



An
Bord
Pleanála

Inspector's Report

ABP-315342-22

Development	Construction of 10 houses and all associated site works.
Location	Site adjoining The Blackhorse Inn, Goldenbridge Walk, Inchicore, Dublin 8
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	4925/22
Applicant(s)	Michael Kelly
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Michael Kelly
Observer(s)	1. Waterways Ireland 2. Rainbowside Limited
Date of Site Inspection	12 March 2024.
Inspector	Paula Hanlon

1.0 Site Location and Description

- 1.1. The site (0.23ha) fronts onto the Grand Canal (south), with access off the canal towpath along Goldenbridge Walk (south of site) at Inchicore, Dublin 8. The River Camac adjoins the site along its rear (northern) and side (western) boundary. It lies vacant and undeveloped, and is enclosed by a mix of palisade, post & wire fencing and mature vegetation & trees. The topography of the site falls steeply towards the river.
- 1.2. Its immediate surroundings are typified with a mix of uses and design forms, including The Blackhorse Inn (currently vacant) (west), rear gardens associated with terraced units along Tyrconnell Road and industrial lands (north), and a hostel (east) of the site.
- 1.3. Its location is very accessible by public transport, with the luas redline (Blackhorse stop) a distance of c. 210 metres from the site and high frequency bus services within walking distance.
- 1.4. The site is located within the Grand Canal Conservation Area.

2.0 Proposed Development

- 2.1. Construction of 10 terraced houses and all associated site works including:

4 x 3-bed (3 storey over lower ground floor (144 - 147m²)) and 6 x 2 bed (2 storey over lower ground floor (117 - 121m²)) and associated works including 2(no) new pedestrian entrances off Goldenbridge Walk. I note that no car parking is proposed within this development.

- 2.2. The application was accompanied by the following documentation of note –

- Urban Design Statement
- Site Specific Flood Risk Assessment
- Engineering Services Report
- Outline Construction Management Plan
- Landscape Rationale.

3.0 Planning Authority Decision

3.1. Decision

By Order dated 17 November 2022, Dublin City Council (DCC) issued a notification of decision to refuse planning permission for 4(no.) reasons, including impacts on visual amenities and the unique character of the area, flood risk, risk to the River Camac's riverbank and intensification of vehicular traffic on Goldenbridge Walk.

The following are the stated reasons for refusal:

1. Having regard to the Z3¹ zoning objective, in the Dublin City Development Plan 2016-2022, the site's location within close proximity to the Grand Canal, the height, width of the terrace and positioning of the terrace set forward of the established building line on Goldenbridge Walk, it is considered that the proposal would have a detrimental impact on the visual amenities of Goldenbridge Walk, would be visually incongruous and would have a negative impact on the unique character of the Grand Canal Conservation Area. The proposed development would be contrary to the policies of the Dublin City Development Plan 2016-2022 and to the proper planning and sustainable development of the area.
2. The proposed development is located within Flood Zone A and B, a significant portion of the site, over 40%, is at risk of flooding. Almost a third of the site is within the Camac Flood Zone A/B, including 4no. of the proposed housing units. Another 15% of the site is at severe risk of pluvial flooding. This site is located within the area of "Site 18: Middle Camac: Davitt Road to South Circular Road" of the Dublin City Development Plan 2016-2022 Strategic Flood Risk Assessment. The Justification Test here states "lands which are within Flood Zones A and B that are currently open space should be retained as such". The applicant has failed to demonstrate that the proposed development passes the Justification Test set out within Dublin City Development Plan 2016-2022 Strategic Flood Risk Assessment. In this regard, the proposed development is

¹ Note: Land-Use Zoning Objective Z3: To provide for and improve neighbourhood facilities. Residential is a permissible use under this zoning.

considered to be contrary to the proper planning and sustainable development of the area.

3. The applicant has failed to adequately demonstrate that the proposed development would not pose a risk to the riverbank of the Camac River which is contrary to Policy GI15 and GI16 of the Dublin City Development Plan (2016-2022) which seeks to protect, maintain and enhance the natural and organic character of watercourses in the city. The proposed development proposes permanent structures within 2m of the river Camac and the proximity of the new boundary wall to the River could have serious consequences both during and post construction. River bank stability is of concern and impacts on the area and beyond resulting from this development have not been suitably assessed. In this regard, the proposed development is considered to be contrary to the proper planning and sustainable development of the area.
4. Goldenbridge Walk is located along the canal towpath which is heavily used by pedestrians and cyclists, and the towpath forms part of the Blackhorse to Portobello section of the future Grand Canal cycle route. The intensification in the use of Goldenbridge Walk by vehicular traffic would lead to conflict and obstruction of sensitive road users, and have an unacceptable negative impact on a key pedestrian and cyclist greenway resource within the City and be detrimental to the Grand Canal cycle route. The development is considered contrary to Policy SC3, MT7 and MT12 of the City Development Plan 2016-2022 and would set an undesirable precedent for similar developments in the area. Accordingly, the proposed development is considered to be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

One Planning Report is attached to the file (dated 17 Nov. 2022). The report was carried out in accordance with the provisions of the CDP 2016-2022 which was enforce at the time of decision. It concluded that the proposed development was unacceptable on this site and recommended that permission be refused on the grounds which are mirrored in the PA's decision to refuse permission.

3.2.2. Other Technical Reports

Transportation Planning Division (7/11/22): Recommended refusal.

Drainage Division (28/10/22): Recommended refusal.

Environmental Health Officer (25/10/22): Recommended Conditions.

3.3. Prescribed Bodies

Waterways Ireland: A number of concerns expressed including ownership dispute, limitations on access, impacts on canal embankment and that the proposal does not align with WI's strategy on the activation, animation and recreational use of their property. [Refer to Section 6.3 Observations of this report, which summarises matters of concern expressed by WI as part of a similar observation made to the Board on this appeal].

Inland Fisheries: Concerns expressed on risks to the River Camac in terms of water quality & biodiversity, and that the proposal is contrary to policy GI15 of the CDP. Concerns are also made in regard to the river catchment which is a recognised salmonid system and that the river at surface level invariably supports self-sustaining levels of brown trout, freshwater crayfish and lamprey.

Transport Infrastructure Ireland: No objection.

3.4. Third Party Observations

The PA received 5 third-party submissions at application stage.

4 of the submissions (submitted by residents in the area), highlighted a number of concerns in regard to the proposal being contrary to the site's landuse zoning objective (current & draft CDP); flood risk; design & layout; impacts on the character with the area, river bank, future greenways (Grand Canal/River Camac) & biodiversity (incl. loss of trees); parking & traffic movement; insufficient services and refer to the site's potential as a public amenity space.

1 submission expressed support for the development.

4.0 Planning History

Subject Site: None

Adjacent Lands: Relevant planning history is set out below -

- Lands at 229-235 Tyrconnell Road (incl. The Blackhorse Inn)

2372/20: Permission granted for the demolition of The Black Horse Inn public house & adjoining semi-detached houses, and the construction of 56 apartments, café and underground car park within a three to seven storey building.

4416/18: [*Noted that Development Description is as per planning reference 2372/20 above*], and that this application was refused permission on grounds of flood risk and potential risks to the River Camac (water quality & biodiversity) during construction.

- 1 Goldenbridge Walk (HSE Woodland Hostel)

3007/15: Permission granted for alterations & extension to existing building, providing 18 bedrooms in total.

- 6 & 7 Goldenbridge Walk

4612/07: Permission refused for the demolition of 6&7 Goldenbridge Walk and the construction of 25 residential units (including basement carpark), with the ground of refusal on vehicular traffic & alterations to the canal towpath, contrary to CDP policy.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The Dublin City Development Plan 2022-2028 (CDP) which came into effect 14 December 2022 (and post the decision of the PA) is the operative Development Plan.

5.1.2. The site is in an area zoned 'Objective Z9 – Amenity/Open Space Lands/Green Network with the landuse zoning objective 'to preserve, provide and improve recreational amenity, open space and ecosystem services'.

'Residential' is not listed as a 'permissible use' or as a use which is 'open for consideration' under the landuse zoning attached to this site, except in certain specific and exceptional circumstances, where the development is associated with a sporting facility on the site (Refer Section 14.7.9, Chapter 14 CDP).

5.1.3. The following Chapters are relevant in the consideration of this appeal:

Ch. 5 Quality Hsg & Sustainable Neighbourhoods; Ch. 8 Sustainable Movement & Transport, Ch.10 Green Infrastructure & Recreation; Ch. 15 Development Standards.

5.1.4. Policies of particular relevance include:

Managing Development Within and Adjacent to Camac River Corridor

Policy SI11: To manage all development within and adjacent to the Camac River Corridor in a way that enhances the ecological functioning and water quality of the river and aligns with the principles for river restoration. All development shall provide for a minimum set-back distance of 10-25m from the top of the river bank depending on site characteristics...

Policy SIO7: (Support the delivery of flagship river restoration projects where restoration measures can be comprehensively implemented).

River Corridors

Policy GI29: To protect, maintain, and enhance the watercourses and their river corridors in the city and to ensure that development does not cover or encroach upon rivers and their banks. To maintain natural river banks and restore them as part of any new development. The creation and/or enhancement of river corridors will be required and river restoration opportunities where possible will be supported to help improve water quality, and ecology, provide natural flood relief as well as providing amenity and leisure benefits.

Policy GI34: To ensure that new development, in terms of siting and design, responds to the character, importance and setting of the city's rivers where the context allows,

and to require public open space which is to be provided as part of new development, to supplement riparian buffer zones so as to support the attainment of 'good ecological status' or higher for water bodies, flood management, the conservation of biodiversity and ecosystem functions.

Flooding

Policy SI19: (refers to facilitating/implementing proposed flood alleviation schemes, with due regard to the protection of natural heritage, built heritage and visual amenities, as well as potential climate change impacts).

Policy SI13: To minimise the flood risk in Dublin City from all other sources of flooding as far as is practicable, including... fluvial... and potential climate change impacts.

Policy SI14: To implement and comply fully with the recommendations of the Strategic Flood Risk Assessment prepared as part of the Dublin City Development Plan 2022-2028, including all measures to mitigate identified climate change and flood risks, including those recommended under Part 3 (Specific Flood Risk Assessment) of the Justification Tests, and to have regard to the Flood Risk Management Guidelines (2009), as revised by Circular PL 2/2014, when assessing planning applications and in the preparation of statutory and non statutory plans.

Policy SI19: To facilitate the provision of new, or the upgrading of existing, flood alleviation assets where necessary and in particular, the implementation of proposed flood alleviation schemes, on the...Camac..., with due regard to the protection of natural heritage, built heritage and visual amenities, as well as potential climate change impacts.

Ecology

Policy GI11: To protect and enhance the ecological functions and connectivity of habitats and species of proposed Natural Heritage Areas (pNHAs)...

Policy GI13: (Areas of Ecological Importance for Protected Species).

Policy GI15: To protect inland and sea fisheries and take full account of Inland Fisheries Ireland Guidelines 'Planning for Watercourses in the Urban Environment' 2020, when undertaking, approving or authorising development or works which may impact on rivers, streams, watercourses, estuaries, shorelines and their associated habitats...

Policy GI24: To incorporate new open space into the green infrastructure network for the city, and providing a multi-functional role including: outdoor recreation, biodiversity, urban drainage, flood management, connection and carbon absorption without compromising public access to and the amenity function of open space (see Section 15.6: Green Infrastructure and Landscaping).

Urban Consolidated Development

Policy QHSN6: (Consolidation/Infill development).

Policy QHSN10: (Sustainable density on vacant and/or underutilised sites).

Policy CA3: (Transition to a low carbon, climate resilient city).

Policy GI41: (Tree protection).

Roads & Traffic/Greenways

Policy SMT1: (Modal shift to sustainable forms of transport).

Policy SMT16: Seeks to prioritise the development of safe and connected walking and cycling facilities and prioritise a shift to active travel ...

Policy SMT27 & Appendix 5 - Table 2: (Car parking).

Policy GIO6: (Support development of the Grand Canal metropolitan greenway).

Design

Policy SC19 (High Quality Architecture).

5.2. **Regional Spatial and Economic Strategy for Eastern & Midland Region (RSES)**

The RSES supports continued population and economic growth in Dublin City and suburbs, with high quality new housing promoted and a focus on the role of good urban design, brownfield redevelopment and urban renewal and regeneration. It outlines that there is an opportunity to promote and improve the provision of public transport and active travel and the development of strategic amenities to provide for sustainable communities.

5.3. **Project Ireland 2040 – National Planning Framework (NPF)**

The overarching policy objective of the NPF is to renew and develop existing settlements rather than the continual sprawl of cities and towns out into the countryside. The NPF sets a target of at least 40% of all new housing to be delivered within the existing built-up areas of cities, towns, and villages on infill and/or brownfield sites.

NSO 9: Coordinate EU Flood Directive and WFD implementation and statutory plans across the planning hierarchy, including national guidance on the relationship between the planning system and river basin management. Local authorities, DHPLG, OPW and other relevant Departments and agencies working together to implement the recommendations of the CFRAM programme will ensure that flood risk management policies and infrastructure are progressively implemented.

5.4. **Climate Action Plan 2023 (CAP 2023)**

Plan implements carbon budgets & sectoral emissions ceilings and sets out a roadmap for taking decisive action to halve emissions by 2030 and reach net zero no later than 2050.

5.5. **National Planning Guidelines**

Having considered the nature of the proposal, the receiving environment, the documentation on file, including the submissions from the PA, I am of the opinion that the directly relevant Section 28 Ministerial Guidelines are:

- Sustainable Residential Development and Compact Settlement Guidelines for PA's (2024).
- The Planning System & Flood Risk Management Guidelines for PA's (2009).

5.6. Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities' (2024)

The site is within a 'City-Centre' area as defined within Table 3.1 of these Guidelines. The guidelines set out that the city centre and immediately surrounding neighbourhoods, are the most central and accessible urban locations in their regions with the greatest intensity of land uses. An accessible location is defined in these Guidelines as lands within 500 metres (i.e. up to 5–6-minute walk) of existing or planned high frequency (i.e. 10 minute peak hour frequency) urban bus services.

SPPR 2 - Minimum Private Open Space Standards for Houses

Proposals for new houses to meet the following minimum private open space standards: 2 bed house 30m² and 3 bed house 40m². A further reduction below the minimum standard may be considered acceptable where an equivalent amount of high quality semi-private open space is provided in lieu of the private open space, subject to at least 50 percent of the area being provided as private open space.

SPPR 3 - Car Parking

(i) In city centres and urban neighbourhoods of the five cities, defined in Chapter 3 (Table 3.1 and Table 3.2) car-parking provision should be minimised, substantially reduced or wholly eliminated. The maximum rate of car parking provision for residential development at these locations, where such provision is justified to the satisfaction of the planning authority, shall be 1 no. space per dwelling.

All new housing schemes include safe and secure cycle storage facilities to meet the needs of residents and visitors.

SPPR 4 - Cycle Parking and Storage

All new housing schemes to include safe and secure cycle storage facilities to meet the needs of residents and visitors.

Policy and Objective 4.1

That PA's implement the principles, approaches and standards set out in DMURS (including updates) in carrying out their functions under the PDA (as amended) and as part of an integrated approach to quality urban design and placemaking.

5.7. Natural Heritage Designations

The site is located within and adjoins the Grand Canal pNHA (002104). The site is not located on any designated Natura 2000 site(s), with the nearest Natura 2000 sites, South Dublin Bay and River Tolka Estuary SPA (004024) and South Dublin Bay SAC (000210) located c.7.52 kilometres east of the site.

5.8. EIA Screening

See completed Form 2 on file. Having regard to the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations, I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, or an EIA determination therefore is not required.

6.0 The Appeal (First Party)

6.1. Grounds of Appeal

- General

The proposed residential which was compliant with the site's landuse zoning objective at the time of the PA's decision, constitutes sustainable urban infill housing on a serviced brownfield site (adjacent to luas), in an area which received significant public infrastructure investment and has housing demand and supply issues. The PA's refusal is based on an engineering agenda as opposed to a more integrated urban design and sustainable planning-based approach, and technical & design issues can

be resolved by design. The site will lie vacant, neglected and a location for anti-social behaviour if the proposal is not permitted.

- Zoning, Character of Area and Visual Amenities [Refusal Reason 1]

- Planning History/Zoning:

Proximity to the canal did not impede previous permissions in the vicinity (incl. ABP308542-20 [50 residential units]), with the difference being the intention to rezone this site. The de-zoning of the site is argued in the context of the core strategy and NPF and a material contravention is sought by the appellant.

- Camac River:

The river is culverted under the Grand Canal & industrial estate (north) and its ecology can be protected while supporting infill housing. The proposal provides a green retaining wall (biodiversity/flood risk defence) & public walkway along the open stretch of the river with significant riparian zone reserved.

- Amenity & Recreation Use

The site's future use for amenity & recreation is queried given its steeply sloping topography, no public access at this location, no specific site locational amenity objective(s) and no plans to CPO this site/adjoining lands.

- Visual Amenity/Impact on Grand Canal Conservation Area

There is an established varied approach to building line along Goldenbridge Walk and the proposal mediates between permitted development (The Blackhorse Inn site) and property to the south. The canal and trees lining the canal are the defining urban design feature of the conservation area. The proposal retains the tree lined landscape along the canal and provides passive supervision, mitigating anti-social behaviour at this location. Proposed elevation and external finishes are appropriate to the scale, character and form of Goldenbridge Walk, with overall height providing a transition in scale with adjoining sites. The inclusion of open space and landscaping (east and west) and retention of hedgerow and trees to the front & trees to the rear boundary with the River Camac, framed by the established trees, provide an established landscape context which integrates the proposed development with the landscape character, neighbouring buildings and to the Grand Canal Conservation Area

- Revised Site Layout Attached to Appeal

A revised site layout map attached to the appeal (appendix 1) provides:-

- a) 2m walkway & 1.5m planted verge indigenous to the river.
 - b) Reduced finished ground level for houses & lowering of retaining wall by 200mm with FFL700mm above modelled AOD flood level.
 - c) Reduced Private open space areas that comply with adopted standards.
 - d) Public walkway provides for a more sustainable solution along the river.
- An AA Screening and NIS is attached to the appeal (appendix 2).
 - Flood Risk [Refusal Reason 2]
 - The submitted Flood Risk Assessment identifies that the site is within flood zone A, B and C, with the outline of the proposed residential dwellings within flood zone C and their respective gardens in flood zone B. The site's topography is significantly elevated (+ 9m) over the River Camac, proposed FFL's are over 900mm above the predicted AOD flood level of 25.20m for 0.1% AOD (in terms of revised layout option) and the proposed retaining wall further defends this site.
 - A supporting document submitted in response to flood risk issues and attached to this appeal refers to revised proposed minimum floor level within this appeal (26.00m AOD, 200mm above the normal 500mm freeboard parameter); access lane being within Zone C; pluvial flood risk is mitigated by SuDs measures and that there is a negligible residual risk and no history of pluvial flooding or any other flooding on the site.

- Risk to the riverbank of the River Camac [Refusal Reason 3]

- Construction

The Construction Method Statement will design the retaining wall structure to ensure it avoids impact on the river.

Revised proposals to site layout with increased distance between the river and the permanent structure (4.75m minimum), will retain potential flood levels and its

method of construction will limit the effect to the existing riverbank and improve stability.

- Ecology

Proposed secant wall (similar to adjoining permitted development), reservation of an extensive buffer riparian zone which follows the course of the river and development of a pathway with planted verge along the river and revised increased distance between the river and the permanent structures to 4.75m (at a minimum) and up to 11.5m (eastwards) and reduced rear garden levels (1.4m) is consistent with policies, will avoid impact to river and allow for additional ecology features and enhancements to amenity value.

• Vehicle Movement/Conflict with Goldenbridge Walk Use [Refusal Reason 4]

- Established Walkway/Cycleway/Vehicular Access

Goldenbridge Walk is an established walkway, cycleway and vehicular access to existing residential development from St. Vincent Street to Tyrconnell Road junction and its existing layout defines it as a pedestrian priority zone with residential vehicular access. There is no on-site parking proposed and therefore there is a negligible impact on traffic in the area and the proposal is consistent with national transport policies. Additional vehicle movements arising from this development (waste collection/Incoming servicing) with turning bay proposed, would be negligible and it is noted that these service vehicles already utilise the canal towpath to serve established residential properties.

• Traffic Hazard due to inadequate provision for servicing delivery and accessible parking facilities [Refusal Reason 5]

There is a required shift in modal transport. The proposal will avoid traffic demand except for minimal drop off or delivery which is likely to occur outside peak hours. It is consistent with adopted policies and national strategies in respect of compact growth and balancing competing demands (limiting car parking) for the efficient,

effective and sustainable movement of people and goods as set out within the Greater Dublin Area Transport Strategy 2022-2040 and the CDP 2022-2028.

6.2. **Planning Authority Response**

None received.

6.3. **Observations**

2(no) observations were received. A summary of matters raised within the observations submitted is set out below.

Waterways Ireland:

Dispute ownership on a portion of the delineated site, with no consent given to the applicant in the making of this application. A number of concerns were expressed, including that the proposal does not align with their strategy on the activation, animation and recreational use of their property, limitations on access along Goldenbridge walk on its eastern approach (single-track road) with limited opportunities for passing, and that construction traffic and number of access points to the development cannot be accommodated, required access for maintenance works is not accommodated, impacts on embankment that supports the canal and within a pNHA, siting of existing ESB assets, and that development works/wayleaves may impede future strategic development of these lands and adjoining future greenway.

Rainbowside Limited:

Supports the proposed development, given its form and scale on a vacant site within an urban area served by high frequency public transport.

7.0 Assessment

7.1. Context

7.1.1. There has been a change in the Development Plan since Dublin City Council issued its decision (17 November 2022) on the proposed development. The Dublin City Development Plan 2022-2028 (CDP) which came into effect 14 December 2022 is now the operative Development Plan and my assessment is therefore based on the policies and standards contained within the current operative plan. Furthermore, the Sustainable Residential Development and Compact Settlement Guidelines (January 2024) are relevant in this assessment, having replaced the Sustainable Residential Development in Urban Areas Guidelines (2009) which are now revoked.

7.1.2 I have examined the application details and all other documentation on file, including the first party submission (the subject of this appeal) and observations received. I do not propose to carry out a de novo assessment of the proposed development. In this context, having regard to relevant national and local policies, objectives, standards and guidelines, I am satisfied that the main issues to be considered in determining this appeal are as follows:

- Landuse Zoning
- Receiving Environment
- Road & Traffic Safety
- Material Contravention
- Other Matters.

7.2. Landuse Zoning

At the time of decision by DCC and in accordance with the 2016-2022 CDP, this site was zoned Z3 - 'To provide and improve neighbourhood facilities' with residential a permissible use on this zoning. However, under the provisions of the current CDP, which is now the operative plan, the site is zoned Z9 'Amenity/Open Space Lands/Green Network' with its stated landuse objective 'To preserve, provide and improve recreational amenity, open space and ecosystem services'. Accordingly, I therefore submit that the proposed development by virtue of its residential use is not

permissible or open for consideration on Z9 zoned lands (Refer: Section 14.7.9, CDP). It is my view that a material contravention is required should the Board be minded to grant permission, which I propose to discuss further in section 7.4 below.

Note: Reason Number 1 refers to Z3 zoning but not material contravention. The Z9 zoning objective on this site which now requires that a material contravention is effectively a new issue. However, the first party has addressed this matter within their grounds of appeal and accordingly, I do not consider it necessary to circulate for comment.

7.3 Receiving Environment

7.3.1 Context

I note that the appellant in the grounds of appeal considered that the PA's refusal was based on an engineering agenda as opposed to a more integrated urban design and sustainable planning-based approach, and that issues raised can be resolved by design. I note that a key priority for city growth within the recently adopted Compact Settlement Guidelines is to *'protect, restore & enhance historic fabric, character, amenity, natural heritage, biodiversity & environmental quality'*. Accordingly, I submit that whilst the site is located within an accessible urban area, being well served by public transport, that due cognisance must also be afforded to the receiving environment and considerations on the natural environment including, flood risk, ecology, character and amenity specific to this site.

7.3.2 Flood Risk

The northern boundary of the site adjoins the River Camac, at a point along the middle section of this river which flows from the Grand Canal at Blackhorse Bridge, through Goldenbridge Industrial Estate to the south of Tyrconnell Road/Inchicore Road (Inchicore Village) before flowing to the South Circular Road north of Emmet Road. The PA in their decision to refuse permission referred to flood risk (fluvial & pluvial) and that the proposal did not satisfy the justification test set out in the Strategic Flood Risk Assessment (SFRA) which accompanied the CDP at the time of decision, and I

note the content of a detailed submission made by DCC's Drainage Division which informed the PA's reason for refusal on flooding.

In accordance with the Flood Risk Management Guidelines, I submit that a risk-based sequential and balanced approach based on flood zones and application of the justification test is required in the assessment of the proposed development. Accordingly, having considered available mapdata and as shown within Map D of the SFRA, I wish to highlight to the Board that the site is encompassed within an area identified as being at risk of Fluvial Flooding (1:100 event) (Flood Zone A and Flood Zone B). Houses are classified as a 'highly vulnerable' development.

I have examined the content of a Site-Specific Flood Risk Assessment (SSFRA), including justification test which accompanied the application made to the PA and updated details within appendix 4 of the first party appellant's submission, including details with respect to the siting of dwellings and gardens (flood zone B/C) and achievable freeboard. The grounds of appeal set out that the likelihood of adverse effects on the public drainage system or contributing to downstream flooding is mitigated given the site's topography, achievable freeboard (at least 200mm above the normal 500mm freeboard parameter) from the minimum floor level and on-site attenuation measures (with 20% increase provision given predicted effects of climate change) which will restrict the flow. I confirm that the FFLs are satisfactorily elevated above mid-range flood levels. In considering the details submitted, it is my view that the documentation submitted does not satisfactorily demonstrate that the proposed development satisfies the justification test.

The site with landuse zoning (Z9) '*To preserve, provide and improve recreational amenity, open space and ecosystem services*' is located within designated Strategic Development Regeneration Area 9 (SDRA 9) - Emmet Road and delineated for 'proposed/improved public open space'. Further, it is not included in DCC's total land capacity for the provision of housing in meeting housing targets set by Ministerial Guidelines and the NPF.

In regard to Site Specific Flood Risk Assessment, I have examined the specific criteria outlined within Appendix B, Area: 18. Middle Camac: Davitt Road to South Circular Road (Part 3) of the SFRA, which is relevant to this case. In applying the justification test at development management case, I submit that the SFRA provides that lands

which are within Flood A and B that are currently open space should be retained as such. The proposed development therefore has not passed the justification test set out within the CDP and similarly, it does not pass the justification test contained within Section 5.15 Box 5.1 'Justification Test for development management (to be submitted by the applicant)' of the Flood Risk Management Guidelines (2009) which requires that the subject lands 'must have been zoned or otherwise designated for the particular use or form of development in an operative development plan', which has been adopted, taking account of the guidelines.

On this basis, it is my view that to permit the proposed development would be contrary to policy S114 of the CDP as this site did not pass the justification test and therefore does not comply with the recommendations of the SFRA as set out in Area: 18. Middle Camac: Davitt Road to South Circular Road (Part 3) and that the development should be refused on the grounds of flood risk.

7.3.3 Ecology and River Restoration

The planning application is not accompanied by an EclA and I note that the first party submitted a Screening for Appropriate Assessment and Natura Impact Statement as part of the documentation submitted with the appeal. Whilst the site itself is of low ecological interest, it does incorporate lands which are within the designated Grand Canal pNHA (002104). Furthermore, the site slopes downwards to the River Camac and immediately adjoins its riverbank with some of its riparian zone (north and west of site) included within the subject site's boundary. The first party appellant argues that a secant wall is proposed at construction stage to avoid impact on the river and considers that sufficient reservation of the riparian zone which follows the course of the river and development of a pathway with planted verge along the river is consistent with policies G115 & G116 of the CDP.

In reviewing the revised site layout map, which accompanies this appeal, I note that a separation distance of 4.75 metres is proposed between the development structures and the river (an increase from initial proposed setback distance of 2 metres). This distance falls short of the minimum set-back distance of 10-25m from the top of the river bank which is set out within a specific policy with regard to managing development within and adjacent to the Camac River, the purpose of which is to

enhance the ecological functioning and water quality of the river and align with the principles for river restoration (Policy SI11). I further note the concerns expressed by Inland Fisheries Ireland in their submission with regard to risks to the river in terms of its water quality and biodiversity and their statement in regard to the Camac river at surface level invariably supporting self-sustaining levels of brown trout, freshwater crayfish and lamprey. Having regard to the documentation submitted and observations received, I consider that the appellant has not satisfactorily demonstrated that the proposed development will not impact on the River Camac and its ecological functioning. It is therefore my view that to permit the proposal would be contrary to policies GI15, G129 and SI11 the CDP, if permitted.

I note also that a Flood Alleviation Study on the Camac River over its whole catchment, commissioned by DCC and South Dublin County Council in partnership with the OPW is progressing, with river corridor restoration and natural flood retention measures being examined. Accordingly, it is my view that to permit the proposed development on this site, within such close proximity to the Camac river would impact on potential opportunities for river corridor restoration at this location and would be contrary to policy SI11 of the SFRA and CDP.

7.3.4 Landscape Character & Design

The development is located within the Grand Canal Conservation Area and there are no protected views associated with this site. Having reviewed the documentation submitted in regard to design and siting, including the content of an accompanying Urban Design Statement for the proposed development and following a site inspection, I concur with the appellant that the canal itself and trees lining the canal are the defining urban design feature of the Grand Canal Conservation Area. Furthermore, I acknowledge the varied building line and densities (both permitted and established) surrounding this site, and in particular, an approved (not yet constructed) residential scheme on The Blackhorse Inn site, which adjoins the western boundary of this site. In this context, I consider that the proposed building line from a visual perspective in this urban location, set back a distance of 7.5m from Goldenbridge Walk (towpath) and c.15m from the canal is appropriate in this Conservation area and will not negatively impact on the stretch of the Grand Canal greenway at this location.

However, notwithstanding the building line and landscaping, and albeit that the proposed part 2st/part 3st over lower ground floor development provides a transition in overall height of development within this site and between permitted (5-st) development on adjoining site to the west and established (2-st) development to the east, I consider that the single terraced block proposed in terms of overall massing, fenestration and flat roof onto Goldenbridge walk, does not reflect the natural features, function and form of these lands, which are also connected to the Camac river and that further consideration should be given to the overall massing and external finishes proposed to assist in its integration with the landscape character at this location, in the event that the Board is minded to grant permission. I further consider that the revised site layout option accompanying the appeal which provides for a public path with wild planted verge sloping up towards the proposed retaining wall along the site's northern boundary is not satisfactory due to the orientation of dwellings, with rear gardens adjoining the proposed walkway and bisected by retaining wall.

7.3.5 Canal Integrity

In regard to the Grand Canal and in noting the content of Waterways Ireland observation on the embankment along the site's frontage which supports the perched canal, I am concerned that that required excavation works in the construction of lower property floors will pose a risk to the integrity of the canal. Given the substantive reasons for refusal in this case, I do not propose to further examine this matter. However, it is my view that further details and analysis are required to ensure that any future development on these lands does not pose a risk to the integrity of the adjoining canal.

7.3.6 Amenity

I note that the first party appellant queried the site's potential for amenity & recreation, owing to the site's topography, no public access and no plans to CPO the site/adjoining lands. I consider that this matter falls outside of the Board's remit in deciding this application. I am of the opinion that the consolidation and intensification of development in this urban area, must be balanced with the need to protect and enhance its natural assets. I submit that the site also adjoins two future greenways

(notably Grand Canal Greenway and along the river). I am of the view that these lands require management to ensure that they meet the conservation and ecological needs associated with the adjoining river and canal and subsequently, that their use will contribute to conserving biodiversity and assist in creating a healthy, low carbon, resilient and connected city, which is consistent with the Z9 landuse zoning attached to this site and Council's policy to incorporate new open space into the green infrastructure network for the city, and provide a multi-functional role including biodiversity, urban drainage and flood management (policy GI24).

7.3.7 Road & Traffic Safety

The proposed development provides no on-site parking, which I consider reasonable and in compliance with the recently adopted Compact Settlement Guidelines due to its accessible location. However, in terms of vehicle movements, the proposed development will require access for construction vehicles, services provision (including waste collection) and emergency vehicles. I note that the PA in its reason for refusal cited that the intensification in the use of Goldenbridge Walk by vehicular traffic would lead to conflict and obstruction of sensitive road users, and have an unacceptable negative impact on this greenway/Grand Canal cycle route. It is my view, given the established use of Goldenbridge Walk in accommodating low levels of traffic movements and to the type and volume of traffic movements likely to be generated once occupied, that this matter in itself would not warrant grounds for refusal. Should the Board be minded to grant permission, I consider that any outstanding details can be addressed by way of condition, including that an updated Construction Management Plan be provided for the approval of the PA which clearly details proposals on construction access.

7.4 Material Contravention

Having regard to Section 37 (2) of the Planning and Development Act 2000 (as amended), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the PA to whose decision the appeal relates.

- i. the proposed development is of strategic or national importance,

- ii. there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or
- iii. permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or
- iv. permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

Having regard to the above provisions I see no validity in this appeal which necessitates a material contravention to the CDP for the following reasons:

- i. The development of 10 dwelling houses is not considered to be of strategic or national importance and the site is not included in DCC's total land capacity for the provision of housing, in meeting housing targets set by Ministerial Guidelines and the NPF.
- ii. There are no conflicting objectives in the development plan and the objectives are clearly stated, insofar as the proposed development is concerned.
- iii. The proposal, located on lands that are zoned 'Z9'- Amenity/Open Space Lands /Green Network is identified in the Strategic Flood Risk Assessment which accompanies the CDP as being at flood risk (1:100 Fluvial Flooding) Flood Zone A and Flood Zone B. Section 28 Guidelines - The Planning System and Flood Risk Management Guidelines for Planning Authorities, November 2009, classify a house as a 'Highly Vulnerable Development'. To permit this development would be contrary to these guidelines, noting that Section 5.24 of the guidelines outline that permission should be refused where flood issues have not been addressed successfully and where the presence of unacceptable residual flood risks remain and that development which is consistent with the overall policy and technical approaches of the Guidelines only should be permitted.

- iv. There is no evidence provided that similar such development has been granted in the immediate area of this site following the adoption and implementation of the CDP.

Based on this assessment, it is my opinion that a material contravention is not warranted in this instance.

7.5 Other Matters

I note that a procedural matter was raised within an observation received with respect to legal interest, with a dispute on land ownership and that no consent was given for the submitted application. The land area in dispute relates to an area identified as a right of way on the site plan and not in the first party's ownership. I am satisfied that this matter did not prevent concerned parties from making representations. In the event that the Board is minded to grant permission, that the applicant shall not be entitled solely by reason of a permission under this section to carry out any development (Section 34(13) of the Planning and Development Act 2000 (as amended)).

I also seek to highlight that matters raised regarding water/wastewater connections remain outstanding and can be addressed by way of condition should the Board decide to grant permission.

This assessment represents my de novo consideration of all planning issues material to the proposed development.

7.6 **Appropriate Assessment**

Advisory Note: An NIS was submitted with the First Party Appeal and not at application stage. The proposed development was not re-advertised to reflect this and the appellant was not requested to undertake same. Having regard to the substantive reasons for refusal on the proposed development, I am satisfied that its re-advertisement should not be sought, however, in the event that the proposed development is to be further considered, it is my view that the submission of an NIS requires re-advertisement.

7.6.1 The site is not located on any designated Natura 2000 site(s). The nearest Natura 2000 sites are South Dublin Bay and River Tolka Estuary SPA (004024) and South Dublin Bay and River Tolka Estuary SAC (000210) located approximately 7.52 kilometres east of the site. Given the nature and scale of the proposed development, connection to public sewer, the lack of a direct hydrological connection, the dilution provided, and the distances involved, I consider that there are no European sites within the Zone of Influence. In determining the zone of influence, I have had regard to the nature and scale of the project, the distance from the development site to the European Sites, and any potential pathways which may exist from the site to a European Site.

I wish to highlight to the Board that a Screening for Appropriate Assessment report did not accompany the planning application submitted to the PA. However, a document entitled 'Appropriate Assessment NIS' which contains a screening and natura impact statement accompanies the first party appeal. This document considered all European sites (6 no) within a 15km radius of the development site, including North Dublin Bay SAC (0206) 7.6km; South Dublin Bay SAC (0210) 7.9km; Sandymount Strand/Tolka Estuary (4024) 7.9km; North Bull Island SPA (4006) 10.4km; Baldoyle Bay SAC (0199) 14.9km and Baldoyle Bay SPA (4016) 14.9km. The author concluded that salmon (Annex 2 species under The Habitats Directive) is said to occur within the River Camac & due to the need for mitigation at construction stage in preventing materials/silt inflows arising from this development into the river, that the proposal be taken to Stage 2.

However, I submit that whilst the protection of salmon is in itself warranted and is an annex 2 species listed under the Habitats Directive, the statement of conservation objectives in the case of all 6 European sites within a 15km radius of this site do not identify salmon as a qualifying interest or conservation feature for which the site(s) are designated. Furthermore, I am of the view that the matter of preventing materials/silt inflows arising from the proposed development at construction stage can be addressed by way of incorporating best practice measures at construction stage as opposed to mitigation measures should the Board be of a view to grant permission.

7.6.2 Mitigation measures

No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

7.6.3 Determination

The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out screening for appropriate assessment of the project, it has been concluded that there is no potential for significant effects on any Natura 2000 site, as a result of the project individually or in combination with other plans or projects, and Appropriate Assessment is therefore not required.

Notwithstanding the submission of an NIS, in order to facilitate the Board in carrying out an Appropriate Assessment, I consider that the particular characteristics of the project for which permission is being sought in the current application, including its nature, scale and location on a serviced site are such that it would not be likely to have a significant effect on any European site, either individually or in combination with other projects. This exclusion can be made in view of the objective information set out in the application and this report. It is therefore reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any European site(s), in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required. In reaching this conclusion, I took no account of mitigation measures intended to avoid or reduce the potentially harming effects of the project on any European Site(s).

8.0 Conclusion

The subject site zoned Z9 ' Amenity/Open Space Lands/Green Network, adjoins the River Camac and encompasses lands located within Flood Zone A & B. I consider that to permit the residential development proposed would materially contravene the Z9 landuse zoning objective contained within the City Development Plan, would be contrary to policies PSI13 and PSI14 of the Development Plan with regard to flood

risk/management and would negatively impact on the riverbank of the River Camac, which is contrary to policies GI15, G129 and SI11 of the plan, Accordingly, to permit the development proposed, would be contrary to the proper planning and sustainable development of the area.

9.0 Recommendation

I recommend that planning permission be refused for the following reasons and considerations.

10.0 Reasons and Considerations

1. The site is located in an area zoned objective Z9 - Amenity / Open Space Lands /Green Network in the current Dublin City Development Plan 2022-2028. The Board considers that the proposed development would materially contravene the zoning objective, as set out in this plan. The Board pursuant to the provisions of section 37 (2)(b) of the Planning and Development Act, 2000, is precluded from the granting of planning permission for the proposed development as none of the provisions of section 37 (2)(b) (i), (ii), (iii) or (iv) of the said Act apply in this case. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

[New Issue]

2. The proposed development constitutes a highly vulnerable development as defined in The Planning System & Flood Risk Management Guidelines for PA's (2009) and is in an area zoned 'Z9' Amenity/Open Space Lands/Green Network which is deemed to be at risk of fluvial flooding (Flood Zone A and Flood Zone B), by reference to the current Dublin City Development Plan 2022-2028 and accompanying Strategic Flood Risk Assessment. It has not been satisfactorily demonstrated that the proposed development passes the Justification Test set out within the City Development Plan and does not accord with the Flood Risk Management Guidelines. The proposed development if permitted, would be contrary to policies PSI13 and PSI14 of the Dublin City Development Plan 2022-2028, would be contrary to Section 28 Ministerial Guidelines and would therefore be contrary to the proper planning and sustainable development of the area.

3. Given the siting of development proposed, the extent of construction works and its proximity to the riverbank of the River Camac, it is considered that the proposed development if permitted, would negatively impact on the ecological functioning of the River Camac and negatively impact on potential opportunities for river corridor restoration at this location. The development would therefore be contrary to policies SI11, GI15, G129 and SI11 of the Dublin City Development Plan 2022-2028, which policies are considered reasonable and 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.

Paula Hanlon
Planning
Inspector

28 March 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	315342-22		
Proposed Development Summary	Construction of 10 houses and all associated site works.		
Development Address	Site adjoining The Blackhorse Inn, Goldenbridge Walk, Inchicore, Dublin 8		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X
		No	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			EIA Mandatory EIAR required
No		X	Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
			Conclusion
No			
Yes	X	Class 10 (Infrastructure Projects)	Proceed to Q.4

4. Has Schedule 7A information been submitted?

No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ **Date:** _____

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	315342-22	
Proposed Development Summary	Construction of 10 houses and all associated site works.	
Development Address	Site adjoining The Blackhorse Inn, Goldenbridge Walk, Inchicore, Dublin 8	
<p>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</p>		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development</p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>The site is undeveloped greenfield and is located in an urban area. The site is zoned Z9 - Amenity / Open Space Lands / Green Network, with residential use not permissible. The proposed development is not exceptional in the context of existing environment.</p> <p>The proposed development will not result in the production of any significant waste, emissions or pollutants.</p>	No
<p>Size of the Development</p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having</p>	<p>No. The site area is 0.23ha.</p> <p>There are no other developments under construction adjoining the site. All other developments are established uses.</p>	No

<p>regard to other existing and/or permitted projects?</p>		
<p>Location of the Development</p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>No.</p> <p>The proposed development is not located on or within proximity to any designated natura 2000 sites. It is located within a designated pNHA Grand Canal (002104). The ecological value of the canal lies more in the diversity of species it supports along its linear habitats than in the presence of rare species. The proposed development is set back within lands which adjoin the canal towpath.</p> <p>The nearest Natura 2000 sites are South Dublin Bay and River Tolka Estuary SPA (004024) and South Dublin Bay and River Tolka Estuary SAC (000210) located approximately 7.52 kilometres east of the site. There is no direct hydrological connection to a European Site.</p>	<p>No</p>
<p>• Conclusion</p>		
<p>There is no real likelihood of significant effects on the environment. EIA not required.</p>		

Inspector: _____

Date: _____

DP/ADP: _____ **Date:** _____

(only where Schedule 7A information or EIAR required)