2.5. The parapet level of the permitted development is 14.10m and the finished floor level proposed is 4mAOD, i.e. up to 2m higher than the existing ground level and above the finished floor level of the surrounding development. Brick, render and metal cladding are indicated as external finishes with the flat roof concealed by a parapet wall.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The Planning Authority decided to refuse permission for the proposed development on 26<sup>th</sup> October 2022 for the following reasons:

1. *The surrounding area is zoned under objective 'RS' - to 'Provide for residential development and protect and improve residential amenity' under the Fingal Development Plan 2017-2023 and comprises of single and two storey dwellings. It is considered that the proposed increased height and resulting scale and bulk as compared to that for which planning permission register reference F20A/0715 (ABP-309777-21) relates fails to respect the established character of the area and would be visually intrusive upon the surrounding area with loss of outlook from the adjoining residential properties. To permit the development would be detrimental to the visual amenities of the area and would materially contravene Objective DMS39 and PM44 of the Fingal Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.*
2. *The proposed introduction of an additional floor to the approved development with limited setback from the boundaries of the site would give rise to a significant level of negative impact upon the existing residential amenity of the area and potential*

*residential amenity of the future residents of the proposed development in terms of undue overbearance, overlooking and overshadowing. Furthermore, the unacceptable deficiencies in car parking provision together with the intensification of the substandard access road collectively contribute to an inappropriate overdevelopment of the site. The proposed development would be inconsistent with the proper planning and sustainable development of the area.*

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

- Planning Report (24/10/22): Basis for the Planning Authority decision. It concluded that the proposed development is unacceptable by virtue of scale and deficiencies in layout, car parking and intensification of a substandard access road which would contribute to overdevelopment of a constrained backland infill site. It further concluded that the development would fail to integrate within the surrounding context and would be intrusive to the visual and residential amenities of the area.

### **3.2.2. Other Technical Reports**

- Water Services (07/10/22): No objection subject to condition.
- Roads (21/10/22): Refusal.
- Parks (07/10/22): No objection subject to condition.

## **3.3. Prescribed Bodies**

- Irish Water (08/10/22): No objection.

## **3.4. Third Party Observations**

3.4.1. The Planning Authority received a total of 12 no. third-party observations. The issues raised can be summarised as follows:

- Concerns regarding overshadowing and reduction in natural light.

- Concerns regarding efficacy and accuracy of Shadow Impact Assessment. Conclusions based on the modelling exercise are questionable. No assessment of internal amenity for future occupiers of the proposed apartments.
- Concerns regarding health impacts due to reduction in sunlight. Development will result in anxiety and discomfort due to overlooking.
- Concerns regarding overlooking, loss of privacy and enjoyment. Homes in Binn Eadair View, Dublin Road and Baldoyle Road are one and two-storey.
- Concerns regarding scale, bulk and form and impact on neighbouring character. Incongruous, overbearing and out of scale and keeping with the low-rise character of adjoining properties. Condition limiting further development above parapet level under ABP-309777-21 noted.
- Concerns regarding overdevelopment of site contrary to DSM28 of the Fingal Development Plan. Development will exacerbate the permitted visually dominant development. Detrimental to visual and residential amenity contrary to Development Plan.
- Concerns regarding traffic safety. Increased potential for traffic congestion. No additional parking provision. Parking deficiencies will result in an overflow parking in surrounding area. Will result in unsafe movements along the access lane and impact on the emergency exit of pub.
- Concerns regarding the frequency of public transport in the context of no additional parking spaces.
- Concerns regarding the accuracy of proposed drawings. Drawings fail to show rear extension of 92 Binn Eadair View and inconsistency in east and south elevations.
- Concerns regarding noise, nuisance and impact on property value. Refuse bins within 4m of 92 Binn Eadair View.
- Concerns raised regarding the applicant's legal interest in the lands necessary to carry out the proposed development. Access lane is not a public road and is owned by the residents of the houses fronting the Dublin Road.
- Concerns regarding impact on wildlife and habitat.

## 4.0 Planning History

### 4.1. Appeal site:

**PA ref. F20A/0715:** Permission **granted on appeal** (ABP-309777-21) in March 2022 for the demolition of existing warehouse and construction of a three-storey building of 21 no. apartments with 10 no. car parking spaces and access upgrades etc. subject to conditions of a standard nature. Conditions of note include:

**Condition 4:** No additional development above roof parapet unless authorised by a further grant of permission in order to protect residential and visual amenities.

**Condition 8:** At least 1 no. car parking space to be provided for persons with impaired mobility in order to ensure a satisfactory parking provision that is accessible to all users.

**Condition 9:** 42 no. bicycle parking spaces to be provided in the interests of sustainable transportation.

**PA ref. F19A/0636:** Permission **refused on appeal** (ABP-306913-20) in August 2020 for the demolition of existing warehouse and construction of three-storey over basement building of 21 no. apartments with 23 no. car and 62 no. bike spaces etc. The Board considered that the proposed access laneway, which comprises an important local pedestrian route, to be seriously deficient in width and lacking sufficient capacity to safely accommodate the vehicular and pedestrian movements which the proposal would generate along with existing and future pedestrian movements along the lane and associated with the adjoining public house. In the absence of any upgrade or traffic management proposals, it considered it would constitute over development of the site and would endanger public safety by reason of traffic hazard.

**PA ref. F19A/0132:** Permission **refused on appeal** (ABP-304655-19) in November 2019 for the demolition of existing warehouse and construction of part four/part three-storey over basement building of 24 no. apartments with 24 no. car and 24 no. bike spaces etc. The Board considered that the proposed development would endanger public safety by reason of traffic hazard because of deficient sightlines at the proposed car park entrance onto the adjoining laneway having regard to the nature and scale of development proposed. A note attached to the Board Direction indicates that the

proposed access laneway, which comprises a local pedestrian route, to be seriously deficient in width and lacking sufficient capacity to safely accommodate the vehicular and pedestrian movements which the proposal would generate along with existing and future pedestrian movements along the lane and associated with the adjoining public house. In the absence of any upgrade or traffic management proposals, it considered it would constitute over development of the site and would endanger public safety by reason of traffic hazard. This was not included as a reason for refusal of permission.

**PA ref. F16A/0444:** Permission **refused on appeal** (PL06F.248478) in November 2017 for the demolition of existing warehouse and construction of 6 no. houses etc. The Board considered the proposed development would result in serious overlooking of adjoining property and substantially detract from its residential amenity and would, therefore, seriously injure the amenities of the area.

**PA ref. F12A/0214:** Permission **granted** in August 2012 for a new vehicular entrance to serve existing commercial premises to the rear of The Elphin public house (No. 36) and Nos. 31-34 Baldoyle Road, Sutton, Dublin 13.

#### 4.2. Sites in vicinity:

##### To Southeast

**PA ref. F21A/0459:** Permission **refused on appeal** (ABP-311823-21) in October 2022 for a mews house to the rear of 94 Dublin Road, Sutton, Dublin 13. The Board considered that the proposed access laneway, which comprises an important local pedestrian route, to be seriously deficient in width and lacking sufficient capacity to safely accommodate the vehicle and pedestrian movements the proposal would generate combined with the existing and future pedestrian movements associated with the adjoining public house and the Binn Eadair housing estate. In the absence of any upgrade or traffic management proposals, it considered that it would constitute an *ad hoc* development which would endanger public safety by reason of traffic hazard.

**PA ref. F20A/0683:** Permission **refused** in February 2021 for a mews house to the rear of 94 Dublin Road, Sutton, Dublin 13. The Planning Authority considered that the proposed access laneway, which comprises an important local pedestrian route, to be seriously deficient in width and lacking sufficient capacity to safely accommodate the vehicle and pedestrian movements which the proposal would generate combined with the existing and future pedestrian movements associated with the adjoining public

house and the Binn Eadair housing estate. In the absence of any upgrade or traffic management proposals, it considered that the proposal would constitute an *ad hoc* development which would endanger public safety by reason of traffic hazard.

### To West

**PA ref. F21A/0468:** Permission **granted** in January 2022 for modifications to PA ref. F17A/0674 (change of use to a pizzeria restaurant etc.) including construction of first floor office unit etc. at 34 Baldoyle Road, Sutton, Dublin 13.

**PA ref. F13A/0157:** Permission **granted** in November 2013 for ground floor extension to crèche and first floor apartment etc. at 33A Baldoyle Road, Sutton, Dublin 13.

## 5.0 Policy Context

### 5.1. Fingal Development Plan 2023-2029

- 5.1.1. The current Development Plan came into effect on 5<sup>th</sup> April 2023. The Planning Authority decision of 26<sup>th</sup> October 2022 was made under the previous Plan for the period 2017-2023. This appeal shall be determined under the current Plan.
- 5.1.2. The appeal site is zoned 'LC' Local Centre with a zoning objective to '*Protect, provide for and/or improve local centre facilities*'. Residential uses are amongst the development types 'permitted in principle' in this zoning.
- 5.1.3. The appeal site abuts housing with a zoning objective to '*Provide for residential development and protect and improve residential amenity*'. Section 13.2 of the Development Plan notes that it is important to avoid abrupt transitions in scale and use in the boundary areas of adjoining land use zones. In dealing with proposals in these contiguous areas, it states that it is necessary to avoid developments that would be detrimental to the amenities of the more environmentally sensitive zone e.g. in zones abutting residential areas, attention must be paid to the use, scale and density of development proposals in order to protect the amenities of residential property.
- 5.1.4. The main policies and objectives relevant to the proposal are set out under Chapter 2 (Planning for Growth), Chapter 3 (Sustainable Placemaking and Quality Homes), Chapter 6 (Connectivity and Movement), Chapter 11 (Infrastructure and Utilities) and Chapter 14 (Development Management Standards) of the Written Statement.



5.1.5. The following sections are relevant to the issues raised in this appeal:

- 3.5.11 – Quality of Residential Development
- 3.5.12 – Private, Semi-Private and Public Open Space
- 3.5.13 – Compact Growth, Consolidation and Regeneration
- 14.5.1 – Achieving Consolidation
- 14.5.3 – Building Heights
- 14.6.3 – Residential Density
- 14.6.4 – Residential Standards
- 14.6.6.1 – Daylight and Sunlight
- 14.6.6.3 – Separation Distances
- 14.6.6.4 – Overlooking and Overbearance
- 14.7 – Apartment Development/Standards
- 14.10.1 – Additional Accommodation in Existing Built-up Areas
- 14.13.3.4 – Apartment and Duplex Units
- 14.17.2.1 – Bicycle Parking and Residential Development
- 14.17.7 – Car Parking

5.1.6. I consider the following objectives particularly relevant:

**DMSO22** Require Daylight and Sunlight analysis for all proposed developments of 50+ units or as required by the Planning Authority, depending on the context of the site and neighbouring property as well as the design of the development.

**DMSO31** New infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/gateways, trees, landscaping, and fencing or railings.

**SPQHO42** Encourage and promote the development of underutilised infill, corner and backland sites in existing residential areas subject to the character of the area and environment being protected.

## 5.2. National Planning Framework

- 5.2.1. Acknowledging demographic trends, Project Ireland 2040, the National Planning Framework (NPF), seeks a 50:50 distribution of growth between the Eastern and Midland region and other regions. It places an emphasis on renewing and developing existing settlements including a delivery target of at least 40% of all new housing within the existing built-up areas of cities, towns and villages on infill and/or brownfield sites.
- 5.2.2. The NPF also signals a move away from rigidly applied planning policies and standards in relation to building design, in favour of performance-based criteria, to ensure well-designed, high-quality outcomes. It emphasises general restrictions on building height may not be applicable in all circumstances in urban area and should be replaced by performance-based criteria appropriate to the general location.

## 5.3. Regional Spatial and Economic Strategy

- 5.3.1. The Eastern and Midland Regional Spatial and Economic Strategy (RSES) 2019-2031 builds on the foundations of the NPF. It notes that the key enablers for growth include promoting compact urban growth to realise targets of at least 50% of all new homes, to be within or contiguous to the existing built-up area of Dublin city and suburbs and a target of at least 30% for other urban areas. The spatial strategy for Dublin City and Suburbs is to support the consolidation and re-intensification of infill/brownfield sites to provide high density and people intensive uses within the existing built-up area.

## 5.4. Design Standards for New Apartments Guidelines

- 5.4.1. The Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (DHLGH, 2022) focus on the locational and planning specific aspects to apartment developments generally. Design parameters include general locational considerations; apartment mix within apartment schemes; internal space standards for different types of apartments; dual aspect ratios; floor to ceiling heights; apartments to stair/lift core ratios; storage spaces; amenity spaces including balconies/patios; car parking; and room dimensions for certain rooms. Many of these parameters are subject to specific planning policy requirements (SPPRs) which take precedence over any conflicting policies and objectives of the Development Plan.
- 5.4.2. In terms of locational considerations, the Guidelines suggest that the appeal site falls within a central and/or accessible urban location i.e. within reasonable walking

distance (up to 10 minutes or 800-1,000m) to/from high capacity urban public transport stops such as DART or Luas. It notes that such locations are generally suitable for small to large-scale and higher density apartment development, subject to location.

- 5.4.3. Section 6.6 of the Guidelines states that planning authorities should have regard to quantitative performance approaches to daylight provision outlined in guides like *A New European Standard for Daylighting in Buildings* (IS EN 17037:2018), *UK National Annex* (BS EN 17037:2019) and the associated practice guide BR 209 2022 (3<sup>rd</sup> ed., June 2022), or any relevant future standards or guidance specific to the Irish context. The Guidelines do not, however, set out performance criteria for building height or building separation distance relative to location. This is subject to separate guidance.
- 5.4.4. Section 6.8 of the Guidelines state that proposals to modify current planning permissions, in full or in part, shall comply with the requirements of these guidelines, subject to s. 34(3A) of the Planning and Development Act. The requirement for the majority of apartments to exceed the minimum floor area standard by 10% (per section 3.8) applies only to new apartment schemes applying for planning permission.

## 5.5. Urban Development and Building Heights Guidelines

- 5.5.1. The Urban Development and Building Heights Guidelines for Planning Authorities (DHPLG, 2018) reflects the policy direction espoused in the NPF in terms of achieving compact growth through urban infill and Brownfield development. Section 3.1 of the Guidelines sets a presumption in favour of buildings of increased height in our town/city cores and in other urban locations with good public transport accessibility. It also outlines some broad principles that should be applied when considering proposals for buildings taller than prevailing heights including whether such proposals positively assist in securing NPF objectives such as fulfilling targets related to Brownfield etc.
- 5.5.2. Section 3.2 of the Guidelines sets out criteria that the proposal should satisfy at the scale of the relevant city/town; at the scale of district/neighbourhood/street; at the scale of the site/building; and other specific assessments. SPPR 3 gives primacy to the outlined criteria even where specific objectives of the relevant Development Plan may indicate otherwise. In terms of building height in suburban/edge locations, section 3.6 of the Guidelines states that development should include an effective mix of 2, 3 and 4-storey development which integrates well into existing and historical

neighbourhoods and 4 storeys or more can be accommodated alongside existing larger buildings, trees and parkland, river/sea frontage or along wider streets.

## **5.6. Design Manual for Urban Roads and Streets (DMURS)**

- 5.6.1. Guidance relating to the design of urban roads and streets is set out in DMURS (DTTS and DHPLG, 2013, updated May 2019). Section 4.1.2 promotes the concept of self-regulating streets. Section 4.2.3 notes that designers should seek to promote active street edges to provide passive surveillance of the street and promote pedestrian activity. It considers that increased pedestrian activity has a traffic-calming effect as it causes people to drive more cautiously. It also notes that higher levels of privacy are desirable where dwellings interface with streets and greater flexibility with regards to setbacks may be needed in existing areas defined by a pattern of building lines.
- 5.6.2. Section 4.3.4 notes that shared surface streets and junctions are particularly effective at calming traffic. It indicates that shared surface streets and junctions are highly desirable where movement priorities are low and there is a high value placed on promoting more liveable streets, such as on local streets within neighbourhood and suburbs; and pedestrian activities are high and vehicle movements are only required for lower-level access or circulatory purposes. The key condition for the design of any shared surface is that drivers, upon entering the street, recognise that they are in a shared space and react by driving very slowly i.e. 20kph or less. The total carriageway width on streets where a shared surface is provided should not exceed 4.8m.

## **5.7. Natural Heritage Designations**

North Bull Island SPA (004006) 0.10km

North Dublin Bay SAC (000206) 0.10km

Baldoyle Bay SPA (004016) 0.40km

Baldoyle Bay SAC (000199) 0.40km

## **5.8. EIA Screening**

- 5.8.1. Having regard to the nature and scale of the proposed development, which is for modifications to a permitted 21 no. unit apartment building including an additional 4 no. units within a fully serviced urban area, and its proximity to the nearest sensitive location, there is no real likelihood of significant effects on the environment arising

from the proposal. 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. A 1<sup>st</sup> Party appeal has been lodged by CWPA Planning and Architecture on behalf of the applicants, LDC Developments Limited.

6.1.2. The main grounds of appeal can be summarised as follows:

#### 1<sup>st</sup> Refusal Reason:

- The applicants state that the character of the immediate area has been considered in the design and revisions to the previously permitted development under PA ref. F20A/0715 (ABP-309777-21). They suggest that adequate and generous setbacks have been included on the upper floor in the interests of visual and residential amenity.
- The applicants note that the site is Brownfield and therefore given high priority in national planning policy. They suggest that this has not been recognised, or perhaps even ignored, by the Planning Authority.
- The applicants state that adequate separation distances have been implemented and the overall development accords with national and regional policy to provide for backland, Brownfield development at increased densities.

#### 2<sup>nd</sup> Refusal Reason:

- The applicants place an emphasis on the previous Board decision ABP-309777-21 and the national and regional policy and planning guidelines that informed that decision.
- The applicants claim that the proposed development meets the recommendations of the BRE guidelines in terms of sunlight to neighbouring properties. They state that the reduction in sunlight in living spaces will be minor and any reduction in daylight in neighbouring dwellings would not likely be perceived and any impact will be minor.

- The applicants refer to the conclusions in the Daylight and Sunlight Assessment which states that the proposal meets the recommendations of the BRE guidelines in terms of sunlight and daylights impacts on neighbouring dwellings and as such consider it accords with local (Objective DMS30), regional and national policy.

## **6.2. Planning Authority Response**

6.2.1. The Planning Authority's response can be summarised as follows:

- Application was assessed against the policies and objectives of the Fingal County Development Plan 2017-2023, including zoning objective, and existing government policy and guidelines as well as impact on adjoining neighbours, including submissions received, and the character of the area.
- The proposal would not be consistent with the proper planning and sustainable development of the area and requests the Board to uphold their decision to refuse permission.
- Provision should be made for financial contribution and bond/cash security in the event that the appeal is successful. It is stated that the bond condition is the Council's sole mechanism to ensure that the roads/footpaths/public lighting etc. are built to their Taking in Charge standard.

## **6.3. Observations**

6.3.1. A total of 3 no. observations were received. The observations generally reflect those made to the Planning Authority. They can be summarised as follows:

- Concerns regarding size and scale of the proposed development having regard to the surrounding two-storey homes on the Dublin Road and Balydoyle Road, in Binn Eadair View and surrounding area. Proposal considered to be overdevelopment of the site resulting in overbearing and adverse impacts on the area and streetscape contrary to DSM28 of the Fingal Development Plan 2017-2023.
- Concerns regarding overlooking and overshadowing of back gardens of residents of Dublin Road and Balydoyle Road, in Binn Eadair View. Shadow Impact Assessment confirms concludes that the proposal will result in undue

overshadowing of neighbouring properties. There would be overshadowing and loss of light when compared with the permitted development.

- Concerns regarding efficacy and accuracy of Shadow Impact Assessment. Conclusions based on the modelling exercise are questionable. No assessment of internal amenity for future occupiers of the proposed apartments.
- Concerns regarding parking and traffic impacts on local area. There is a large deficit in the proposed car parking spaces and the minimum number of bike spaces is not being met. Unrealistic to assume buyers will not have cars. It will result in a traffic hazard on Baldoyle Road which experiencing significant traffic congestion. The access and footpath are substandard.
- Applicants fail to address the Planning Authority's refusal reasons and instead rely on policy documents to justify more housing. Concerns regarding the frequency of public transport made in this context.
- Concerns raised in respect of the use of Baldoyle as opposed to Sutton as the development address.
- Applicants previously acknowledged the inappropriateness of a part 3 storey / part 4 storey development at this site under PA ref. F19A/0132 and subsequent appeal. The Board indicated that a 3-storey development would be more appropriate.
- Condition 4 of permitted development prevents additional development above parapet level in order to protect visual and residential amenities.

## **7.0 Assessment**

### **7.1. Preliminary Points**

- 7.1.1. The principle of a three-storey apartment building was established on the appeal site in March 2022 under ABP-309777-21 (PA ref. F20A/0715). This appeal is restricted to assessing whether modifications to this permitted development, consisting of an additional storey, is in accordance with proper planning and sustainable development.
- 7.1.2. Having examined the application details and all other documentation on the appeal file, including the appeal submission, and inspected the site, and having regard to relevant local, regional and national policies and guidance, I consider that the main

issues in this appeal are those raised in the ground of appeal. The issues can be addressed under the following headings:

- Visual Amenity and Character
- Residential Amenity
- Access and Parking
- Appropriate Assessment

## **7.2. Visual Amenity and Character**

- 7.2.1. The Planning Authority's 1<sup>st</sup> refusal reason relates to negative visual impacts on the surrounding area including impacts on established character and loss of outlook from adjoining residential properties, arising from increased height and resultant scale and bulk. This, the Planning Authority states, would materially contravene Objectives DMS39 and PM44 of the Fingal Development Plan 2017-2023. Objective DMS39 related to the height and massing of new infill development having regard to the character of the area and Objective PM44 sought to encourage and promote such development subject to the protection of the character of the area and environment.
- 7.2.2. The current Development Plan came into effect on 5<sup>th</sup> April 2023 and an identical policy approach is reflected in objectives DMSO31 (Infill Development) and SPQHO42 (Development of Underutilised Infill, Corner and Backland Sites), as cited earlier in this report. These objectives outline a general approach to infill development and are not, in my view, sufficiently specific so as to justify the use of the term "materially contravene" in terms of normal planning practice, notwithstanding the approach of previous inspectors in their reports on this appeal site under refs. ABP-309777-21, ABP-306913-20 and ABP-304655-19. The Board should not, therefore, consider itself constrained by s. 37(2) of the Planning and Development Act 2000 (as amended).
- 7.2.3. In respect of the 1<sup>st</sup> refusal reason, the appellants place significant weight on national policy in respect of Brownfield lands in order to justify the proposal. They suggest that high priority is given to such development without addressing the refusal reason, as noted by the observers, other than to say that the character of the area was considered in the proposed design. Some sections and a contiguous elevation have been submitted which illustrate the relationship of the proposal with adjacent buildings. One



would have expected some other visual representation of the proposal, such as photomontages, in order to fully address the refusal reason but none were submitted.

- 7.2.4. In simple terms a 55m long, 22m deep, four-storey building, with a parapet level of 17.20m, albeit with some setback, would sit between single-storey buildings and a two-storey pub along the Baldoyle Road to the west and two-storey houses in the Binn Eadair View estate to the east. This, in my opinion, does not respect the height and massing of existing residential units contrary to objective DMSO31. The transition between building heights would be jarring, impacting on the character of the area.
- 7.2.5. I accept some of the arguments put forward by the appellant including the fact that the site is clearly Brownfield, as promoted by the NPF, and within a central and/or accessible urban location as defined by the Apartment Guidelines where increased densities may be appropriate. This does not automatically mean that increased height, above the prevailing height is acceptable however, irrespective of the extant permission and national policy. Further expression of this policy direction is given in section 3.2 of the Building Height Guidelines and afforded primacy over specific development plan objectives under SPPR 3. This is the crux of the appellant's case.
- 7.2.6. Having regard to the additional storey and surrounding context, I do not consider that the proposal satisfies all the criteria outlined in section 3.2 of the Guidelines. I am not convinced that it successfully enhances the character of the area notwithstanding the design merits of the permitted building noted by the inspector under ABP-309777-21. Moreover, the Guidelines suggest that a landscape and visual assessment is required for such proposals. None was submitted. Nor do I consider the proposal makes a positive contribution to the surrounding urban neighbourhood or streetscape. It will be visible from distant views along the adjoining road networks and visually jarring and incongruous from closer range views along the Baldoyle Road and within Binn Eadair View. I also note that section 3.6 of the Guidelines identifies locations where four storeys or more could be accommodated, none of which are backland, infill locations.
- 7.2.7. On balance, and notwithstanding the presumption in favour of increased building height in urban areas with good public transport accessibility, I do not consider the proposal respects the height and massing of existing residential units, contrary to objective DMSO31, nor does it enhance the character of the area or make a positive contribution to the neighbourhood or streetscape, contrary to section 3.2 of the

Guidelines. If the Board consider the proposal is acceptable from a visual perspective, I recommend that Apartment No. 22 is removed to mitigate some of these impacts.

### **7.3. Residential Amenity**

- 7.3.1. The Planning Authority's 2<sup>nd</sup> refusal reason relates to negative impacts on residential amenity, including that of the future residents of the proposed development, in terms of overbearance, overlooking and overshadowing. These impacts are separate but interrelated issues. The planning application was accompanied by a Daylight and Sunlight Assessment and the appeal submission focuses primarily on the conclusions in this report in terms of overshadowing. It is generally silent in terms of the stated overlooking impacts however, other than to suggest that greater weight was attached to national policy during the appeal process when similar issues were raised by the Planning Authority under PA ref. F20A/0715. It is fully silent on overbearing impacts.
- 7.3.2. In terms of overbearing impacts, my main concern is the proximity of the building to No. 92 Binn Eadair View. As noted, the smaller footprint of the proposed development allows for some additional set-back from site boundaries over and above the permitted development. The set-back from the northern boundary is unchanged however and at c. 2m, or roughly 4.50m from the gable wall, with a parapet of 17.20m, the additional storey will tower above No. 92 where the ridge height is illustrated as 12.18m. This relationship, in my opinion, is overbearing and particularly given the fully glazed conservatory to the rear of No. 92 where the overbearing impacts will be most stark. If the Board consider the proposal is acceptable, I recommend that Apartment No. 22 is removed in order to mitigate the overbearing impacts on No. 92 Binn Eadair View.
- 7.3.3. In terms of overlooking, I note that the additional storey includes 3 no. window openings in the north facing elevation, 1 no. window opening in the south facing elevation, 9 no. window openings in the east facing elevation and 11 no. window openings in the west facing elevation. There will be no overlooking impacts from the north or south facing elevations given the set-back, location, design and nature of the windows. Of the 9 no. windows in the east facing elevation, 6 no. will be clerestory windows and overlooking, perceived or otherwise, would only be achieved from the bedroom windows in Apartment Nos. 23 and 25. This is unlikely given the separation distances involved. Of the 11 no. windows in the west facing elevation, all bar a clerestory bathroom window (Apartment No. 23) and lobby window are recessed

beyond either a section of flat roof with parapet or balcony. Any overlooking, perceived or otherwise, would be unlikely and on balance I am not convinced the proposed development would adversely impact on residential amenity by reason of overlooking.

- 7.3.4. In terms of overshadowing, I note that section 3.2 of the Building Height Guidelines provides that appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlined in guides like the BRE's *Site Layout Planning for Daylight and Sunlight* (2<sup>nd</sup> ed.) or *Lighting for Buildings – Part 2: Code of Practice for Daylighting* (BS 8206-2: 2008). These guides have since been updated as confirmed by section 6.8 of the Apartment Guidelines (2022). The relevant guide is therefore BR 209 2022, *Site Layout Planning for Daylight and Sunlight* (3<sup>rd</sup> ed.). As noted, the planning application was accompanied by a Daylight and Sunlight Assessment which references these updated documents in section 2 (Methodology).
- 7.3.5. In terms of daylight, Table 6 of the report indicates that a number of windows will have a reduction in VSC levels below 27% and 80% of the existing VSC level i.e. Nos. 17, 17A, 18, 18A, 19, 19A and 92 Binn Eadair View. Section 3.4 of the report concludes that these windows retain high VSC levels and are marginally below 80% of the existing level. It claims that any reduction to the daylight in neighbouring dwellings would not likely be perceived and any impact would be minor. In this regard, I note section 2.2.7 of BR 209 2022 states that if the VSC, with the new development in place, is both less than 27% and less than 0.80 times its former value, occupants of the existing building will notice the reduction in the amount of skylight. Figure 20 of BR 209 2022 suggests that daylighting is likely to be significantly affected in this case.
- 7.3.6. In terms of sunlight to existing houses, Table 8 of the report indicates that some windows will have sunlight levels below 25% APSH and 5% winter sunlight hours i.e. Nos. 18 Binn Eadair View and 32 Baldoyle Road. Section 4.3 of the report claims that the reduction in available sunlight in these living spaces will be minor. Section 3.2.13 of BR 209 2022 indicates that sunlighting may be adversely affected in this case.
- 7.3.7. In terms of sunlight to existing gardens and open spaces, Table 9 of the report indicates that at least 50% of open space for all assessed properties in Binn Eadair View and along the Baldoyle Road will receive at least 2 hours sunlight on 21<sup>st</sup> March and none drop below 0.80 times the former value. Whilst I note that Nos. 92, 92A and 93 Binn Eadair View are close to the minimum, I acknowledge that their existing levels

range from 55.9% to 58.6%. Section 5.2 of the report concludes that the proposal meets the guidelines and I agree having regard to section 3.3.17 of BR 209 2022.

- 7.3.8. The report does not address the degree to which light from the sky or sunlight will penetrate the proposed development, as noted by the observers. This is important in the context of Apartment No. 23, where the kitchen/dining/living area would be served by an enclosed, recessed balcony and clerestory window. I also note that its balcony would overhang that of Apartment No. 17 of the permitted development reducing light entering its windows below. I do not have any evidence in front of me that supports or refutes this aspect of the 2<sup>nd</sup> refusal reason in terms of the amenity of future residents, but I do note that this internal layout was accepted under ABP-309777-21.
- 7.3.9. The observers also highlight concerns regarding the accuracy of the report. Section 6 of the report illustrates shadow diagrams of the existing and proposed scenarios. I note that the existing scenario includes the footprint of the warehouse that previously occupied the site. The observers correctly highlight that the shadow cast from the warehouse does not accurately reflect the roof profile of the warehouse before its demolition. I agree that this in turn calls into question the entire modelling exercise. Section 1.1 of the report states that the analysis was carried out on the drawings of CWPA Planning and Architecture but I have not had sight of the warehouse drawings.
- 7.3.10. Notwithstanding the presumption in favour of increased building height in urban areas with good public transport, I consider the proposal will significantly and adversely affect daylighting and sunlighting levels in a number of adjoining houses resulting in overshadowing and loss of amenity. Coupled with the overbearing impacts on No. 92 Binn Eadair View and in the absence of alternative, compensatory design solutions, this is determinative. I can only conclude that protection of the residential amenity of these houses outweighs the benefits of 4 no. additional apartments on the appeal site.

#### **7.4. Access and Parking**

- 7.4.1. The Planning Authority's 2<sup>nd</sup> refusal reason also highlights concerns in respect of car parking provision, and what they consider to be an intensification of a substandard access road, which would collectively contribute to the overdevelopment of the site. The observers highlight similar concerns. This aspect of the refusal reason was informed by the internal Roads Report which notes a deficit of 27 car parking spaces (as per the Development Plan in force at the time) although it accepts that 14 car

parking spaces would be the minimum practical requirement. In terms of access, the report indicates that the c. 1.1m wide footpath along the upgraded access road is substandard as is the c. 3.1m wide road itself for a length of c. 29m. In this regard, it states that a 'shuttle-run' system would be required to allow cars to pass, and the proposed development would intensify the use of this substandard arrangement.

7.4.2. The appeal submission is generally silent in terms of this aspect of the 2<sup>nd</sup> refusal reason other than to highlight national policy which provides for reductions in the quantum of, or indeed requirement for, car parking at certain locations. In accepting 10 no. car parking spaces for the extant scheme, the Inspector noted the national policy direction of minimising provision in certain areas and considered any greater provision would increase traffic on the access, which they concluded was substandard.

7.4.3. This application is for modifications to the development permitted under ABP-309777-21, consisting of 4 no. additional apartments. The access arrangements and parking provision for the permitted 21 no. apartments has been settled. The only relevant matters in this aspect of the appeal relate to the parking provision for the additional 4 no. apartments and whether these apartments, as proposed, will intensify the access to the extent that it will contribute to overdevelopment of the site. The simple answer is no. The appeal site is located in a central and/or accessible urban location where the default policy is for car parking provision to be minimised, substantially reduced or wholly eliminated in certain circumstances. No additional car parking spaces are proposed, which is acceptable, and there will no intensification of the access road.

## 7.5. **Appropriate Assessment**

7.5.1. Having regard to the nature and scale of the proposed development, which is for modifications to a permitted 21 no. unit apartment building including an additional 4 no. units within a fully serviced urban area, the distance from the nearest European site, no Appropriate Assessment issues arise. Therefore, 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 a European site.

## 8.0 **Recommendation**

8.1. I recommend that planning permission be refused for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

- 9.1. Having regard to its height and proximity to adjoining residential properties, the proposed development, if permitted, would result in a jarring and incongruous feature in this urban neighbourhood, unduly impacting on the amenities of adjoining residential property and the character of the area by reason of overbearing, overshadowing and general loss of daylight and sunlight. This would be contrary to the performance-based criteria detailed in section 3.2 of the Urban Development and Building Heights Guidelines for Planning Authorities (2018). 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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Philip Maguire  
Planning Inspector  
11<sup>th</sup> May 2023