



An  
Bord  
Pleanála

## Inspector's Report ABP-315450-23

|                                     |   |
|-------------------------------------|---|
| <b>Development</b>                  | Construction of 91 apartments (phase 2) and associated site works. NIS accompanied application. Phase 1 (99 units) was submitted under separate application under Reg. Ref. FW22A/0228. |
| <b>Location</b>                     | Canterbury Gate, Old Navan Road, Mulhuddart, Dublin 15.   |
| <b>Planning Authority</b>           | Fingal County Council.  |
| <b>Planning Authority Reg. Ref.</b> | FW22A/0237.   |
| <b>Applicant</b>                    | AAI Baneshane Limited.  |
| <b>Type of Application</b>          | Permission.   |
| <b>Planning Authority Decision</b>  | Refusal of Planning Permission.   |
| <b>Type of Appeal</b>               | First Party v Refusal of Planning Permission.   |
| <b>Appellant</b>                    | AAI Baneshane Limited.  |

|                                |                                   |
|--------------------------------|-----------------------------------|
| <b>Observer(s)</b>             | Transport Infrastructure Ireland. |
| <b>Date of Site Inspection</b> | 30/01/2024                        |
| <b>Inspector</b>               | Enda Duignan                      |

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## **1.0 Site Location and Description**

- 1.1.** The address of the appeal site, as included within the public notices, are the Lands at

Canterbury Gate, Old Navan Road, Mulhuddart, Dublin 15. The appeal site has a linear form and is positioned between the M3 to the south and the Old Navan Road to the north. The village of Mulhuddart is located c. 500m to the south-east of the appeal site. Blanchardstown Shopping Centre is also located c. 2km to the site's south-east. To the north of the appeal site on the opposite side of the Old Navan Road is the Tolka Valley Park. The site is bound to the east by an existing residential development known as 'Canterbury Gate' and has been identified within the submitted documentation as being within the control of the Applicant. This site comprises a 4 no. storey apartment development with associated communal open space and surface level car parking. To the east of the site are a range of commercial/employment uses which includes the 'Maxol M3 Mulhuddart Services' service station, the RSA Driving Test Centre and the 'M3 Van Centre'.

- 1.2. The appeal site has a stated site area of c. 1.434ha. The net developable site area equates to c. 1.033ha. The remainder of the site extends to c. 0.401ha. and relates to lands within the ownership of Fingal County Council. The red line boundary extends to the east and west of the site along the Old Navan Road, Damastown Close and Damastown Road. The boundary has been extended in order to facilitate upgrade works to the public road which were proposed as part of Phase 1 of the development under Reg. Ref. FW22A/0228.
- 1.3. In terms of topography, the site is locally elevated and there is a level difference of c. 3.5m between the southern and northern boundaries. There is an existing gated access to the site at the western end of the site's roadside boundary to the Old Navan Road. A dirt track leads from this entrance to the centre of the site and this portion of the site is overgrown with dense areas of scrub and construction waste. Further to the east within the site is a partially constructed basement level associated with a previous permission for an apartment development. I note the partially constructed basement was filled with water at the time of my site inspection.
- 1.4. The site's northern boundary with the Old Navan Road typically comprises a low stone wall with a wire railing fence above. There are also a number of mature trees located along this boundary and within the appeal site. The southern boundary typically

comprises a mixture of a boundary wall and wire fence. A stand of trees is located outside the boundary which partially screen the site from the N3. The western boundary of the site is currently undefined, and an existing wooden panel fence forms the boundary with the Canterbury Gate development to the east. There is no formal pedestrian footpath along the frontage of the appeal site. However, a pedestrian path is provided along the northern side of the Old Navan Road opposite the subject site.

## **2.0 Proposed Development**

- 2.1.** The proposed development seeks planning consent for the construction of a residential development on the appeal site. The application represents Phase 2 of an overall development (190 no. apartments in total) and comprises the construction of 91 no. Build to Rent (BTR) apartments. The proposed apartments are to be provided across 2 no. blocks and comprise 52 no. one bed apartments and 39 no. two-bed apartments. The 2 no. apartment blocks range in height from six (Block D) to ten (Block c) no. storeys, all above a lower ground floor level car park. It is stated that the lower ground floor level car park does not form part of the proposed development and is included within Phase 1.
- 2.2.** Block C is centrally located within the site and comprises a 10 no. storey building above the lower ground floor level car park. 79 no. apartments (40 no. one bed & 39 no. two bed) are provided within this building and each apartment is provided with private open space in the form of a terrace or winter garden. The ground floor level of the building includes communal facilities comprising a laundry room, residential amenity area and a drop box area. Block D is located to the west of Block C and is a 6 no. storey building which comprises a total of 12 no. two bedroom apartments. Block D will be provided with a communal gym, with shower rooms and changing facilities at the ground floor. The Applicant indicates that a management office and concierge to serve the entire development (i.e. Phase 1 & 2) is also located on the ground floor. However, the office and concierge has not been identified on the submitted floor plan. On the first floor, the proposal includes 3 no. communal rooms, a beverage preparation room, laundry room, cleaning store and disabled WC will provide for residents. The main pedestrian access to each building is provided on its southern side.

### Works Proposed as Part of Phase 1

- 2.3.** As part of Phase 1, landscaped communal open space with a combined area of c. 4,399sqm is proposed to serve the entire scheme and is provided in the form of landscaped pocket parks adjacent to the proposed blocks. Further to this, public open space measuring c. 1,120sq.m. is provided within the western portion of the site and comprises a playground, basketball court and walking trails which run along the southern site boundary.
- 2.4.** The site is to be accessed from the Old Navan Road via a new vehicular entrance located between Block A and B. An access road from the entrance leads to the lower level car parking area which is located beneath Blocks A and B and then extends to the west below Blocks C & D. Permission is also sought to upgrade the existing entrance serving the Canterbury Gate development to the east to serve the proposed creche and the existing residential development. As noted, these lands are identified as being within the control of the Applicant. There are also a number of pedestrian access points proposed along the boundary with the Old Navan Road.
- 2.5.** In terms of car parking, a total of 98 no. car parking spaces are proposed at lower ground floor level (including 4 no. limited mobility spaces, 10 no. electric charging spaces and 2 no. Go Car parking spaces). It is noted that 7 no. existing surface level parking spaces within the Canterbury Gate development will serve the proposed creche. A total of 414 no. bicycle parking spaces are proposed to serve development which includes 406 no. spaces at lower ground floor level. A covered bicycle stand catering for 8 no. spaces at grade level are located adjacent to the site's western boundary. 9 no cargo bicycle parking spaces to serve the apartments are proposed at lower ground floor level and a covered bicycle stand catering for 8 no. bicycle parking spaces are proposed at the lower ground floor level of Block A which also serve the proposed Creche.
- 2.6.** The application boundary extends to the east and west of the site along the Old Navan Road, Damastown Close, and Damastown Road and these lands are within the control of Fingal County Council. The proposed works as part of Phase 1 will facilitate the provision of a shared footpath/cycle lane and pedestrian crossings to improve links to

public transport & local facilities in Mulhuddart.

- 2.7.** Permission is also sought under Phase 1 for all associated site landscaping and infrastructural works, including tree planting, boundary treatments, street lighting, internal roadways, footpaths and shared surfaces, ESB substations, foul and surface water drainage, and potable water supply necessary to facilitate the development.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Fingal County Council refused planning permission for the proposed development for the following 1 no. reason.

- The application site is located in close proximity to the N3 national road. In accordance with Objective MT41 of the Fingal County Development Plan 2017-2023, it is an objective of Fingal County Council to implement the N3 Upgrade Littlepace to M50 scheme. This scheme is also identified in the Transport Strategy for the Greater Dublin Area 2016-2035 and referenced in the National Development Plan 2021-2030. Based on the current design process, the application site would interact with the future layout of the scheme. The proposed development is considered to be premature pending the determination of the Planning Authority and the Road Authority of a road layout for the area, would be contrary to Objective MT41 of the Fingal County Development Plan 2017-2023 and obviate against the delivery of infrastructure identified at national level, in the Transport Strategy for the Greater Dublin Area 2016-2035 and the Fingal County Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.

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

##### **3.2.1. Planning Report**

- 3.2.1.1.** The Fingal County Council Planning Report forms the basis for the decision. The Report provides a description of the appeal site and the subject proposal, it sets out the policy that is relevant to the development proposal and summarises the observation on the file. In terms of their assessment of the development, the Planning

Authority noted the 3 no. zoning objectives that apply to the land (i.e. RS & OS) and was satisfied that the principle of a residential development was acceptable at this location.

3.2.1.2. The Planning Authority had regard to the planning history of the site, whereby permission had been previously refused on this site by the Board for reasons relating to flood risk. However, the revisions to the design of the development were noted and the Planning Authority was satisfied that the development had successfully overcome the previous reason for refusal.

3.2.1.3. The Planning Authority refer in their assessment to the N3, M50 to Clonee Road Upgrade Scheme which has been identified in Table 7.1 of the County Development Plan (2017-2023). It is also noted that this project is recognised in national and regional infrastructure strategies. It is highlighted within their report that the current design process for the scheme has identified the subject site as a preferred location for a drainage attenuation basin. They go on to note that SuDS for this road scheme is considered to be a fundamental design requirement and there is limited opportunity to provide such SuDS features elsewhere along the route. In light of this, the Planning Authority formed the view that the development, and the concurrent application (Ref. FW22A/0228), were premature pending the determination by the Planning Authority of the road layout for this area. A refusal of permission was therefore recommended.

3.2.1.4. In terms of the nature of the proposed BTR development, concerns had been raised with respect to the development's phasing (i.e. concurrent application for Phase 1) and its compliance with the relevant SPPRs. Concerns were raised about the open space provision on site and how residents with Phase 1 (i.e. Blocks A & B) could access the open space areas in the event that Phase 2 was not constructed. The Planning Authority's report also raised concerns with respect to the quality of the private amenity spaces, the results of the Applicant's daylight assessments and the potential for overlooking between blocks due to the separation distances proposed. Further to this, the Planning Authority formed the view that the development was deficient in terms of car parking and bicycle storage.



### 3.2.2. Other Technical Reports

Environmental: Report on file stating no objection to the proposed development subject to a requirement to submit a Construction and Demolition Resource Waste Management Plan (RWMP) prior to the commencement of development.

Parks and Green Infrastructure: Report on file recommending additional information.

Transportation: Report on file recommending a refusal of permission.

Water Services: Report on file stating no objection to the proposed development subject to compliance with conditions.

### 3.2.3. Prescribed Bodies

Irish Water: No objection subject to compliance with a condition.

Transport Infrastructure Ireland: Report on file recommending a refusal of permission.

### 3.2.4. Third Party Observations

3.2.4.1. There are 3 no. observations on the file which lend their full support to the proposed development. The observations were received from.

- Thomas Celanders,
- Keadie Reilly, and
- Mulhuddart Business Association.

3.2.4.2. The submissions highlight that it would be wonderful to see the site finally finished as it is eyesore and completely overgrown. It is stated that site is zoned residential and is therefore an ideal proposal for this location. A submission notes that Mulhuddart is populated with young families, still living at home with parents as there is not enough accommodation in the local area to meet demand and is therefore a development which is greatly welcomed by the people of Mulhuddart. The submission from the Mulhuddart Business Association notes that as a business community, the positive impact of such development on the surrounding area has no limitations. In a time where it is next to impossible to find adequate accommodation for staff, especially in

the proximity of the village, this would be of huge benefit and the development would attribute immensely economically to the local businesses.

3.2.4.3. One (1) no. observation was also received from Cllr. Mary McCampany. The issues raised within the observation can be summarised as follows:

- Whilst the principle of an apartment development on the site is welcomed, concerns remain from the previous SHD on the lands which was refused planning permission. This included concerns regarding:
  - o The scale of the proposed development at this location;
  - o Flooding.
  - o Tenure proposed.
  - o Impacts on the nearby watercourse.
- Works to the public realm and facilities within the development should be provided in tandem with the proposed scheme.
- The proposal is not in keeping with the character of the surrounding area.
- Concerns are highlighted that schools within the surrounds are already at capacity and the issue will be exacerbated by the proposed development.
- Concerns raised within respect to overlooking within the development.
- It is highlighted that there is a lack of clarity on the submitted documents as to the number of trees to be felled within the site. Details are also lacking regarding the proposed planting scheme.
- It is considered that the existing wall along the Old Navan Road should be retained and incorporated into the development.
- Concerns raised regarding the refuse collection locations and the traffic hazards that would arise.

## **4.0 Relevant Planning History**

### **4.1. The Subject Site.**

4.1.1. **FW22A/0228 (ABP-315425-22):** Planning permission refused by the Planning Authority which sought permission for:

- i. Construction of 99 no. Build to Rent apartments (comprising 12 no. one bed apartments and 87 no. two-bed apartments) across 2 no. blocks (A&B)

ranging in height from six to eight storeys over lower ground floor car park. Each apartment is provided with its own private balcony and has access to a landscaped communal open space (4,399sqm). Residents also have access to 467.4 sqm of communal amenity spaces, comprising a residential amenity area, parcel drop box, laundry and a 270 sqm creche at ground floor level in Block A; a residential amenity area, parcel drop box and laundry at ground floor level in Blocks B;

- ii. Provision of 98 no. car parking spaces at lower ground floor level to serve the apartments in both Phase 1 and Phase2 (including 4 no. limited mobility spaces, 2 no. Go-Car spaces ( at grade level) & 10 no. electric charging spaces) accessible from pedestrian entrances on northern facade and vehicular entrance off Old Navan Road;
- iii. Provision of 7 no. at grade car parking spaces to serve creche (including 1 no. limited mobility space) accessible from the existing entrance off Old Navan Road on western boundary off the site;
- iv. Provision of 414 no. bicycle parking spaces (406 no. bicycle parking spaces at lower ground floor level and a covered bicycle stand catering for 8 no. bicycle parking spaces at grade level at the sites western boundary adjacent to the public open space and play area) and 9 no. cargo bicycle parking spaces at lower ground floor level to serve the apartments;
- v. Provision of a covered bicycle stand catering for 8 no. bicycle parking spaces at lower ground floor level of Block A to serve the Creche;
- vi. Provision of a new vehicular and pedestrian access serving residents of the apartments off Old Navan Road to the east of the site and vehicular and pedestrian access serving the creche will be provided via existing entrance off Old Navan Road to the east of the site. A set down area for the creche will also be provided;
- vii. Provision of 2 no. new pedestrian crossing on Old Navan Road linking the proposed development with the Tolka Valley Park and footpath network to the northwest;
- viii. Provision of 1120 sqm of public open space comprising landscaped areas and play areas;
- ix. Road, and streetscape upgrade works along Old Navan Road, Damastown

Close, and Damastown Road, to facilitate the provision of a shared footpath/cycle lane and pedestrian crossings to improve links to public transport & local facilities in Mulhuddart; and

- x. all associated site landscaping and infrastructural works, including tree planting, boundary treatments, street lighting, internal roadways, footpaths and shared surfaces, ESB substations, foul and surface water drainage, and potable water supply necessary to facilitate the development. The application was accompanied by a Natura Impact Statement (NIS). This application represented Phase 1 (99 no. units) of an overall development of 190 no. units on the subjects lands (Phase 1 and Phase 2).

The application was refused by the Planning Authority for the following 1 no. reason:

- The application site is located in close proximity to the N3 national road. In accordance with Objective MT41 of the Fingal County Development Plan 2017-2023, it is an objective of Fingal County Council to implement the N3 Upgrade Littlepace to M50 scheme. This scheme is also identified in the Transport Strategy for the Greater Dublin Area 2016-2035 and referenced in the National Development Plan 2021-2030. Based on the current design process, the application site would interact with the future layout of the scheme. The proposed development is considered to be premature pending the determination of the Planning Authority and the Road Authority of a road layout for the area, would be contrary to Objective MT41 of the Fingal County Development Plan 2017-2023 and mitigate against the delivery of infrastructure identified at national level, in the Transport Strategy for the Greater Dublin Area 2016-2035 and the Fingal County Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.

This application comprises Phase 1 (Blocks A & B and associated works) and is currently the subject of a First Party appeal with the Board under ABP-315425-22.

- 4.1.2. **FW20A/0043:** Planning permission refused by the Planning Authority which sought permission for the realignment of a 450 m-long section of the Old Navan Road (R121)

between Canterbury Gate Apartment and M3 Mulhuddart Service Station, Navan Road, Dublin 15. The overall development comprised the realigning of the existing road to provide a 6.5m road and all associated footpaths, verges, cycle tracks, street lighting, signage, road markings, pedestrian crossing points, landscaping, boundary treatments, drainage works, piped and other services, and other ancillary works necessary to facilitate the development.

The application was refused for the following 3 no. reasons:

- Having regard to the distances from the proposed realigned road, including the constructed embankment, to the bank of the River Tolka, the proposed development would materially contravene Objective DMS171 of the Fingal County Development Plan which is to 'ensure that no development, including clearance and storage of materials, takes place within 10m - 15m as a minimum, measured from each bank of any river, stream or watercourse'. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
- The proposed development is located in an area at risk of flooding. Having regard to the lack of compensatory storage provided for Flood Zone B and based on the information submitted, the Planning Authority is not satisfied that the development would not increase the risk of flooding downstream. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
- Based on the information submitted, the Planning Authority is not satisfied that consent to make the planning application has been provided from all relevant landowners. In the absence of this consent it would be inappropriate to grant permission for the proposed development.

4.1.3. **SHD/013/20 (ABP-311771-21):** Planning permission refused by the Board which sought permission for:

- i. Construction of 189 no. Build to Rent apartments (comprising 63 no. one bed apartments and 126 no. two-bed apartments) across 4 no. blocks (A-D) ranging in height from five-storey over lower ground floor car park to ten storeys over lower ground floor car park. Each apartment is provided with its own private

balcony and has access to a landscaped communal open space (4268sqm). Residents also have access to 773.4 sqm of communal amenity spaces, comprising a residential amenity area, parcel drop box, laundry and a 270 sqm creche at ground floor level in Block A; a residential amenity area, parcel drop box and laundry Creche at ground floor level in Blocks B & C; a concierge, parcel drop box and fitness suite with changing facilities at ground floor level in Block D; and a laundry, 3 no. common rooms, beverage prep area, toilets and cleaner's store at first floor level in Block D;

- ii. Provision of 96 no. car parking spaces at lower ground floor level to serve the apartments (including 4 no. limited mobility spaces, 2 no. Go-Car spaces & 10 no. electric charging spaces) accessible from pedestrian entrances on northern facade and vehicular entrance to west of subject site;
- iii. Provision of 7 no. at grade car parking spaces to serve the creche (including 1 no. limited mobility space) accessible from existing entrance off Old Navan Road on western boundary of the site;
- iv. Provision of 410 no. bicycle parking spaces and 7 no. cargo bicycle parking spaces at lower ground floor level to serve the apartments;
- v. Provision of a covered bicycle stand catering for 8 no. bicycle parking spaces at lower ground floor level of Block A to serve the Creche;
- vi. Provision of a new vehicular and pedestrian access serving residents of the apartments off Old Navan Road to the west of the site and vehicular and pedestrian access serving the creche will be provided via existing entrance off Old Navan Road to the east of the site. A set down area for the creche will also be provided;
- vii. Provision of new pedestrian crossing on Old Navan Road linking the proposed development with the Tolka Valley Park;
- viii. Provision of 1,120 sqm of public open space comprising landscaped areas and play areas;
- ix. Road, and streetscape upgrade works along Old Navan Road, Damastown Close, and Damastown Road, to facilitate the provision of a shared footpath/cycle lane and pedestrian crossings to improve links to public transport & local facilities in Mulhuddart; and
- x. All associated site, landscaping and infrastructural works, including tree

planting, boundary treatments, street lighting, internal roadways, footpaths and shared surfaces, ESB substations, foul and surface water drainage, and potable water supply necessary to facilitate the development.

The application was refused for the following 1 no. reason:

- It is considered that Objective SW02 and Objective SW07 of the Fingal County Development Plan 2017 - 2023 require that there be no new development within floodplains other than development which satisfies the justification test and that a site-specific Flood Risk Assessment to an appropriate level of detail, addressing all potential sources of flood risk be provided.

The vehicular access, internal road network and surface level car parking spaces are considered to be an intrinsic element of the residential development and are, therefore, considered as a highly vulnerable use. These uses are located within Flood Zone A and B, which are at risk of pluvial flooding from the River Tolka.

The nature of the proposed development is considered a highly vulnerable use as defined in the Planning System and Flood Risk Management for Planning Authorities (including the associated Technical Appendices), issued by the Department of the Environment, Heritage and Local Government in 2009. A justification test as set out in the Guidelines was not carried out by the applicant and it is considered that proposed development does not satisfy the criteria of the justification test as the mitigation measures provided in the Flood Risk Assessment are not sufficient to manage flood risk to an acceptable level and would be a risk to people and property and prejudicial to public health.

The proposed development would, therefore, be contrary to Planning System and Flood Risk Management for Planning Authorities (including the associated Technical Appendices), issued by the Department of the Environment, Heritage and Local Government in 2009 and Objective SW02 and Objective SW07 of the Fingal County Development Plan 2017 – 2023. The proposed development would, therefore, be contrary to the proper planning and sustainable

development of the area.

- 4.1.4. **F06A/1879:** Planning permission granted by the Planning Authority for the construction of 100 apartments (28 no. one bed. 60 no. two bed and 12 no. three bed) which are distributed in 4 no. four storey blocks. The development also included 2 no. vehicular and pedestrian entrances onto the Old Navan Road; a single storey crèche (239sq.m) with set down area, outdoor play area and 9 no. staff / customer car parking spaces; 44 no. residential surface and 98 no. underground car parking spaces (total car parking spaces = 151); 36 no. surface and 64 no. underground bicycle parking spaces and refuse storage at basement level; landscaped public open space and associated and ancillary site development works including landscaping, erection of stone boundary wall and railing to the Old Navan Road, acoustic timber fencing to southern boundary (onto the N3), foul and surface water drainage, ESB substation, landscaping and boundary treatments.

I note that only one (1) apartment block was constructed as part of this development and this a 4 no. storey apartment building located to the immediate east of the site. The access to this permitted development, surface level car parking and an area of open space associated with this development is included in the application red line boundary as is identified as being within the control of the Applicant.

- 4.1.5. Other applications on the Planning Authority's online application register include F06A/0904 (refusal), F98A/0891 (refusal) and F97A/0800 (refusal).

## **5.0 Policy and Context**

### **5.1. Fingal County Development Plan, 2023-2029 (CDP)**

- 5.1.1. The Fingal County Development Plan, 2023-2029 (CDP) came into effect on 5<sup>th</sup> April 2023, and after the decision of the Planning Authority to refuse planning permission. Therefore, the 2023-2029 Development Plan is the operative plan for the purposes of the appeal determination. The appeal site is subject to 3 no. land use zoning objectives. The majority of the site is zoned RS (Residential) which seeks to 'Provide for residential development and protect and improve residential amenity'. A small portion of lands adjacent to the site's eastern boundary is zoned OS (Open Space)



with the associated land use objective to 'preserve and provide for open space and recreational amenities'. In addition, the western corner of the site is zoned GE (General Employment) where it is an objective to 'provide opportunities for general enterprise and employment'.

5.1.2. The appeal site is located c. 500m to the north-west of Mulhuddart Village and under the current CDP, Mulhuddart is identified as an urban neighbourhood located within the Dublin City and Suburbs Consolidation Area. Chapter 3 of the Plan sets out the strategy to guide successful healthy placemaking and ensure quality housing. It includes a range of policies and objectives which accord with the NPF and RSES, the Housing Strategy and HNDA prepared in support of the Development Plan, and national planning guidance.

5.1.3. Chapter 4 outlines the importance of community infrastructure and open space to healthy place making. Relevant policies and objectives include the following:

- Policy CIOSP2 – Promotes the preparation of community and social infrastructure audits for large-scale developments.
- Objective CIOSO5 – Ensure proposals for large scale residential developments include a community facility, unless needs are already adequately served.
- Objective CIOSO44 – Facilitate the provision of appropriately scaled children's playground facilities within new and existing residential development in line with the Council's Play Policy.

5.1.4. Chapter 5 outlines the role of the plan in helping Fingal realise its potential to be a low carbon society and mitigating the impacts of climate change. It encourages the form, design, and layout of new development to positively address climate change.

5.1.5. Chapter 6 'Connectivity and Movement' recognises and supports a collaborative approach that needs to be taken by all stakeholders to ensure the delivery of a sustainable transport network including key transport projects, new walking and cycling infrastructure, behavioural change initiatives and improved roads access. Relevant policies and objectives include the following:

- Policy CMP2 – Concentrate compact growth around existing and planned

transport services ensuring that travel demand and car-based travel is reduced.

- Policy CMP25 – Implement a balanced approach to car parking, using parking as a demand management measure to promote a transition towards more sustainable forms of transportation, while meeting the needs of businesses and communities.

5.1.6. Chapter 9 deals with ‘Green Infrastructure and Natural Heritage’ and aims to develop and protect a network of interconnected natural areas, biodiversity, and natural heritage. Objective GINHO20 relates to new residential development proposals and seeks, where appropriate, to maximise the use and potential of existing parks, open spaces and recreational provision, by upgrading and improving the play and recreational capacity of these existing facilities through development contributions in lieu of new open space or play provision.

5.1.7. Chapter 11 deals with ‘Infrastructure and Utilities’. The Chapter outlines a range of policies and objectives to develop and protect water and waste infrastructure, and to protect air, noise, and light conditions.

5.1.8. Chapter 14 outlines ‘Development Management Standards’ in an aim to ensure that development occurs in an orderly and efficient manner which contributes to the Core Strategy and related policies and objectives. Relevant aspects include the following:

- Section 14.5.2 and 14.5.3 promote building density and height in accordance with national and regional policy and guidance.
- Section 14.6 outlines a range of design criteria and standards for various types of residential development, which is based on national guidance documents including the Apartments Guidelines.
- Section 14.13 deals with Open Space based on the principles of ‘Hierarchy and accessibility’, ‘Quantity’, and ‘Quality’. The following elements are noted:
  - Objective DMSO50 – Require the monetary value in lieu of play facilities to be in line with the Fingal County Council Development Contribution Scheme.
  - Objective DMSO51 – Requires a minimum public open space provision of 2.5 hectares per 1000 population.
  - Section 14.13.2. - It is the intention of the Council to ensure, except under

exceptional circumstances, that public open space provision exceeds 10% of a development site area.

- Objectives DMSO52 and DMSO53 – Require that public open space shall be provided in accordance with Table 14.12 and other provisions.
- Objective DMSO56 – Ensure every home within a new residential scheme is located within 150 metres walking distance of a park.
- Objective DMSO57 – Require the monetary value in lieu of open spaces to be in line with the Fingal County Council Development Contribution Scheme.
- Objective DMSO68 – Provide appropriately scaled children’s playground facilities within residential development (4sq.m. per residential unit).
- Objective DMSO69 – Ensure that equipped playgrounds shall occupy an area of no less than 0.02 hectares and include a minimum of one piece of play equipment for every 50sq.m.
- Section 14.17 ‘Connectivity & Movement’ outlines a range of transport standards and objectives, including bicycle and car parking standards.

## **5.2. Section 28 Ministerial Guidelines.**

5.2.1. Having considered the nature of the proposal, the receiving environment, and the documentation on file, I am of the opinion that the directly relevant Section 28 Ministerial Guidelines are:

- Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024).
- Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020, updated in 2023) (the ‘Apartment Guidelines’).
- Regulation of Commercial Institutional Investment in Housing – Guidelines for Planning Authorities (May 2021).
- Urban Development and Building Height, Guidelines for Planning Authorities (2018) (the ‘Building Height Guidelines’).
- Design Manual for Urban Roads and Streets (DMURS) (2019).
- The Planning System and Flood Risk Management (including the associated Technical Appendices) (2009).
- Childcare Facilities – Guidelines for Planning Authorities 2001 and Circular PL3/2016 – Childcare facilities operating under the Early Childhood Care and Education (ECCE) Scheme.

Other relevant national guidelines include:

- Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment, (Department of Housing, Local Government and Heritage) (August 2018).
- Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities (Department of Environment, Heritage and Local Government, 2009).

### **5.3. Climate Action Plan (CAP) 2023**

### **5.4. Project Ireland 2040 National Planning Framework (NPF)**

5.4.1. The NPF is the Government's high-level strategic plan for shaping the future growth and development of the country to the year 2040. A key element of the NPF is a commitment towards 'compact growth', which focuses on a more efficient use of land and resources through reusing previously developed or under-utilised land and buildings. It contains several policy objectives that articulate the delivery of compact urban growth as follows:

- NPO 3 (b) aims to deliver at least 50% of all new homes targeted for the five cities within their existing built-up footprints.
- NPO 4 promotes attractive, well-designed liveable communities.
- NPO 6 aims to regenerate cities with increased housing and employment.
- NPO 11 outlines a presumption in favour of development in existing settlements, subject to appropriate planning standards.
- NPO 13 promotes a shift towards performance criteria in terms of standards for building height and car parking.
- NPO 27 seeks to integrate alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility.
- NPO 33 prioritises new homes that support sustainable development at an appropriate scale relative to location.
- NPO 35 seeks to increase densities through a range of measures including site-based regeneration and increased building heights.

## **5.5. 'Housing for All - a New Housing Plan for Ireland (September 2021)'.**

- 5.5.1. is the government's housing plan to 2030. It is a multi-annual, multi-billion-euro plan which aims to improve Ireland's housing system and deliver more homes of all types for people with different housing needs. The overall objective is that every citizen in the State should have access to good quality homes:
- To purchase or rent at an affordable price,
  - Built to a high standard in the right place,
  - Offering a high quality of life.

## **5.6. Regional Spatial and Economic Strategy for the Eastern and Midland Region (RSES).**

- 5.6.1. The primary statutory objective of the RSES is to support implementation of Project Ireland 2040 and the economic and climate policies of the Government by providing a long-term strategic planning and economic framework for the Region. A key National Strategic Outcome (NSO 1) in the NPF and Regional Strategic Outcome (RSO 2) in the RSES is the need to achieve ambitious targets for compact growth in our urban areas.

## **5.7. Spatial Planning and National Roads Guidelines for Planning Authorities, DoECLG (January, 2012).**

## **5.8. Natural Heritage Designations**

- 5.8.1. The nearest designated site is Rye Water Valley / Carton SAC (Site Code: 001398) (7.2km). There are also a number of European sites associated with Dublin Bay and include the South Dublin Bay and River Tolka Estuary Special Protection Area (SPA) (004024), the South Dublin Bay Special Area of Conservation SAC (000210), the North Dublin Bay SAC (000206) and the North Bull Island SPA (004006). The designated sites are located between c. 13km & 16km to the east of the appeal site.

## **5.9. EIA Screening**

- 5.9.1. 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, therefore, is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1. A First Party appeal has been prepared and submitted on behalf of the Applicant. The appeal statement provides a description of the site and surrounds and an overview of the subject proposal. The appeal submission also summarises the planning history of the site and surrounds. The grounds of appeal can be summarised as follows:

- *The proposed development demonstrates compliance with local and national transportation development.*
- *TII, the state agency that operates, maintains and improves the country's road infrastructure did not raise any concerns about the proposed development in the context of the N3 upgrade.*
- *The provision of an attenuation basin on the subject site would make the site unviable in terms of residential development and the provision of dwellings.*
- *The development is consistent with the proper planning and sustainable development of this area.*

6.1.2. It is highlighted within the submission that the subject site currently provides access to drainage pipes for the existing road which traverse the site from south to north into the Tolka Valley and have been identified on the engineering drawings submitted with the application. The appeal submission contends that it is inappropriate to provide an attenuation basin for the N3 on the subject site and that more suitable sites are located nearby. The appeal site is zoned RS and given the current housing crisis, it would be nonsensical to sterilise these lands by providing an attenuation facilities to serve the N3. The submission notes that it would also be prohibitively expensive for TII to compulsory purchase the land for this purpose.

6.1.3. As part of the appeal, the Applicant's consulting engineers have conducted a search for a suitable alternative location for the attenuation basin. The submission notes that there is a large landholding within the Tolka Valley which does not fall into any flood

zone, thus providing a more suitable alternative to the subject site for the provision of an attenuation basin. Appendix C of the appeal submission includes a Technical Note and associated drawings from the Applicant's consulting engineer which indicates that an attenuation basin can be provided on lands to the north of the Old Navan Road, either on lands to the north-east which are within the control of the Local Authority or to the north-west which are within the control of the Applicant. The submission notes that the Local Authority previously gave consent to the Applicant to include these lands in an application which sought consent for the realignment of the Old Navan Road. It is stated that these lands are zoned HA (High Amenity) and it is considered that the provision of SuDS infrastructure (i.e. attenuation basin) is in keeping with this zoning objective.

- 6.1.4. The appeal submission notes that TII, the state agency that operates, maintains and improves the country's road infrastructure did not raise any concerns about the proposed development in the context of the N3 upgrade. It is contended by the Applicant that if the proposed development was problematic to the delivery of the strategic road upgrades, TII would have flagged this and recommended a refusal of permission in their observation.
- 6.1.5. The appeal submission also highlights that this issue was raised by the Planning Authority in the previous SHD application (311771-21) on the site. Although this application was refused by the Board for reasons relating to flood risk, it is stated that this matter was dealt with by the Planning Inspector who indicated that it would be unreasonable to refuse planning permission having regard to the lack of specific detail regarding the potential location for an outfall to serve the N3 and the lack of a timeframe for such works. The appeal submission contends that proposed residential development on zoned residential lands is an appropriate form of development for the site and there are more appropriate alternative locations for SuDS measures to serve the N3.
- 6.1.6. In response to concerns raised in the Planner's Report, it is stated that the Applicant had instructed the design team to prepare revised drawings with minor modifications. These revisions seek to overcome concerns regarding the absence of bicycle storage

lockers, separations distances and overlooking and the revised drawings are included within Appendix B of the appeal submission. Section 5.0 of the appeal also addresses the issues raised in the Planner's Report which they note would ordinarily be dealt with by way of further information. This section of the appeal statement provides a response to concerns regarding:

- Overlooking,
- Daylight Analysis,
- Phasing of Development,
- Procedural Issues - Consent,
- Public Open Space,
- Communal Open Space,
- Car Parking,
- Bicycle Parking, and,
- Noise Levels.

6.1.7. The following appendices accompanied the appeal submission:

- Appendix A – Notification of Decision,
- Appendix B – Revised Architectural Drawings,
- Appendix C – Technical Note and Engineering Drawings,
- Appendix D – Technical Note in relating to flood mapping,
- Appendix E – Letter of Consent, and,
- Appendix F – Revised Daylight Analysis.

## **6.2. Planning Authority Response**

6.2.1. The Planning Authority provided a response to the First Party appeal dated 30<sup>th</sup> January 2023. The submission notes that Fingal County Council has been working in collaboration with Meath County Council and TII, to develop a multi-modal transport scheme along a section of the N3 between the M50 and Clonee which has a focus on improving long term access to public transport and reducing the existing and future congestion issues. It is stated that the scheme is currently at the design and environmental evaluation stage and the project engineers are currently working up the attenuation and drainage design drawings and technical documents. Detention basins have been identified as being the most suitable method of managing surface water



run-off to maximise environmental benefits. It is stated that there is a limited scope along the N3 M50 to Clonee Scheme for the provision of sustainable drainage systems in the form of swales and basins because of the urban nature of the site. The lands subject to the proposed development is one of the few locations where it remains possible. As such the Planning Authority reiterates its opinion that the development is premature pending the determination of a road layout for the area or any part thereof as the provision of sustainable/nature-based drainage systems for the N3 is a fundamental design requirement for the scheme. The Planning Authority requests the Board to uphold their decision to refuse permission.

### **6.3. Observations**

- 6.3.1. One (1) no. observation to the appeal has been received from TII. The observation notes that the proposed development is considered to be at variance with official policy in relation to the control of development on/affecting national roads, as outlined in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012), as the proposed development by itself, or by the precedent which a grant of permission for it would set, would adversely affect the operation and safety of the national road network. It is stated that the site of the proposed development is located in close proximity to the preferred and/or approved route of a national road scheme and the proposal could prejudice plans for the delivery of this scheme. A grant of permission, in this instance, was considered to be at variance with the provisions of the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (January, 2012), section 2.9 refers.

### **6.4. Further Responses**

None.

## **7.0 Assessment**

The main issues are those raised in the First Party appellant's grounds for appeal, the Planner's Report on file and the consequent reason for refusal. Overall, I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- N3 Road Improvement Scheme

- Flood Risk
- BTR & Phasing of Development
- Height, Design & Density
- Standard of Amenity
- Noise
- Access & Parking
- Appropriate Assessment

## **7.1. N3 Road Improvement Scheme**

7.1.1. The Applicant is seeking permission for the construction of a residential development on the appeal site which is described as Phase 2 of a BTR development. The scheme comprises a total of 91 no. apartments across 2 no. blocks. Although the principle of a residential development at this location was accepted by the Planning Authority, the application was ultimately refused permission on grounds relating to prematurity, given that there are currently proposals to upgrade a section of the N3 between the M50 and Clonee. The linear shaped site is positioned between the N3 and the Old Navan Road and permission was previously granted on the site for a residential development (i.e. F06A/1879) and a creche. I note that this development was only partially completed with a singular apartment block constructed (Canterbury Gate). This development is identified as being within the control of the Applicant and the entrance, open space area and a number of surface level car parking spaces associated with this development are included within the appeal site. I note that the appeal site also includes the remnants of a partially constructed basement level associated with this expired permission.

7.1.2. Within their assessment of the application, the Planning Authority referred to Table 7.1 of the County Development Plan (2017-2023) which detailed the various road improvement schemes across the County, and which included the N3 upgrade from Littlepace to the M50. Under the current Plan (2023-2029), the Local Authority's Transportation Schemes are set out under Table 6.3, and I note that Objective CMO39b (N3 Scheme) seeks to 'Support and facilitate the TII and Meath County Council in the planning and delivery of the N3 Upgrade between the M50 and Clonee'. It is stated by the Planning Authority that the current design process for the road

improvement scheme has identified the subject site as a preferred location for a drainage attenuation basin as there is a low point close to the proposed development. They go on to note that the provision of sustainable/nature-based drainage systems (SuDS) for the road improvement scheme are considered to be a fundamental design requirement and there is a limited scope along the N3 (M50 to Clonee Scheme) for the provision of SuDS in the form of swales and basins because of the urban nature of the site. In response to the Applicant's appeal, the Planning Authority again note that the scheme is currently at the design and environmental evaluation stage and the project engineers are currently working up the attenuation and drainage design drawings and technical documents. It is stated that detention basins have been identified as being the most suitable method of managing surface water run-off to maximise environmental benefits and the appeal site is one of the few locations where it remains possible. As such, the Planning Authority reiterated their opinion that the development is premature pending the determination of a road layout for the area or any part thereof. Similar concerns have been raised by TII in their observation to the appeal.

- 7.1.3. As part of their appeal, the Applicant contends that it is inappropriate to provide an attenuation basin for the N3 on the subject site and notwithstanding the commentary of the Planning Authority, there are alternative sites located nearby that would be more suitable for locating associated SuDS features. Given the current housing crises, the Applicant objects to the sterilisation of these lands by providing an attenuation basin to serve the N3. In June 2022, Fingal County Council, in collaboration with Meath County Council and TII published the 'Option Selection Report & Preferred Option Confirmation' for the N3 (M50 to Clonee) road improvement scheme (see Appendix 2 of this Report). Included within this documentation are indicative cross sections (existing & proposed) of the N3 and Figure 3 (Emerging Preferred Option - Median Widening between Junction 2 Snugborough and Parslickstown Junction) of this document shows an additional lane provided in each direction which is achieved by reducing the current verge and central median widths. As part of the Planning Authority's response to the appeal, it was noted that a further non-statutory consultation may be undertaken in 2023 and it was estimated that a formal submission to An Bord Pleanála seeking permission for the scheme may be made later in 2023,

subject to TII approval processes. I note that currently, there does not appear to have been any further public engagement on the scheme nor has an application been progressed to the Board.

7.1.4. As noted in Section 5 of this report, the Fingal County Development Plan, 2023-2029 came into effect on 5<sup>th</sup> April 2023 and is therefore, the operative plan for the purposes of the appeal determination. The majority of the site is zoned RS (Residential), the objective of which seeks to 'provide for residential development and protect and improve residential amenity'. I note that residential development is identified as a permitted in principle use within this zoning. As detailed in Section 4 of this report, planning permission was previously refused by the Board (ABP-311771-21) for a similar residential development on the appeal site for reasons relating to flood risk. Within the Chief Executive's Report to the Board, the Planning Authority also raised concerns that the proposal had the potential to impact the development of the N3 M50 to Clonee Scheme. The Planning Inspector in that application formed the view that given the lack of specific detail regarding the potential location for an outfall to serve the N3 and the lack of a timeframe for such works, that it would be unreasonable to refuse planning permission on this basis and that details of the location of a potential outfall, if required, to serve the N3 could be agreed prior to commencement of development. I note that the SHD application was lodged with the Board in October 2021 and before the Draft CDP (Stage 2, 2023-2029) was published (February 2022). Although I acknowledge that the design for the road improvement scheme has advanced in the intervening years and that the Planning Authority has suggested that the site may be suitable for attenuation basins to serve the proposed scheme, it is relevant to note the Planning Authority did not seek to rezone the lands in question and the suitability of the subject proposal should therefore be considered in the context of the RS zoning objective that applies to the lands and the various other policy provisions at local, regional and national level that are relevant to the proposed development.

7.1.5. Following on from the foregoing, TII within their observation note that a grant of permission was considered to be at variance with the provisions of Section 2.9 (Protection of Alignments for Future National Road Projects) of the DoECLG Spatial

Planning and National Roads Guidelines for Planning Authorities (January, 2012). This national policy document notes that a development or local area plan should identify any land required for future national road projects including objectives that:

- retain required lands free from development; and,
- ensure that measures are put in place so that any adjacent development of sensitive uses, such as housing, schools and nursing homes, are compatible with the construction and long-term operation of the road.

The policy goes on to note that development objectives, including the zoning of land, must not compromise the route selection process, particularly in circumstances where road scheme planning is underway and potential route corridors or upgrades have been identified and brought to the attention of the Planning Authority. It is stated that inappropriate zonings are contrary to the broader public interest concerning the achievement of value for money for the taxpayer and can significantly increase the cost of land to be acquired for national road schemes. Whilst I acknowledge that CMO39b (N3 Scheme) of the current Plan seeks to support and facilitate the planning and delivery of the N3 Upgrade between the M50 and Clonee, I note that the policy is not prescriptive insofar as restricting or prohibiting the development of the appeal site for a use such as this. Further to this, I again note that there has been no attempt by the Planning Authority to rezone the lands in question or restrict development of this nature through the inclusion of specific policies, despite the road improvement scheme being identified in the preceding County Development Plan. It is also of relevance to note that TII would have been afforded the opportunity to make a submission through the development plan process at draft stage which would allow all involved parties to actively engage in the process and this particular matter. In this regard, I would find it unreasonable to recommend a refusal of permission for the proposed development for reasons relating to prematurity given the zoning provisions that apply to the site, the lack of specific policies restricting development of this nature and in light of policies at local and national level that seek to secure and deliver compact growth within the footprint of our cities and our suburbs.

- 7.1.6. Whilst I accept that SuDS features are a design requirement for an infrastructure project such as this, I would have concerns that the provision of an attenuation basin on the appeal site as suggested by the Planning Authority would fail to represent an

appropriate and efficient use of zoned and serviced land, particularly in light of the various policy provisions that seek to achieve this aim. At local level, Policy CSP14 (Consolidation and Re-Intensification of Infill/Brownfield Sites) of the current Plan seeks to 'support the consolidation and re-intensification of infill/brownfield sites to provide high density and people intensive uses within the existing built up area of Dublin City and suburbs...'. Policy CSP15 (Compact Growth and Regeneration) also seeks to 'Support the implementation of and promote development consistent with the National Strategic Outcome of Compact Growth as outlined in the NPF and the Regional Strategic Outcome of Compact Growth and Regeneration as set out in the RSES. In addition, it is an aim under Policy CSP18 (Promotion of Residential Development) to 'promote residential development addressing the current shortfall in housing provision and meeting target guidance figures, through a co-ordinated planned approach to developing appropriately zoned lands at key locations, including regeneration areas, and vacant and underutilised sites'.

- 7.1.7. In the context of the NPF, NPO 3a, b and c seek the delivery of new homes within the footprint of existing settlements, that at least 40% of all new homes nationally, are delivered within the built-up footprint of existing settlements and that at least 30% of all new homes that are targeted in settlements, are delivered within their existing built-up footprints. Further to this, a key National Strategic Outcome (NSO 1) in the NPF and Regional Strategic Outcome (RSO 2) in the RSES is the need to achieve ambitious targets for compact growth in our urban areas. The RSES notes that urban regeneration and infill sites can contribute to sustainable compact growth and the revitalisation of existing settlements of all scales. The policy recognises that securing compact growth will help to address National Policy Objective 3a, 3b and 3c of the NPF which targets the delivery of new homes within the footprint of existing settlements. Whilst I fully accept that the development of a singular site should not unduly impede or restrict a road improvement scheme such as this, the provision of an attenuation basin would effectively sterilize the subject site and I am not satisfied that it has been demonstrated that there are not alternative sites that would potentially be more suitable for supporting SuDS infrastructure when considering the policy provisions that I have outlined above. In this context, I refer again to Section 2.9 of the Spatial Planning and National Roads Guidelines for Planning Authorities (January,

2012) where it is stated that inappropriate zonings are contrary to the broader public interest concerning the achievement of value for money for the taxpayer and can significantly increase the cost of land to be acquired for national road schemes.

7.1.8. Following on from this, I note there are 2 no. surface water pipes (1,050mm dia & 375mm dia) that traverse the site in a south to north direction. From the information on file, these pipes appear to currently form part of discharge for the N3 and ultimately discharge into the River Tolka, c. 35m to the north of the appeal site. The location of the existing surface water pipes has been identified in the Applicant's engineering drawings (i.e. Drawing No. 180163-X-05-Z00-DTM-DR-DBFL-CE-1301) and on Figure 2 of the submitted Infrastructure Design Report. The existing pipes are to be located within the development's public open space area and the Infrastructure Design Report confirms that the pipes are to be retained in their current position as they will not be impacted by the proposed development.

7.1.9. As part of the First Party appeal, the Applicant's consulting engineer has identified alternative lands that would be suitable for accommodating SuDS infrastructure associated with the road improvement scheme. The Applicant has identified lands within the control of the Local Authority within the Tolka Valley Park to the north and north-east of the appeal site. These lands are zoned HA (High Amenity) and low impact infrastructure such as nature based SuDS are generally deemed to be compatible with this zoning objective. The Applicant has provided mapping to demonstrate that these lands are not susceptible to flood risk (i.e. Flood Zone C) and would be potentially suitable for accommodating SuDS features such as attenuation basins. I note that the mapping provided by the Applicant (i.e. Drawing No. M02127-06\_FIG\_FL117) is generally consistent with the flood zone mapping provided in the current CDP's Strategic Flood Risk Assessment (See Appendix 3 of this report). There are also a number of local map based objectives contain within the CDP for the Tolka Valley Park and an indicative route for the (GDA) Cyle Network Plan, all of which are unlikely to be impacted by the provision of nature based SuDS. In addition, there is a swathe of lands zoned HA located further to the west of the appeal site and immediately adjacent the N3, a portion of which is also located outside a designated flood zone (i.e. Flood Zone A & B). Lands such as this are likely be utilised for

agriculture and may represent an alternative location for supporting infrastructure such as this. I note that the Applicant has indicated in their submission that they are agreeable to a wayleave through their lands so that a new outfall could be provided adjacent to their site and a connection be provided to the lands to the north. The appeal submission notes that they have identified the low point within their site which is at the site's eastern end and this wayleave has been indicatively identified on Drawing No. 180163-X-05-Z00-DTM-DR-DBFL-CE1321. It is also indicated that wayleaves can be provided over the 2 no. existing surface water pipes that traverse the western end of the site. I am therefore satisfied that this matter could reasonably be addressed by way of condition should the Board be minded to grant permission. I have therefore recommended a suitable condition in this regard.

7.1.10. In summary, I have had regard to;

- The totality of the documentation on file, including the recommendations of the Planning Authority and TII,
- The 'RS' zoning objective of the newly adopted County Development Plan that applies to the majority of the lands,
- The nature of the proposed residential development,
- The policy provisions of the current County Development Plan, the RSES and the NPF which seek to promote residential development at appropriate locations to address the current shortfall in housing provision and in order to achieve ambitious targets for compact growth in our urban areas,
- The location of the appeal site within walking distance of Mulhuddart Village, a range services, amenities, locations of employment and public transport and the Applicant's proposals to improve pedestrian and cyclist connections to same, and,
- The potential alternative locations that may be suitable for accommodating ancillary SuDS features associated with the N3 road improvement scheme and the willingness by the Applicant to facilitate same.

In light of the foregoing, it is my view that the development of the appeal site for a residential development of this nature is consistent with the provisions of the current County Development Plan and will represent a more efficient and sustainable use of the appeal site. For the reasons I have outlined in the foregoing, it is my view that a



refusal of permission on grounds of prematurity is unreasonable, and I therefore consider the proposed development to be generally in accordance with the proper planning and sustainable development of the area.

## **7.2. Flood Risk**

- 7.2.1. Permission had previously been refused by the Board (ABP-311771-21) for a residential development on the appeal site. In their previous determination, the Board formed the view that the vehicular access, internal road network and surface level car parking spaces were an intrinsic element of the residential development and were therefore classified as highly vulnerable uses. These elements of the development were located within Flood Zone A & B and were considered to be at risk of fluvial flooding from the River Tolka. The Board noted that the proposed development failed to comply Objectives SW02 & SW07 of the CDP (2017-2023) and the Planning System and Flood Risk Management for Planning Authorities (including the associated Technical Appendices) and the proposal was therefore considered to be contrary to the proper planning and sustainable development of the area.
- 7.2.2. With the exception of the development now being proposed on a phased basis (i.e. Phase 1 & 2), the current scheme is broadly similar to the one previously proposed. However, the Applicant has sought to overcome the previous reason for refusal by relocating the proposed vehicular entrance to a position further to the east along the Old Navan Road and outside Flood Zones A & B. In support of the application, the Applicant has submitted a Site Specific Flood Risk Assessment (SSFRA) for the proposed development. Section 4.2.2 of the assessment and the associated modelling and mapping (Appendix D & E) notes that it has been determined that the 1% AEP (Flood Zone A) and 0.1% AEP (Flood Zone B) events cause out-of-bank flooding from the River Tolka adjacent to the site. Flood Zone A and B both encroach into a minor portion of the north of the site. The flood mechanism is a low point in existing ground along the north of the Old Navan Road that allows floodwater to pass through and pond on lower lying parts of the road. The SSFRA notes that mitigation of flood risk will be achieved by siting the proposed development outside the 1% AEP and 0.1% AEP flood extents and ensuring that finished ground floor levels provide sufficient freeboard.

- 7.2.3. Section 3.1 of the SSFRA indicates that proposals for the site have been developed on the basis of the Flood Zone Map provided in Appendix E, in line with the OPW Guidelines and Local Authority requirements, to ensure that there is no proposed development within the floodplain / Flood Zones and that safe access / egress will be possible during an extreme flood event. Table 4.3 of the SSFRA shows the modelled flood levels determined at model nodes located upstream of, adjacent to, and downstream of the site, as well as at a location adjacent to the site entrance which shows no change to flood levels compared to the existing scenario. Therefore, the SSFRA contends that the proposed development cannot and does not have any impact on flood risk elsewhere. Details relating to proposed mitigation is discussed in Section 5.2 of the assessment. In terms of addressing the previous reason for refusal, the SSFRA notes that the proposed layout includes the site entrance outside the existing natural floodplain of the River Tolka that encroaches into the Old Navan Road. It is therefore contended that site access / egress outside the floodplain will be possible during an extreme flood event.
- 7.2.4. As per Table 3.1 of the Planning System and Flood Risk Management Guidelines, 2009, the proposed development is classified as 'Highly Vulnerable Development' given its residential nature. Although not an identified use in the Guidelines, a creche would be broadly similar to a school and in my view would also be considered highly vulnerable development. Within their assessment of the application, the Planning Authority noted that the OPW flood maps for the Tolka River are currently 'under review' and in the absence of these maps, the Applicant's consultants had prepared a detailed hydraulic model of the Tolka River and key tributaries to gain an improved understanding of the flood risk on the site. This approach was deemed to be acceptable by the Planning Authority. It is noted within their assessment that the proposed vehicular access is now outside the potential flood zone areas and the finished floor levels of the proposed residential units provided a generous freeboard and are also located outside areas of flood risk. The proposed development was therefore considered to be acceptable in this regard. In the intervening period, I note that the current Plan's SFRA has been adopted. It is evident that the current flood mapping for the site (Sheet No. 18, Appendix A of the SFRA) broadly aligns with the

modelling provided by the Applicant and the proposed development and its vehicular access are now located outside areas that are susceptible to flood risk. Having regard to the updated flooding mapping of the current Plan's SFRA and the modified scheme which provides for a relocated site entrance, I am satisfied that the proposal has successfully overcome the previous reason for refusal and the proposed development is therefore not susceptible to a risk of flooding.

### **7.3. BTR & Phasing of Development**

- 7.3.1. I note that the Section 28 Guidelines 'Design Standards for New Apartments' (July 2023) omit Specific Planning Policy Requirements (SPPRs) 7 and 8 as previously existed in the 2020 version of the Guidelines. The effect of the omissions is that BTR is no longer a distinct class of development for planning purposes, and that planning standards for BTR development are required to be the same as those for all other generally permissible apartment types. Section 5.0 of the Guidelines continues to recognise BTR development as a valid form of rental accommodation and sets out typical characteristics, but with no allowable divergence from the minimum standards for apartments generally, which are set out in Sections 3.0 and Section 4.0 of the Guidelines. This ensures that apartment developments, irrespective of the intended end user, will be designed to the same minimum standards.
- 7.3.2. Notwithstanding this, the 2023 Guidelines include transitional arrangements which outlines that all current appeals, or planning applications, that are subject to consideration within the planning system on or before 21<sup>st</sup> December 2022, will be considered and decided in accordance with version of the Guidelines issued prior to the BTR update i.e. the version of the Apartment Guidelines that includes SPPRs 7 and 8 will remain applicable. I am satisfied that the current appeal case complies with these conditions and that, accordingly, the 2020 version of the Guidelines should apply, including SPPR 7 and SPPR 8.
- 7.3.3. Given the nature of the proposed development Objective DMSO25 (Applications for Build to Rent Schemes) is relevant to the consideration of the appeal. The policy acknowledges that BTR serves an important role in meeting housing demand and provides an additional housing tenure option in the market. However, it is important to

ensure that no one housing type dominates and a mix of housing options and tenures is preferable in achieving a sustainable housing mix. Objective DMSO25 requires applications for BTR schemes shall be required to, be accompanied by an assessment of other permitted BTR developments in the vicinity (3km) of the site including a map showing all such facilities to demonstrate that the development would not result in the overconcentration of one housing tenure in a particular area. In assessing the matter of overconcentration, the Planning Authority will have regard to factors such as:

- The number and scale of other permitted BTR development in the vicinity (3km) of the site,
- The household tenure and housing type of existing housing stock in the approximate vicinity (3km) of the site, and
- The proximity of the proposal to high-capacity public transport stops and interchange (such as DART, MetroLink, LUAS and BusConnects)

As the application was submitted before the adoption of the current Plan, this exercise has not been undertaken by the Applicant. However, having reviewed the online planning application register, it is apparent that there is not an over-concentration of BTR development within the surrounding area. In addition, it was evident from my observations when inspecting the site and surrounds that traditional housing is a characteristic of the wider area and I am satisfied that the proposal can make a positive contribution in terms of the mix of tenure that is currently available. Overall, I deem the principle of a BTR development to be acceptable at this location and I note that this matter has not been disputed by the Planning Authority. Given the nature of the proposed development, I also recommend the inclusion of a condition which shall require the Applicant to submit an Operational Management Plan for the proposed BTR development.

- 7.3.4. The proposed development comprises Phase 2 of a BTR residential development. As noted, the proposal comprises the construction of 2 no. apartment blocks (91 no. apartments (i.e. Block C & D)). There is a concurrent appeal on the subject site (ABP-315450-23 (FW22A/0237)) for Phase 2 of the development which comprises the construction of an additional 91 no. apartments across 2 no. additional apartment blocks (i.e. Block C & D). In their assessment of the application, the Planning Authority had raised concerns regarding the phased nature of the proposed development and

in particular, how residents within Phase 1 would access the public open space area within the western corner of the site if Phase 2 was not constructed. Concerns were also raised with respect to noise impacts associated with the construction of Phase 2 if the apartments within Phase 1 were occupied.

- 7.3.5. I would share the Planning Authority's view that the Phase 1 of the development is reliant to a degree on elements proposed as part of current proposal, namely the communal amenities and facilities which form an integral component of any BTR scheme. Should there be a situation where the current scheme did not progress, I would also have concerns regarding the open space provision and its disjointed nature, and the potential visual impacts associated with a partially completed development. The would be exacerbated given the current proposal (Blocks C & D) is fully integrated within the scheme. Therefore, it is my view that the construction of both phases of the overall development should be carried out in tandem and a suitable condition should be attached in this regard. I note the Applicant in their appeal submission has confirmed that they are agreeable to a similar condition.

#### **7.4. Height, Design & Density**

Phase 2 of the development comprises the construction of Blocks C & D which have heights that range from between 6 no. storeys (Block D) to 10 no. storeys (Block C), all above a lower ground level car parking area. Block C is centrally located within the site, and it is proposed to raise the ground levels at this location to accommodate the lower ground floor level car park. This results in the site being elevated relative to the N3 to the south (c. 2m differential between ground floor level FFL and the N3). I note the building provides a minimum setback of c. 10m from the southern boundary and is separated from this boundary by a landscaped embankment and a pedestrian walkway. A separation distance of c. 38m is provided between Block C and D and Block D is set back a minimum of c. 7m from the southern boundary. The site levels are also proposed to be raised along the southern boundary which allows the pedestrian pathway to be extended west, where it connects with the area of public open space. On its northern side, the buildings will read as 11 and 7 no storeys respectively and I note lower ground floor level each building will be elevated relative to the new pedestrian footpath along the southern side of the Old Navan Road. The

variation in site levels can be clearly illustrated on the proposed section diagrams (i.e. Drawing No. 3449-P-PH2-301) as submitted with the application.

- 7.4.1. In terms of the overall scale and height, I note that Section 14.5.3 (Building Heights) of the current plan has specific regard to national policies that seek to achieve consolidation, increased densities and long-term strategic development, namely the Urban Development and Building Heights – Guidelines for Planning Authorities 2018 (i.e. the Building Height Guidelines). The policy notes that development proposals which include buildings of increased height and density should clearly demonstrate the suitability and positive impacts of the proposal with reference to the receiving environment, including justification for the height strategy proposed. This includes a demonstration of compliance with the 4 no. Specific Planning Policy Requirements (SPPR's) contained within the Building Height Guidelines. In terms of a justification for the height of the current proposal, the Applicant contends that the goal is to arrive at a solution that enhances the built environment with a high-quality scheme while being sympathetic to its context and planning precedent in the area. It is stated that the proposed development has been designed and scaled to avoid appearing visually obtrusive, whilst ensuring no dis-amenity to existing properties arises by way of overlooking or overshadowing, particularly given the appropriate height of the proposed blocks and the substantial separation distance between the application site and the closest dwellings. The Applicant's planning consultant indicates that the use of appropriate materials across the buildings will also reduce the visual impact of the development and it is considered that this development would be a landmark on the N3, acting as a gateway into the city.
- 7.4.2. SPPR 3 of the Building Height Guidelines notes that where a development proposal complies with the relevant guidance criteria (i.e. Section 3.2) and the assessment of the Planning Authority concurs, the Planning Authority may approve such development, even where specific objectives of the relevant development plan or local area plan may indicate otherwise, taking account of the wider strategic and national policy parameters set out in the National Planning Framework. Notwithstanding this, it is evident that the current CDP does not set out any specific restrictions in terms building height. In addition, SPPR 4 seeks to ensure that a greater mix of building

heights and typologies are achieved in the future development of suburban locations. The appeal site, with its linear shape is positioned between the N3 to the south and the Old Navan Road and the Tolka Valley Park to the north. With the exception of a number of trees which are located towards the eastern end of the northern boundary, the site has been substantially cleared and contains construction related waste material. I note that substantial separation distances have been provided from proposed apartment blocks to the existing Canterbury Gate development to the site's east (i.e. c. 165m). I also acknowledge the lack of any sensitive residential interfaces to west of the site. Having regard to the specific characteristics of the appeal site, I am satisfied that increased building heights can be successfully absorbed at this location. In addition, a graduated building height has been proposed across the 2 no. phases of development and provides an appropriate transition in scale from the existing Canterbury Gate development to the east. Although the development will form a prominent feature when viewed from the N3 and along the Old Navan Road, each block is highly articulated, a generous separation distance has been between provided between the 2 no. blocks which breaks up the overall massing of the development and a staggered building line adds visual interest within the streetscape context. Comprehensive landscaping proposals can also play an important role in integrating a development of this scale into its receiving environment. I will discuss these elements of the design in further detail below. Overall, I am satisfied that the scale of the development proposed is acceptable in the context of the site and the scheme will provide a significant enhancement of the existing streetscape context. I also note that the Planning Authority in their assessment of the application have not raised any concerns with respect to the scale or height of the proposed development.

- 7.4.3. The proposed development has adopted a varied palette of materials and finishes which comprises a combination of grey and buff coloured brick, grey and buff coloured stone cladding, metal cladding, aluminium pressings and ventilation grills with vertical planting. Whilst in principle, the materials chosen are typically high quality and durable finishes, there are elements of the design which require further consideration and amendment. I am satisfied that this matter could reasonably be addressed by way of condition. I note that the detail and quality of the finishes does not come through in the submitted elevations or the photomontages for the development. In my view, the

proposed palette is overcomplicated, and the development has somewhat of a commercial feel which does not respond to the prevailing neighbourhood character. A softer, more restricted palette of materials and finishes is required in this instance, and I suggest the omission of the proposed metal and stone cladding. The use of two contrasting brick tones with a light mortar will successfully address this issue. This, in combination with the proposed winter gardens and splayed windows will successfully articulate each building. Whilst I acknowledge that these changes are of a purely aesthetic nature, each block shall individually form a visually prominent feature within the streetscape given their overall height and it is my view that a simplification of the palette is required so that the scheme can integrate successfully into the site.

7.4.4. As noted, the lower ground floor level is raised relative to the new footpath on the Old Navan Road and will therefore be fully legible within the streetscape. This is evident when viewing the section diagrams and contiguous elevations. Although separation distances are provided between the blocks, this is not the case at lower ground floor level and the car parking level will read as a continuous volume when viewed from the north. I would have concerns regarding the quality of the materials and finishes proposed at this level which utilise a combination of ventilation grills with vertical planting. I am not satisfied that this is an appropriate façade treatment, particularly given its visibility and prominence when viewed from within the development and from the public realm. Notwithstanding this, I note that the lower ground floor level does not form part of the current proposal and forms part of Phase 1.

7.4.5. In terms of the overall density of development, Section 3.5.11.3 (Density) notes that the Local Authority will support higher densities in appropriate locations in accordance with the NPF, RSES and Guidelines issued under Section 28 of the Planning and Development Act 2000, (as amended). The policy notes that the achievement of higher densities ensures the efficient use of land and promotes compact consolidated development in line with national and regional planning policy. This ensures sustainable travel and settlement patterns, enhanced vibrancy and economic vitality of urban and villages centres while ensuring return on investment in key public transport initiatives. As noted earlier in this report, Policy CSP14 (Consolidation and Re-Intensification of Infill/Brownfield Sites) also supports the consolidation and re-



intensification of infill/brownfield sites to provide high density and people intensive uses within the existing built up area of Dublin City and suburbs. Although a density of c. 88 units per ha. is proposed under the current development, the proposal must be considered on the basis of 2 no. phases of development, given both are intrinsically linked. Combined, a density of 184 units per ha is proposed.

- 7.4.6. It is considered that the proposed scheme would represent infill development given its proximity to Mulhuddart Village and its location between an existing apartment development to the east and commercial development to the west. The Apartment Guidelines (2023) note that it is necessary to significantly increase housing supply, and City and County Development Plans must appropriately reflect this and that apartments are most appropriately located within urban areas, and the scale and extent should increase in relation to proximity to public transport as well as shopping and employment locations. The Apartments Guidelines identify intermediate urban locations as sites within or close to i.e reasonable walking distance of a principal town or suburban centres or employment locations and/ or sites within reasonable walking distance of high frequency urban bus services. As per the recently published Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024) (Compact Settlement Guidelines), the appeal site could also be described as an accessible suburban location (Table 3.8: Accessibility). This is due to its location relative to existing high frequency bus services, with the 38, 38A and 38B bus services located within 500m of the appeal site on Damastown Road. Further to this, the site is accessible to large centres of employment and educational centres with the Damastown Industrial Park c. 600m to the north, TU Dublin Blanchardstown c. 1.6km to the north-east, Blanchardstown Shopping Centre c. 2km to the south-east, Blanchardstown Corporate Park c. 2.5km to the north-east and Connolly Hospital Blanchardstown c. 3km to the south-east. Table 3.1 of the Compact Settlement Guidelines notes that densities of up to 150 dph (net) shall be open for consideration within these areas. Whilst I acknowledge that the proposal exceeds this range, I am satisfied that the site can absorb a higher density of development due to its robust interface to the south and its location relative to the Tolka Valley Park to its north. Further to this, I am cognisant of the BTR nature of the scheme, whereby 1 and 2 no. bedroom apartments are solely proposed in this scheme. In developments such

as this, densities will typically be higher when there is no restriction on unit mix as allowable under the relevant SPPR (i.e. SPPR8(i)). On balance, I am satisfied that the proposed development would not result in the overdevelopment of the site and that the proposed density is appropriate in this instance having regard to local, regional and national policy, the characteristics of the site and surrounds and the site's access to public transport, employment and educational centres and its proximity to services and amenities.

## **7.5. Standard of Amenity**

- 7.5.1. As detailed in Section 7.3 of this report, I am satisfied that the 2020 version of the Apartment Guidelines should apply in the case of the subject proposal which includes SPPR 7 and SPPR 8. As per SPPR 7(a), the proposed development has been described in the public notices as a BTR housing development and a draft covenant has been submitted to the Planning Authority for their consideration. The proposal is therefore considered to be acceptable in this regard. In terms of SPPR 7(a)(i) (Resident Support Facilities) and SPPR 7(a)(ii) (Resident Services and Amenities), I again note that facilities and amenities are an integral element of any BTR scheme. A resident amenity area and laundry is provided within Block C and a fitness suite and 3 no. communal rooms are provided across the ground and first floor level of Block D. Overall, I am satisfied that the level of resident amenities and facilities are acceptable in this instance.
- 7.5.2. The Planning Authority has considered the standard of residential development proposed with reference to the Apartment Guidelines. It generally outlined satisfaction with the proposed development in terms of housing mix (SPPR8 compliant), apartment/room size and dimensions, aspect, floor to ceiling height, lift and stair cores and storage areas. The new Development Plan standards are consistent with those of the Apartments Guidelines and, therefore, it is not proposed to revisit all these matters. However, the outstanding issues in relation to residential standards and amenity are discussed in further detail below.

### Private Open Space

- 7.5.3. Appendix 1 of Apartments Guidelines prescribes minimum floor areas for private

amenity space. Although I note that SPPR 8 affords flexibility in relation to the provision of a proportion of private amenity space associated with individual units, each private amenity space across the development is compliant with the Apartment Guidelines in terms of floor area and minimum depth. I note that in this instance, private amenity space has been proposed in the form of winter gardens. This is based upon the outcome of the noise impact assessment report which indicates that the provision of external balconies is not suitable at this location due to the current level of noise on the site. The Planning Authority has raised some concerns with respect to the useability of these spaces given their location relative to the N3 and the associated noise impacts. I will address noise related impacts separately in section 7.6 of this report. In addition, the Planning Authority noted that there is potential for the winter gardens to experience excessive heating, due to the aspect of the site. Whilst it does not specify on the submitted documentation, one would reasonably assume that the proposed winter gardens are operable which provides flexibility to the occupants as to how these spaces can be utilised. Therefore, I would not share the concerns of the Planning Authority with respect to overheating as this can typically be controlled by the Applicant. However, I do recommend a condition which shall require details of the proposed winter gardens to be submitted to the Planning Authority, including with respect to their operability and specifications regarding their acoustic performance.

#### Overlooking and Separation Distances

- 7.5.4. The Planning Authority has raised concerns with respect to the separation distances between the proposed apartment blocks and the potential for overlooking within the development. I note that a separation distance of c. 10.5m is provided between Block C and B (Phase 1) and a distance of c. 38m is provided between Blocks C and D. Objective DMSO23 (Separation Distance) of the current Plan typically requires a minimum separation distance of c. 22 metres between directly opposing windows unless alternative provision has been designed to ensure privacy. The policy goes on to note that in residential developments over three-storeys in height, minimum separation distances shall be increased in instances where overlooking or overshadowing occurs. Notwithstanding this, Section 14.6.6.3 of the Plan notes that in certain instances, depending on orientation and location in built up areas, reduced separation distances may be acceptable. In the case of the subject proposal,

overshadowing is not an issue of concern given the site's orientation and the layout and configuration of the apartment blocks. However, the Applicant has now submitted modified proposals to address the concerns raised regarding direct overlooking.

- 7.5.5. The Applicant notes that the proposed development as submitted to the Planning Authority had utilised deflected window openings to prevent direct overlooking. Additional splayed windows have now been provided as part of the appeal which direct views to the south rather than to the adjacent blocks. Included within Appendix B of the appeal submission are details as to how each apartment will be affected by the revised window design. I note that Drawing No. 3449-P-PH1-130 depicts the relationship between Block C & B to the east. The modification to the design of the development includes the provision of splayed windows, the increase in sill height of windows and the provision of frosted glazing on the side of balconies. Having reviewed the modified plans, I am generally satisfied that direct overlooking is now precluded. In addition, I am satisfied that the revisions to the fenestration does not negatively impact the quality of the internal spaces. Any room where the sill height has been increased are served by an additional window of a conventional height. Overall, I am satisfied that the modifications to the design of the development are acceptable, and the proposal is in compliance with the relevant policy provisions of the current Plan.

#### Daylight

- 7.5.6. In support of the application, the Applicant has submitted a Daylight Analysis and Overshadowing Study. This study examines the Average Daylight Factor (ADF) of apartments within the development and for the purposes of this analysis the bottom two floors of each block were analysed as the worst-case units for daylight ingress. I consider this to be a reasonable approach. Section 3.2 of the Urban Development and Building Height Guidelines (2018) states that the form, massing and height of proposed developments should be carefully modulated so as to maximise access to natural daylight, ventilation and views and minimise overshadowing and loss of light. The Guidelines state that appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlined in guides like the BRE 'Site Layout Planning for Daylight and Sunlight' (2nd edition) or BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting'. The Sustainable

Urban Housing Design Standards for New Apartments Guidelines, 2020 also state that planning authorities should have regard to these BRE or BS standards.

7.5.7. BS 8206-2:2008: Lighting for buildings - Part 2: Code of practice for daylighting 1 gives minimum values of ADF of 2% for kitchens, 1.5% for living rooms and 1% for bedrooms. Section 2.1.14 of the BRE Guidance notes that non-daylight internal kitchens should be avoided wherever possible, especially if kitchens are used as a dining area too. If the layout means that a small internal galley-type kitchen is inevitable, it should be directly linked to a well daylight living room. This guidance does not give any advice on the targets to be achieved within a combined kitchen/living/dining layout. It does however, state that where a room serves a dual purpose the higher ADF value should be applied. Within their assessment, the Planning Authority formed the view that the submitted study was deficient as the table provided within the report did not match the floor plans submitted for the 2 no. blocks being proposed. In addition, it was noted that the study had failed to include plans/diagrams of how the ADF had been calculated and some concerns were raised with respect to the depth of some of the apartments within the Block C where daylight may therefore be restricted.

7.5.8. In support of the appeal, the Applicant has now submitted an updated Daylight Analysis and Overshadowing Study (December 2022). For completeness, the daylight provision to the proposed development was assessed against the following standards:

- BS 8206-2:2008,
- BR 209 / BS EN 17037:2018.

The study notes that the overall daylight provision for the tested spaces in the development are summarised in Table 4, 5 and 6. A 100% compliance rate is achieved in accordance with BS 8206-2:2008 when the Living/Kitchen/Dining rooms are assessed against a 2% ADF target. Under BS EN 17037:2018 Method 2, a compliance rate of 100% is also achieved. Appendix A of the study provides the ADF analysis outputs from the analysis software. Having regard to the updated analysis, I am satisfied that the proposed development will achieve adequate daylight levels and the units within the development will provide a good standard of amenity.

### Sunlight & Overshadowing

- 7.5.9. In terms of sunlight access to the open space areas within the development, Section 3.3 of the BRE guidelines highlights that good site layout planning for daylight and sunlight should not limit itself to providing good natural lighting inside buildings. Sunlight in the spaces between buildings has an important impact on the overall appearance and ambience of a development. It is recommended that at least half of the amenity areas should receive at least 2 hours of sunlight on 21<sup>st</sup> March. Section 3 of the Applicant's study notes that of the total communal and public open space proposed across the scheme (1,959sq.m.), 93.6% (1,834sq.m.) of the open space areas will receive a minimum at least 2 hours of sunlight on 21<sup>st</sup> March. In this regard, I am satisfied that the open space areas will receive excellent solar access. Further analysis with respect to the quality of these open space areas is included in the following section of this report.

### Impacts on Neighbouring Properties

- 7.5.10. As noted, the existing Canterbury Gate apartment development is located to the east of the appeal site. When designing new developments, it is necessary to ensure that daylight to nearby buildings is safeguarded. The Applicant's Daylight Analysis and Overshadowing Study does not include an assessment of adjoining properties and therefore, results have not been provided for Vertical Sky Component (VSC), Daylight Distribution (DD) or Annual Probable Sunlight Hours (APSH) for the apartments within this development. Notwithstanding this, I note that a separation distance of c. m is provided between Block C and the Canterbury Gate development. I am therefore satisfied that the proposed development will not unduly impact the residential amenity of the existing properties by way of overshadowing, loss of daylight/sunlight or by being visually overbearing. Due to the separation distances proposed, I am also satisfied that undue overlooking will not arise. The proposed development is therefore considered to be acceptable having regard to the residential amenity of the site and surrounding area.

## **7.6. Noise**

- 7.6.1. As noted earlier in this report, the Applicant's noise impact assessment recommended the use of winter gardens in lieu of traditional balconies due to the recorded noise

levels on site and the Planning Authority had raised some concerns with respect to the useability of these spaces given their location relative to the N3 and associated noises impacts. Section 14.20.17 (Noise) of the current Plan notes that Appropriate Noise Assessments will be required to be carried out in respect of planning applications for residential and other noise sensitive developments within the relevant noise contours presented by the Strategic Noise Maps in the Fingal Noise Action Plan (Dublin Agglomeration Environmental Noise Action Plan 2018–2023) or any other noise contour maps prepared by Fingal County Council. When examining the relevant Strategic Noise Maps, it evident that this is applicable to the subject proposal given its location relative to the N3. The policy of the current Plan notes that noise assessments should follow the principles of good acoustic design in line with Professional Practice Guidance on Planning & Noise: New Residential Developments 2017 (ProPG)<sup>1</sup> so that development is designed to achieve acceptable internal noise levels. Predicted internal and external noise levels should be in keeping with BSI Standards Publication BS 8233:2014 Guidance on Sound Insulation and Noise Reduction for Buildings, Table 4: Indoor Ambient Noise Levels for Dwellings while external noise should be in accordance with Section 7.7.3.2 Design Criteria for External Noise.

- 7.6.2. As per Section 3.1 & 3.2 of the Applicant's Noise Impact Assessment, the proposed development was assessed having regard to the requirements of ProPG for both internal and external noise levels. I am satisfied that the Applicant's approach is acceptable and in accordance with Section 14.20.17 of the current Plan. Whilst it is accepted that a high noise level exposure in LAeq/LA90 format is recorded on the site, Section 5.2 (Construction Requirements) of their assessment has set out the various requirements with respect to glazed elements, windows and external doors, ventilation systems, wall constructions, roof constructions and the proposed winter gardens. Section 7.7.3.2 (Design criteria for external noise) of BS8233:2014 notes that for traditional external areas that are used for amenity space, such as gardens and patios, it is desirable that the external noise level does not exceed 50 dB LAeq,T, with an upper guideline value of 55 dB LAeq,T which would be acceptable in noisier environments. However, it is also recognised that these guideline values are not achievable in all circumstances where development might be desirable. In higher noise areas, such as city centres or urban areas adjoining the strategic transport network, a

compromise between elevated noise levels and other factors, such as the convenience of living in these locations or making efficient use of land resources to ensure development needs can be met, might be warranted. In such a situation, development should be designed to achieve the lowest practicable levels in these external amenity spaces but should not be prohibited. By providing acoustically treated winter gardens in lieu of balconies, I am satisfied that an appropriate compromise has been reached for the site. The indicative façade glazing requirements for the development are illustrated in Table 5 and Appendix A of the Noise Impact Assessment which shows a mark-up of the required glazing types. I am satisfied that these are appropriate mitigation measures to reduce associated noise impacts and I recommend the inclusion of a condition which requires compliance with same.

## **7.7. Access & Parking**

- 7.7.1. The appeal site is located c. 500m to the north-west of Mulhuddart village. In terms of pedestrian access to the village, there is a continuous public footpath on the northern side of the Old Navan Road with a partial footpath on the southern side from the village towards the Canterbury Gate development to the site's east. Along the site frontage, a speed limit of 60kph applies to this section of the Old Navan Road. The speed limit then reduces to 50kph when approaching Mulhuddart Village. I note that there are no dedicated cycle facilities in the vicinity of the site.
- 7.7.2. It is proposed to access the appeal site via a new vehicular entrance off the Old Navan Road. The entrance will provide direct access to the lower ground floor level car park which is located beneath the proposed 4 no. apartment blocks, all of which is proposed as part of Phase 1 of the overall development. Additional works proposed as part of Phase 1 include the provision of:
- 2 no. priority-controlled junctions with raised table treatment and informal pedestrian crossings;
  - Toucan crossings with raised table treatment;
  - 1 no. traffic calming raised speed cushion between the western and eastern site accesses.
- 7.7.3. In terms of car parking, a total of 105 no. spaces are proposed across the 2 no. phases



of development. 7 no. existing spaces which currently serve the Canterbury Gate development are to be utilised by the proposed creche. The Applicant's Traffic and Transport Assessment notes that it is proposed to provide a reduced number of car parking spaces for the apartments at a ratio of 0.52 spaces per unit. This equates to a total provision of 98 no. spaces for the 190 no. apartment units (i.e. Phase 1 & 2). Included within this are:

- 4 no. mobility impaired spaces;
- 2 no. 'Club Car' Parking spaces; and,
- 10 no. electric vehicle spaces.

7.7.4. The proposed development shall provide a total of 422 no. bicycle parking spaces which comprise 316 no. long term, 98 no. short term / visitor spaces and 8 no. spaces for the creche. The cycle provision also includes 9 no. cargo cycle parking spaces within the lower ground floor car park. 406 no. spaces are provided within the lower level car park. 8 no. spaces are proposed within a covered bike stand to the west of Block D within the area of public open space and an additional 8 no. covered spaces are provided at the eastern end of the site, proximate to the creche car parking.

7.7.5. I note that the report on file from the Planning Authority's Transportation department provides a detailed analysis of the development as a whole. Notwithstanding this, site access, car parking, cycle parking and works to the public realm do not form part of the subject proposal (i.e. Phase 2) and therefore do not form part of this assessment.

## **7.8. Appropriate Assessment**

### **7.8.1. Introduction**

7.8.1.1. This section of my report considers the likely significant effects of the proposal on European sites, with each of the potential significant effects assessed in respect of each of the Natura 2000 sites which are considered to be at risk and the significance of same. The assessment is based on the submitted Appropriate Assessment Screening and Natura Impact Statement (NIS) prepared by Openfield Ecological Services, dated September 2022. I have also had regard to the Bat Survey prepared by Ecofact Environmental Consultants and the Ecological Impact Statement for the proposed development prepared by Openfield Ecological Services. The Screening

Report concluded that potential impacts on three (3) no. identified European sites may arise during the construction phase of the proposed development and an NIS has therefore been prepared.

#### **7.8.2. The Project and its Characteristics**

7.8.2.1. The proposed development relates to the construction of a residential development on the appeal site and a detailed description of the proposal can be found in Section 2 of this report. The site is serviced by public water supply and foul drainage networks. Foul effluent will drain to the existing 675mm diameter public sewer on the Old Navan Road to the north of the site. As part of the Phase 1 proposals, surface water runoff will be directed to the proposed pipe network, discharging into the underground storage tank. The proposed geo-cellular attenuation system is to be located in the car park area. It is proposed to remove the existing underground storage tank and provide a new geo-cellular attenuation system in the open space area between car park and Block A. An existing outfall to the Tolka River is to be retained and shall be utilised as the storm water discharge point. As a result, the proposed surface water catchment subject area will include the whole proposed development and the existing Canterbury Gate development to the east. This gives an overall catchment area of 1.01ha. It is also proposed to retain the existing 1,050mm diameter and 375mm diameter surface water pipes that traverse the western end of the site.

7.8.2.2. The development site is not within or directly adjacent to any Natura 2000 site. The site is located in a developed urban area, adjacent to existing residential development to the east and commercial development to the west. The site is also close to noise and artificial lighting. The site is overgrown, with dense areas of scrub and remnants of the foundations of an unfinished apartment scheme. The site has a direct abuttal with the N3 to the south and the Tolka Valley Park is located to the site's north on the opposite side of the Old Navan Road.

#### **7.8.3. Zone of Influence**

7.8.3.1. I have had regard to the submitted Appropriate Assessment Screening which notes that while the site is not located within or directly adjacent to any Natura 2000 areas, there are a number of Natura 2000 sites sufficiently proximate or indirectly linked to

the site which require consideration of potential effects. The Screening Report identifies the following 6 no. European sites which are located within the appeal site's potential zone of influence:

- Rye Water Valley / Carton SAC (Site Code: 001398) - 7.2km from site.
- South Dublin Bay SAC (Site Code: 000206) - 13km from site.
- South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024) - 13km from site.
- North Dublin Bay SAC (Site Code: 000206) – 14.5km from site.
- North Bull Island SPA (Site Code: 004006) - 16km from site.
- Poulaphouca Reservoir SPA (Site Code: 004063) - 25km from site.

7.8.3.2. Section 2.2 of the Screening Report provides a description of the European sites referenced above and their qualifying interests. The potential Zone of Influence (Zoi) of the proposed project would be seen to be restricted to the site outline with the potential for minor localised noise, dust and light impacts during construction. However, drainage from site, both foul and surface water, would be seen as outputs from the site during the construction and operational phase that could potentially extend to other Natura 2000 sites. The designated area of sites within the inner section of Dublin Bay, namely South Dublin Bay SAC, North Dublin Bay SAC, South Dublin Bay and River Tolka Estuary SPA and the North Bull Island SPA are proximate to the outfall location of the Ringsend WWTP and the River Tolka, and could therefore, reasonably be considered to be within the downstream receiving environment of the proposed development. On this basis, these sites are subject to a more detailed Screening Assessment.

7.8.3.3. In carrying out my assessment, I have had regard to the nature and scale of the project, the distance from the site to Natura 2000 sites, and any potential pathways which may exist from the development site to a Natura 2000 site, aided in part by the EPA Appropriate Assessment Tool ([www.epa.ie](http://www.epa.ie)), as well as by the information on file. I have also visited the appeal site. I am satisfied that the potential for impacts on all other Natura 2000 Sites with the Zone of Influence (i.e. the Rye Water Valley / Carton SAC (Site Code: 001398) & the Poulaphouca Reservoir SPA (Site Code: 004063)) can be excluded at the preliminary stage due to the separation distances between the

European sites and the proposed development site, the nature and scale of the proposed development, the absence of relevant qualifying interests in the vicinity of the works, the absence of ecological and hydrological pathways and to the conservation objectives of the designated sites.

#### 7.8.4. Inspector's Screening Report

7.8.4.1. Having regard to the potential ZOI and the submitted AA document, the following Natura 2000 sites are identified as requiring further consideration for potential impacts due to possible indirect hydrological connections between the development and the European Sites in Dublin Bay via the surface water drainage network and the foul sewer network. The qualifying interests and conservation objectives of the relevant sites are included as follows:

**Table 7.1**

| European Site   | Qualifying Interest/ Conservation Objectives  | Distance to Development |
|---|---|-------------------------|
| South Dublin Bay SAC (000210)                         | To maintain the favourable conservation condition of the qualifying interests.<br><br>Qualifying Interests<br><br>Mudflats and sandflats not covered by seawater at low tide [1140]<br>Annual vegetation of drift lines [1210]<br>Salicornia and other annuals colonising mud and sand [1310]<br>Embryonic shifting dunes [2110]  | 13km                    |
| South Dublin Bay and River Tolka Estuary SPA (004024) | To maintain the favourable conservation condition of the qualifying interests.<br><br>Qualifying Interests<br><br>Light-bellied Brent Goose ( <i>Branta bernicla hrota</i> ) [A046]<br>Oystercatcher ( <i>Haematopus ostralegus</i> ) [A130]<br>Ringed Plover ( <i>Charadrius hiaticula</i> ) [A137]<br>Grey Plover ( <i>Pluvialis squatarola</i> ) [A141]<br>Knot ( <i>Calidris canutus</i> ) [A143] | 13km                    |

|                                |   |        |
|--------------------------------|---|--------|
|                                | <p>Sanderling (<i>Calidris alba</i>) [A144]</p> <p>Dunlin (<i>Calidris alpina</i>) [A149]</p> <p>Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]</p> <p>Redshank (<i>Tringa totanus</i>) [A162]</p> <p>Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179]</p> <p>Roseate Tern (<i>Sterna dougallii</i>) [A192]</p> <p>Common Tern (<i>Sterna hirundo</i>) [A193]</p> <p>Arctic Tern (<i>Sterna paradisaea</i>) [A194]</p> <p>Wetland and Waterbirds [A999]</p>   |        |
| North Dublin Bay SAC (000206)  | <p>To maintain the favourable conservation condition of the qualifying interests.</p> <p>Qualifying Interests</p> <p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Annual vegetation of drift lines [1210]</p> <p>Salicornia and other annuals colonising mud and [1310]</p> <p>Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) [1330]</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p> <p>Embryonic shifting dunes [2110]</p> <p>Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120]</p> <p>Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</p> <p>Humid dune slacks [2190]</p> <p><i>Petalophyllum ralfsii</i> (Petalwort) [1395]</p> | 14.5km |
| North Bull Island SPA (004006) | <p>To maintain the favourable conservation condition of the qualifying interests.</p> <p>Qualifying Interests</p> <p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</p> <p>Shelduck (<i>Tadorna tadorna</i>) [A048]</p> <p>Teal (<i>Anas crecca</i>) [A052]</p> <p>Pintail (<i>Anas acuta</i>) [A054]</p> <p>Shoveler (<i>Anas clypeata</i>) [A056]</p> <p>Oystercatcher (<i>Haematopus ostralegus</i>) [A130]</p> <p>Golden Plover (<i>Pluvialis apricaria</i>) [A140]</p> <p>Grey Plover (<i>Pluvialis squatarola</i>) [A141]</p>  | 16km   |

|  |   |  |
|--|---|--|
|  | Knot ( <i>Calidris canutus</i> ) [A143]<br>Sanderling ( <i>Calidris alba</i> ) [A144]<br>Dunlin ( <i>Calidris alpina</i> ) [A149]<br>Black-tailed Godwit ( <i>Limosa limosa</i> ) [A156]<br>Bar-tailed Godwit ( <i>Limosa lapponica</i> ) [A157]<br>Curlew ( <i>Numenius arquata</i> ) [A160]<br>Redshank ( <i>Tringa totanus</i> ) [A162]<br>Turnstone ( <i>Arenaria interpres</i> ) [A169]<br>Black-headed Gull ( <i>Chroicocephalus ridibundus</i> ) [A179]<br>Wetland and Waterbirds [A999] |  |
|--|---|--|

#### South Dublin Bay SAC (000210):

- 7.8.4.2. This site is comprised of an intertidal site with extensive areas of sand and mudflats. The sediments are predominantly sands but grade to sandy muds near the shore at Merrion Gates. The main channel which drains the area is Cockle Lake. The site is a Special Area of Conservation (SAC) selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive (\* = priority; numbers in brackets are Natura 2000 codes): [1140] Tidal Mudflats and Sandflats [1210] Annual vegetation of drift lines [1310] *Salicornia* and other annuals colonising mud and sand [2110] Embryonic shifting dunes. The bed of Dwarf Eelgrass (*Zostera noltii*) found below Merrion Gates is the largest stand on the east coast. Green algae (*Enteromorpha* spp. and *Ulva lactuca*) are distributed throughout the area at a low density. Furoid algae occur on the rocky shore in the Maretimo to Dún Laoghaire area. Species include *Fucus spiralis*, *F. vesiculosus*, *F. serratus*, *Ascophyllum nodosum* and *Pelvetia canaliculata*. Several small, sandy beaches with incipient dune formation occur in the northern and western sectors of the site, notably at Poolbeg, Irishtown and Merrion/ Booterstown. A small area of pioneer saltmarsh now occurs in the lee of an embryonic sand dune just north of Booterstown Station. This site is a fine example of a coastal system, with extensive sand and mudflats, and incipient dune formations. South Dublin Bay is also an internationally important bird site.

#### South Dublin Bay and River Tolka Estuary SPA (004024):

- 7.8.4.3. The South Dublin Bay and River Tolka Estuary SPA comprises a substantial part of Dublin Bay. It includes the intertidal area between the River Liffey and Dun Laoghaire, and the estuary of the River Tolka to the north of the River Liffey, as well as

Boooterstown Marsh. A portion of the shallow marine waters of the bay is also included. The site is a Special Protection Area (SPA) under the E.U. Birds Directive, of special conservation interest for the following species: Light-bellied Brent Goose, Oystercatcher, Ringed Plover, Grey Plover, Knot, Sanderling, Dunlin, Bar-tailed Godwit, Redshank, Black-headed Gull, Roseate Tern, Common Tern and Arctic Tern. The E.U. Birds Directive pays particular attention to wetlands, and as these form part of the SPA, the site and its associated waterbirds are of special conservation interest for Wetland & Waterbirds.

- 7.8.4.4. The site is an important site for wintering waterfowl, being an integral part of the internationally important Dublin Bay complex. Although birds regularly commute between the south bay and the north bay, recent studies have shown that certain populations which occur in the south bay spend most of their time there. An internationally important population of Light-bellied Brent Goose occurs regularly and newly arrived birds in the autumn feed on the Eelgrass bed at Merrion. At the time of designation the site supported nationally important numbers of a further nine species: Oystercatcher, Ringed Plover, Grey Plover, Knot, Sanderling, Dunlin, Bar-tailed Godwit, Redshank and Black-headed Gull. Other species occurring in smaller numbers include Great Crested Grebe, Curlew and Turnstone. Little Egret, a species which has recently colonised Ireland, also occurs at this site. South Dublin Bay is a significant site for wintering gulls, with a nationally important population of Black-headed Gull, but also Common Gull and Herring Gull. Mediterranean Gull is also recorded from here, occurring through much of the year, but especially in late winter/spring and again in late summer into winter. Both Common Tern and Arctic Tern breed in Dublin Docks, on a man-made mooring structure known as the E.S.B. dolphin – this is included within the SPA.

#### North Dublin Bay SAC (000206)

- 7.8.4.5. This site covers the inner part of north Dublin Bay, the seaward boundary extending from the Bull Wall lighthouse across to the Martello Tower at Howth Head. The North Bull Island is the focal point of this site. North Bull Island is a sandy spit which formed after the building of the South Wall and Bull Wall in the 18th and 19th centuries. It now extends for about 5 km in length and is up to 1 km wide in places. A well-developed

and dynamic dune system stretches along the seaward side of the island. Various types of dunes occur, from fixed dune grassland to pioneer communities on foredunes. Marram Grass (*Ammophila arenaria*) is dominant on the outer dune ridges, with Lyme-grass (*Leymus arenarius*) and Sand Couch (*Elymus farctus*) on the foredunes. Behind the first dune ridge, plant diversity increases with the appearance of such species as Wild Pansy (*Viola tricolor*), Kidney Vetch (*Anthyllis vulneraria*), Common Bird's-foot-trefoil (*Lotus corniculatus*), Common Restharrow (*Ononis repens*), Yellow-rattle (*Rhinanthus minor*) and Pyramidal Orchid (*Anacamptis pyramidalis*). In these grassy areas and slacks, the scarce Bee Orchid (*Ophrys apifera*) occurs.

#### North Bull Island SPA (004006)

- 7.8.4.6. This site covers all of the inner part of north Dublin Bay, with the seaward boundary extending from the Bull Wall lighthouse across to Drumleck Point at Howth Head. The site is a Special Protection Area (SPA) under the E.U. Birds Directive, of special conservation interest for the following species: Light-bellied Brent Goose, Shelduck, Teal, Pintail, Shoveler, Oystercatcher, Golden Plover, Grey Plover, Knot, Sanderling, Dunlin, Black-tailed Godwit, Bar-tailed Godwit, Curlew, Redshank, Turnstone and Black-headed Gull. The site is also of special conservation interest for holding an assemblage of over 20,000 wintering waterbirds. The E.U. Birds Directive pays particular attention to wetlands and, as these form part of this SPA, the site and its associated waterbirds are of special conservation interest for Wetland & Waterbirds. The North Bull Island SPA is an excellent example of an estuarine complex and is one of the top sites in Ireland for wintering waterfowl.

#### Potential effects on Designated Sites

- 7.8.4.7. In terms of potential impacts, the Screening Report indicates that proposed development will not result in the direct loss or disturbance of any habitat within or adjacent to any Natura 2000 site. When considering the impact of the proposal in terms of Habitat disturbance/Ex-situ impacts, the report notes that the development site is located in a heavily urbanised environment close to significant noise and artificial light sources such as roads. Therefore, it is considered that the development cannot contribute to potential disturbance impacts to species or habitats for which Natura 2000 sites have been designated. The development site provides no suitable habitat



for wintering wetland or wading birds which may be associated with the North Bull Island SPA or the South Dublin Bay and River Tolka Estuary SPA and therefore, no ex-situ impacts to Natura 2000 sites can arise. I would agree with the Screening Report's conclusions in this regard.

- 7.8.4.8. In terms of impacts from wastewater associated with the operation of the development, the Screening Report notes that whilst capacity issues at Ringsend wastewater treatment plant are being dealt with in the medium term, evidence suggests that some nutrient enrichment is benefiting wintering birds for which SPAs have been designated in Dublin Bay (Nairn & O'Hallaran eds, 2012). It is considered that no negative impacts to Natura 2000 sites can arise from the additional loading arising from this development as there is no evidence that negative effects are occurring to SACs or SPAs from water quality.
- 7.8.4.9. As there is no alteration to the area of hard surfacing, the Screening Report notes that there can be no negative impact from this development to the quantity or quality of surface water leaving the site. New attenuation measures (SUDS) will ensure that the net impact of the project will be positive on the drainage character of the site. It is stated that these measures are not included to reduce or avoid any effect to a Natura 2000 site and are not mitigation in an AA context.
- 7.8.4.10. In terms of the construction phase of the development, the Phase 1 and Phase 2 works will take place close to the River Tolka which may result in release of sediments to the river. The Screening Report notes that the potential for construction pollution, including sediment and potentially toxic substances such as cement, to reach mudflat habitats, is considered to be very low given the distance from the development site to Natura 2000 sites. Nevertheless, were pollution to occur, particularly from toxic substances, it could affect the biological community in mudflats habitat and thereby affect the conservation objective of the North Dublin Bay SAC. Taking a precautionary approach therefore, and given that pollution of any kind is undesirable, the Screening Report concludes that significant effects to the North Dublin Bay SAC cannot be ruled out. Given that wetland and wading birds rely upon mudflat communities for foraging, and also taking a precautionary approach, it is also concluded that significant effects to the

North Bull Island SPA and the South Dublin Bay and River Tolka Estuary SPA cannot be ruled out. It is stated that no effects are likely to arise to the South Dublin Bay SAC due to the enormous dilution effect of the coastal waters in this area.

#### Consideration of Impacts

7.8.4.11. Having examined the submitted information, I consider that the only likely significant risks to the above four European sites arise from potential construction and/or operational related surface water discharges and wastewater discharges from the development site and the potential for these effects to reach the downstream European sites. I found no evidence to the contrary in my assessment. The following points are noted in this regard:

- The nature and scale of the proposed development being a moderately sized residential development on serviced land.
- The development cannot increase disturbance effects to birds in Dublin Bay given its distance from these sensitive areas (i.e. minimum of c. 13km). There are no sources of light or noise over and above that this is already experienced in this built-up, urbanised location.
- Habitats on the site or on any adjacent lands are not suitable for regularly occurring populations of wetland or wading birds which may be features of interest of the North Bull Island SPA or South Dublin Bay and River Tolka Estuary SPA. The development will not lead to any decrease in the range, timing, or intensity of use of any areas within any SPA by these SCI bird species. The development will not lead to the loss of any wetland habitat area within the SPA and no ex-situ impacts can occur.
- Given the relatively moderate scale of the proposed development, it will make a very small contribution to the overall capacity of the licensed WWTP at Ringsend. Furthermore, I note that upgrade works have commenced on the Ringsend Wastewater Treatment works extension permitted under ABP – PL.29N.YA0010 and the facility is subject to EPA licencing (D0034-01) and associated Appropriate Assessment Screening. It is my view that the foul discharge from the site would be insignificant in the context of the overall licenced discharge at Ringsend WWTP, and thus its impact on the overall discharge would be negligible.

- During the construction phase, standard pollution control measures would be put in place and are outlined in the submitted Construction and Environmental Management Plan (CEMP). These include surface water management, material storage, waste management and other environmental management measures. Notwithstanding the fact that these are identified as mitigation measures in the Applicant's NIS, I am satisfied that these measures are standard practices for urban sites and would be required for a development on any urban site in order to protect local receiving waters, irrespective of any potential hydrological connection to Natura 2000 sites. It is my view that the measures outlined are typical and well proven construction methods and would be expected by any competent developer whether or not they were explicitly required by the terms and conditions of a planning permission.
- I also consider that, even if the aforementioned best practice construction management measures were not in place, the possibility of significant effects on designated sites is unlikely given the nature and scale of the development, the intervening distance between the development and the designated sites and the resultant dilution factor with regard to the conservation objectives of the relevant designated sites and habitats and species involved. I therefore do not include these measures as 'mitigation measures' for the purposes of protecting Natura sites.
- Noise from the works would be localised to the vicinity of the site. Noise from the works would be deemed to have a negligible impact on the SCIs due to the distance from the SPAs.
- The scheme includes attenuation measures which would have a positive impact on drainage from the subject site. In order to restrict surface water drainage, sustainable drainage systems (SuDS) will be implemented. This will include permeable paving, swale, bio-retention area, filter drains and intensive green roof (podium) and extensive green roofs (building). The SUDS measures to be incorporated are not included to avoid or reduce an effect to a Natura 2000 Site.

7.8.4.12. On the basis of the foregoing, I am satisfied that there is no likelihood that pollutants arising from the proposed development either during construction or operation could reach the designated site in sufficient concentrations to have any likely significant

effects on them, in view of their qualifying interests and conservation objectives.

**7.8.5. In-combination Effects.**

7.8.5.1. The expansion of Fingal is catered for through land use planning, including the Fingal County Development Plan, 2023-2029 covering the location of the application site. I note that the development is located on serviced lands in an urban area and does not constitute a significant urban development in the context of the County. As such the proposal will not generate significant demands on the existing municipal sewers for foul water and surface water. While this project will marginally add to the loadings of the municipal sewer, evidence shows that negative effects to Natura 2000 sites are not arising. Furthermore, I note that upgrade works have commenced on the Ringsend Wastewater Treatment Plant (works extension permitted under ABP – PL.29N.YA0010) and the facility is currently operating under EPA licencing which was subject to AA Screening.

7.8.5.2. In-combination effects are also considered in the Applicant's screening report, and it is considered that there are no other plans or projects which are planned or underway which can act in combination with the subject proposal to result in significant effects to Natura 2000 sites. Whilst the Screening Report has failed to mention a number of significant permitted developments within the site's wider surrounds, these mainly relate to other residential development and would be subject to the similar construction management and drainage arrangements as the subject proposal (cannot be considered as mitigation measures as they would apply regardless of connection to European Sites). The Screening Report also refers to Phase 1 (i.e. Ref. FW22A/0228) of the overall scheme which was made concurrently with the subject proposal, and it is stated that the potential impacts from Phase 1 are similar to that of Phase 2. Notwithstanding this, I note that the submitted CEMP focuses solely on Phase 1 of the development and it is my view that a final CEMP which covers both phases of development should be submitted to the Planning Authority for written agreement prior to the commencement of development. The revised CEMP should also provide further detail with respect to the works proposed within the public realm (i.e. shared pedestrian and cyclist path linking the site to Mulhuddart and Damastown Road). Overall, I would agree with the Screening Report's conclusions that there is no

potential for cumulative or in combination effects to arise in this instance.

#### **7.8.6. Conclusion and Screening Determination.**

7.8.6.1. Therefore, in conclusion, having regard to the nature and scale of the proposed development on serviced lands, the nature of the receiving environment which comprises an urban area, the distances to the nearest European sites, and the hydrological pathway considerations outlined above, it is 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 sites, in view of the sites' Conservation Objectives. Notwithstanding that the Applicant has submitted a Stage 2 NIS, it is considered that a Stage 2 Appropriate Assessment is not required. In reaching this conclusion I took no account of mitigation measures intended to avoid or reduce the potentially harmful effects of the project on any European Sites.

### **8.0 Recommendation**

8.1.1. Grant of permission is recommended.

### **9.0 Reasons and Considerations**

9.1.1. Having regard to:

- i. The totality of the documentation on file, including the recommendations of the Planning Authority and TII;
- ii. The 'RS' zoning objective that applies to the majority of the appeal site;
- iii. The nature, scale and design of the proposed development which is consistent with the policy provisions of the Fingal County Development Plan 2023 – 2029, in respect of residential development and appendices contained therein;
- iv. The policies and objectives of the current County Development Plan, the Regional Spatial and Economic Strategy for the Eastern and Midland Region (RSES) and Project Ireland 2040 National Planning Framework (NPF) which seek to promote residential development at appropriate locations to address the current shortfall in housing provision and in order to achieve ambitious targets for compact growth in our urban areas,

- v. The Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024), the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, issued by the Department of the Housing and Planning and Local Government, December 2022 and the Urban Development, the Building Height, Guidelines for Planning Authorities (2018) and the Planning System and Flood Risk Management (including the associated Technical Appendices) (2009); and,
- vi. The pattern of existing and permitted development in the area,

it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would be acceptable in terms of urban design, height and density of development, would not be susceptible to flood risk and would be acceptable in terms of traffic and pedestrian safety and convenience. In this regard, the proposed development would represent an efficient and sustainable use of the appeal site and would therefore be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out in accordance with the plans and particulars lodged with the application, and as amended at appeal stage as received by the Board on 22<sup>nd</sup> December 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

**Reason:** In the interest of clarity.

2. Prior to commencement of the Build-to-Rent element of the proposed development, the developer shall submit, for the written agreement of the planning authority, details of a proposed covenant or legal agreement which

confirms that the Build-to-Rent units permitted shall remain owned and operated by an institutional entity for a minimum period of not less than 15 years and where no individual Build-to-Rent residential units shall be sold separately for that period. The period of 15 years shall be from the date of occupation of the first residential unit within the scheme.

**Reason:** In the interest of the proper planning and sustainable development of the area.

3. Prior to the expiration of the 15-year period referred to in the covenant, the developer shall submit for the written agreement of the planning authority ownership details and management structures proposed for the continued operation of the Build-to-Rent scheme. Any proposed amendment or deviation from the Build-to-Rent model, as authorised by this permission, shall be subject to a separate planning application.

**Reason:** In the interest of orderly development and clarity.

4. The construction of Phase 1 (i.e. Ref. FW22A/0228) and Phase 2 shall be carried out concurrently. In addition, occupancy of the apartments within the development shall be restricted until the proposed creche (Phase 1) is operational.

**Reason:** In the interests of orderly development and the proper planning and sustainable development of the area.

5. The Applicant shall submit full details of the materials, colours and textures of all external finishes for the proposed development. A high quality finish shall be utilised for the acoustic wall serving the proposed creche. In addition, the proposal shall be amended as follows:

- a. The proposed palette of materials and finishes shall be restricted through the omission of the proposed metal and stone cladding. Each apartment block shall utilise a combination of a buff and darker coloured brick with a light coloured mortar.

**Reason:** in the interest of visual amenity and to provide for acceptable standard and quality of development for future residents.

6. Dedicated co-working space shall be provided within each apartment block. The communal resident facilities shall be occupied as part of the development and shall not be occupied as separate commercial facilities. In addition, the Applicant shall submit an Operational Management Plan for the proposed Build-to-Rent residential development prior to commencement of development. The Operational Management Plan shall provide details of the management structure in place and shall provide information relating to:

- a. Reception/concierge;
- b. Staffing;
- c. Moving in/out;
- d. Occupiers facilities;
- e. Car parking management/allocation including details for car sharing;
- f. Deliveries;
- g. Security;
- h. Health and Safety; and,
- i. Building maintenance.

**Reason:** To provide for the satisfactory completion and maintenance of the development in the interest of residential amenity.

7. Noise

- a. The Applicant shall comply with the various construction requirements set out in Section 5.2 of the Noise Impact Assessment dated September 2022.
- b. The Applicant shall submit details of the proposed winter gardens with respect to their operability and specifications regarding their acoustic performance.

**Reason:** In the interest of residential amenity.

8. The developer shall ensure the provision of unrestricted pedestrian accessibility to facilitate direct continuous access through the site, the proposed public open space area and to allow access to the proposed creche. In this regard, any pedestrian gates on the Old Navan Road shall remain permanently unlocked



and accessible to allow for unrestricted pedestrian permeability through the site. In addition, the pedestrian entrance serving the proposed public open space area shall be located c. 15m to the east.

**Reason:** In the interests of pedestrian safety and the proper planning and sustainable development of the area.

9. Prior to the commencement of development, the Applicant shall submit to the Planning Authority for written agreement, a revised Construction Environmental Management Plan (CEMP). The revised CEMP shall have regard to Phase 1 (i.e. Ref. FW22A/0228) and 2 of the development and all works contained within the public realm. This plan shall provide details of the intended construction practice for the development.

**Reason:** In the interest of amenities, public health and safety.

10. Proposals for a naming and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all signs, and numbers shall be provided in accordance with the agreed scheme.

**Reason:** In the interest of the proper planning and sustainable development of the area.

11. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through the communal and public open spaces, details of which shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development/installation of lighting. Such lighting shall be provided prior to the making available for occupation of any housing unit and shall have regard to impact in terms of biodiversity and the recommendations contained within the Bat Survey Report dated September 2022.

**Reason:** In the interests of amenity and public safety.

12. The Applicant shall comply with the recommendations contained within Section 6 (Conclusions and Recommendations) of the Bat Survey Report dated

September 2022.

**Reason:** In the interests of biodiversity.

13. Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the Planning Authority (Water Services Section) for such works and services.

**Reason:** In the interest of public health.

14. Prior to the commencement of development, the developer shall enter into water and waste-water connection agreement(s) with Irish Water.

**Reason:** In the interest of public health.

15. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing overground cables shall be relocated underground as part of the site development works.

**Reason:** In the interests of visual and residential amenity.

16. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

17. Prior to the commencement of development, the Applicant shall prepare and submit a Construction Management Plan to the Planning Authority for their written agreement. The Construction Management Plan shall deal with issues relating to traffic management, noise and dust mitigation measures, site hoarding and security, details of construction lighting and waste minimisation.

**Reason:** In the interest of clarity and to safeguard the amenities of property in the vicinity.

18. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities for each unit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

**Reason:** To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

19. As Phase 1 & 2 exceeds 100 no. residential units, the developer shall provide a piece of public art, sculpture or architectural feature which shall have a relationship with the area. The design, location, and timescale for the piece of art shall be agreed with the planning authority prior to commencement of development.

**Reason:** In the interests of visual amenity and cultural identity.

20. Prior to commencement of development, the developer shall lodge with the Planning Authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the Planning Authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion and maintenance of the development until taken in charge.

21. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application or the terms of the Scheme shall be agreed between the planning authority and the developer, or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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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Enda Duignan  
Planning Inspector

28/02/2024

**Appendix 1 - Form 1  
EIA Pre-Screening  
[EIAR not submitted]**

|   |   |                       |                                  |   |
|---|---|-----------------------|----------------------------------|---|
| <b>An Bord Pleanála<br/>Case Reference</b>  | ABP-315450-23   |                       |                                  |   |
| <b>Proposed Development<br/>Summary</b>   | 91 Build to Rent apartments. Natura Impact Statement (NIS) lodged with application. |                       |                                  |   |
| <b>Development Address</b>  | Land at Canterbury Gate, Old Navan Road, Mulhuddart, Dublin 15.                     |                       |                                  |   |
| <b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b><br>(that is involving construction works, demolition, or interventions in the natural surroundings)  |   | <b>Yes</b>            | Yes                              |   |
|   |   | <b>No</b>             | No further action required       |   |
| <b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) or does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>    |   |                       |                                  |   |
| <b>Yes</b>  |   |                       | EIA Mandatory<br>EIAR required   |   |
| <b>No</b>   | X   |                       | Proceed to Q.3                   |   |
| <b>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]?</b> |   |                       |                                  |   |
|   |   | <b>Threshold</b>      | <b>Comment<br/>(if relevant)</b> | <b>Conclusion</b>                           |
| <b>No</b>   |   |                       |                                  | No EIAR or Preliminary Examination required |
| <b>Yes</b>  | X   | 500 residential units | Class 10(b)(i)                   | Proceed to Q.4                              |

| 4. Has Schedule 7A information been submitted? |   |                                  |
|--|---|----------------------------------|
| No   | X | Preliminary Examination required |
| Yes  |   | Screening Determination required |

Inspector: \_\_\_\_\_

Date: 28<sup>th</sup> February 2024

## Form 2

# EIA Preliminary Examination

|   |   |                              |
|---|---|------------------------------|
| <b>An Bord Pleanála Case Reference</b>  | ABP-315450-23   |                              |
| <b>Proposed Development Summary</b>   | 91 Build to Rent apartments. Natura Impact Statement (NIS) lodged with application.   |                              |
| <b>Development Address</b>  | Land at Canterbury Gate, Old Navan Road, Mulhuddart, Dublin 15.   |                              |
| <p><b>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.</b></p>                    |   |                              |
| •   | <b>Examination</b>  | <b>Yes/No/<br/>Uncertain</b> |
| <ul style="list-style-type: none"> <li>• <b>Nature of the Development</b></li> <li>• Is the nature of the proposed development exceptional in the context of the existing environment?</li> <li>• Will the development result in the production of any significant waste, emissions or pollutants?</li> </ul> | The proposed development is for a residential development within an urbanised area which has a number of existing housing developments and is connected to public services. | <p>No</p> <p>No</p>          |
| <ul style="list-style-type: none"> <li>• <b>Size of the Development</b></li> <li>• Is the size of the proposed development exceptional in the context of the existing</li> </ul>  |   | No                           |

|   |  |                     |
|---|--|---------------------|
| <p>environment?</p> <ul style="list-style-type: none"> <li>Are there significant cumulative considerations having regard to other existing and/or permitted projects?</li> </ul>  |  | No                  |
| <ul style="list-style-type: none"> <li><b>Location of the Development</b></li> <li>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</li> <li>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</li> </ul> | <p>No designations apply to the subject site.</p> <p>The development would be connected to the public wastewater services.</p> | <p>No</p> <p>No</p> |
| <p>• <b>Conclusion</b></p>  |  |                     |
| <ul style="list-style-type: none"> <li><b>There is no real likelihood of significant effects on the environment.</b></li> <li>EIA not required.</li> </ul>  |  |                     |

Inspector: \_\_\_\_\_

Date: 28<sup>th</sup> February 2024

DP/ADP: \_\_\_\_\_

Date: \_\_\_\_\_

(only where Schedule 7A information or EIAR required)

## Appendix 2 - 'Option Selection Report & Preferred Option Confirmation'



**for the N3 (M50 to Clonee) road improvement scheme.**