



An  
Bord  
Pleanála

## Inspector's Report

### ABP-315459-23

<b>Development</b>	Modifications to previously permitted Build to Rent residential development (permitted under Reg. Ref. 3308/20; ABP Ref. 309366-21).
<b>Location</b>	76, 76G & 280 Bannow Road, Cabra, Dublin 7.
<b>Planning Authority</b>	Dublin City Council North
<b>Planning Authority Reg. Ref.</b>	4574/22
<b>Applicant(s)</b>	Colin Daly, Nicola Daly & Andrew Haydon
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	First & Third Party
<b>Appellant(s)</b>	Colin Daly, Nicola Daly & Andrew Haydon.  Serena Quinn and Stephen Hassett.
<b>Observer(s)</b>	Architectural Construction Technology; Cabra Racing Pigeon Club; Henry O'Brien and Others.

**Date of Site Inspection**

03<sup>rd</sup> January 2024

**Inspector**

Bernadette Quinn

## **1.0 Site Location and Description**

- 1.1. The site is located on Bannow Road and forms part of an existing industrial site. The site contains two large industrial units which contain recreational and warehouse uses and a small car park and service yard to the front. The total site area measures a stated 3,000 square metres.
- 1.2. Broombridge Luas depot and the adjoining train and luas line are located to the rear of the site behind which is the Royal Canal. A new residential development has been completed immediately to the west of the site. Cabra Racing Pigeon Club is located adjacent to the north east boundary of the site and is served by a gated access lane. Further east of this is a Dublin City Council maintenance depot. To the south, on the opposite side of Bannow Road, there is a series of terraces containing 2-storey dwellings. The surrounding area is largely characterised by two storey residential development.

## **2.0 Proposed Development**

- 2.1. The application relates to modifications to a previously permitted development (planning permission reference 3308/20) comprising a Build to Rent (BTR) residential development in 2 blocks and seeks to modify this permitted development as follows:
  - The application proposes a total of 64 no. apartments (69 no. apartments previously permitted) comprising 46 no. 1 bed units and 18 no. 2 bed units over basement car park).
  - No changes proposed to previously permitted Block A or retail unit. Block B to now comprise of 44 no. apartments consisting of 43 no. 1 bed and 1 no. 2 bed apartments in a five-storey building.
  - Amendment to site boundary to omit existing Cabra Racing Pigeon Club from site boundary.
- 2.2. The planning authority requested further information to address issues including concerns regarding the impact of the adjoining pigeon club on the development and concerns that the design of north facing units have been changed from previously permitted tri-aspect units. Following receipt of further information the planning officer

was satisfied that the on-going use of the pigeon club would not have an undue impact on the residential amenity of future occupants of the proposed development. In relation to aspect an alternative design option which omitted 1 bed north facing apartments and replaced them with 2 bed apartments with a south facing balcony on each floor on the northeastern part of Block B (Block B-Option A Drawing No.AA-108) was considered acceptable by the Planning Officer who recommended a condition be attached to this effect, reducing the total number of permitted apartments to 59.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

By order dated 05<sup>th</sup> December 2023, Dublin City Council issued notification of the decision to grant planning permission subject to 19 conditions typically of a standard nature. The following condition is of note:

Condition 7: The development shall be amended as follows:

- a) The layout of Block B shall be undertaken in line with Block B-Option A as shown on Drawing No.AA-108; and
- b) All Cosentino Dekton Soke finishes shall be replaced with a brick to match the rest of the development.

Reason: To clarify what is permitted and in the interest of visual amenity and to protect the residential amenities of the area

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

##### **3.2.1. Planning Reports**

- The report is consistent with the decision. No issues raised in relation to EIA and AA.

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

Drainage Division: No objection subject to standard conditions

### 3.3. Prescribed Bodies

Irish Rail – Outlines the need to ensure that the proposed works do not increase risk to the railway and highlights the potential noise and vibration impacts on the proposed units.

### 3.4. Third Party Observations

23 submissions were received in relation to the application. The issues raised are similar to those raised in the third party appeal and include:

- Excessive height and density and resulting impacts on residential amenity of existing properties.
- Substandard level of amenity for the prospective occupants as a result of location of adjoining pigeon club.
- Inadequate infrastructure including roads, parking, water and wastewater.
- Loss of existing community facilities and limited community benefit.
- Concerns about servicing and construction arrangements.
- Concerns relating to Build to Rent nature of development, tenure, occupancy and housing mix.
- Impact on amenity of Royal Canal of overdevelopment of site.

## 4.0 Planning History

### Appeal Site

**2895/19 & ABP Ref. PL304945-19:** On the western portion of the site (i.e. 280 Bannow Road only), on 22/11/2019 the Board upheld the decision of DCC to refuse permission for the demolition of the existing two-storey building and the construction of 32 apartments in 2 blocks for two reasons relating to negative impact on residential amenity as a result of poor quality open space, overshadowing and overbearing, and overdevelopment of site; and inadequate separation distances

between opposing units resulting in lack of privacy and failure to comply with apartment standards relating to room size.

**3308/20 / ABP-309366-21:** Permission granted by DCC for demolition of existing structures and the construction of 69 apartments split over two blocks with social and community centre at basement level. Permission subject to 29 conditions with condition 6 of note. Final grant dated 13/07/2021.

*Condition 6 The development shall be revised as follows:*

*The racing pigeon club shall be omitted from the scheme and the resultant space at basement level shall be omitted. Development shall not commence until revised plans, drawings and particulars showing the above amendments have been submitted to, and agreed in writing by the Planning Authority, and such works shall be fully implemented prior to the occupation of the buildings.*

*Reason: In the interests of orderly development and visual amenity.*

**3448/22:** Permission refused by Dublin City Council on 28/04/2022 for modifications to the previously permitted build to rent residential development (permitted under Reg. Ref. 3308/20; ABP Ref. 309366-21). The proposed modifications consist of a new set back penthouse level at fourth floor level to Block A and the provision of 2 additional floors to Block B and provision of a new community use unit at lower ground floor level/basement level, total of 93 no. apartments proposed (69 no. apartments previously permitted). Refusal reasons relate to impact on residential amenities of existing dwellings and proposed apartments, negative impact on visual amenity and overdevelopment of site.

**ABP-316565-23** – Appeal against the inclusion of land on the Residential Zoned Land Tax. On 21/08/2023 An Bord Pleanála confirmed the determination of the planning authority to include the land for the purposes of Residential Zoned Land Tax.

## **5.0 Policy Context**

### **5.1. Ministerial Guidelines**

5.1.1. Having considered the nature of the proposal, I consider that the directly relevant section 28 Ministerial Guidelines are as follows:

- The Sustainable Residential Development and Compact Settlements, Guidelines for Planning Authorities 2023 provides density ranges for different area types. The city urban neighbourhoods category is defined as including lands around existing or planned high-capacity public transport nodes or interchanges within the city and suburbs area. These are highly accessible urban locations for which it is a policy and objective of these guidelines that residential densities in the range 50dph to 250 dph (net) shall generally be applied. SPPR 3 – Car Parking provides the maximum rate of car parking provision shall be 1 space per dwelling in city centres and urban neighbourhoods. SPPR 4 requires a minimum standard of 1 cycle storage space per bedroom and that visitor cycle parking should also be provided.
- The Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2023) set out national policy and standards for apartment development including recommended standards in relation to aspect, housing mix and minimum floor areas. This document updated previous versions of these guidelines which removed provisions for specific design standards relating to Build-to-Rent apartments and provides for transitional arrangements for applications that were in the planning system prior to the publication of the 2022 version of these guidelines. SPPR 7 provides for build to rent as a specific class of development. SPPR 8 provides that for proposals that qualify as specific BTR development (i) No restrictions on dwelling mix and all other requirements of these Guidelines shall apply, unless specified otherwise; (ii) Flexibility shall apply in relation to the provision of a proportion of the storage and private amenity space associated with individual units and in relation to the provision of all of the communal amenity space. (iii) default or significantly reduced car parking for sites proximate to public transport services.

## **5.2. Development Plan**

- 5.2.1. The Dublin City Development Plan 2022-2028 is the statutory development plan for the area. The site is zoned Z1 – Sustainable Residential Neighbourhoods: ‘To protect, provide and improve residential amenities’. Build to Rent is a defined use which is considered ‘open for consideration’ on this land use zoning.
- 5.2.2. The development plan has regard to national and regional policies in respect of infill development within existing built-up areas. Chapter 4: Shape and Structure of the City emphasises the importance of high quality placemaking to ensure a compact city where people want to live and work. Chapter 5: Quality Housing and Sustainable Neighbourhoods aims to deliver quality homes and sustainable communities in a compact city and in Section 5.5.7 sets out policy in relation to Build to Rent units including appropriate locations for such development. Chapter 15 provides guidance on the creation of high-quality urban environments that make the most efficient use of land, including relating to Apartment Standards and Build to Rent units. Appendix 16: Sunlight and Daylight provides direction on the technical approach for daylight and sunlight assessments.

## **5.3. Natural Heritage Designations**

- 5.3.1. At a distance of c. 5km to the east of the appeal site, the South Dublin Bay and River Tolka Estuary SPA (site code 004024) is the nearest Natura 2000 site. The Royal Canal (c. 60m to the north) is designated as a Proposed Natural Heritage Area.

## **5.4. Environmental Impact Assessment - Preliminary Examination**

- 5.4.1. See Appendix 1 - Form 1 EIA Pre-Screening and Form 2 EIA Preliminary Examination attached to this report. Having regard to the nature and scale of the proposed development which is for modifications to permitted development in which a preliminary investigation confirmed no likelihood of effects, and having regard to the brownfield nature of the receiving environment, and to the nature, extent, characteristics and likely duration of potential impacts, I conclude that the proposed development is not likely to have significant effects on the environment and that the submission of an Environmental Impact Statement is not required. The need for



environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

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

6.1.1. Appeals have been submitted by both the first party (the Applicant) and a third party (Serena Quinn and Stephen Hassett).

6.1.2. A First Party appeal received on 10/01/2023 in relation to Condition 7(a) can be summarised as follows:

- Requests appeal be considered under Section 37(6)(d) of P&D Act which the first party submits gives the right to request An Bord Pleanala to solely look at a specific condition attached to the decision of a Local Authority.
- Requests removal of Condition 7(a) which results in a reduction in 5 units by providing for 5 no. two bed units in place of 10 no. 1 bed units. Inclusion of condition is considered malpractice as concerns raised by Planning Authority have been fully addressed and disproven.
- Includes a copy of the Daylight and Sunlight report submitted with the response to additional information. Report demonstrates all the apartments to the north of Block B achieve the BS EN17037:2021+A1 UK National Annex target values for kitchen/living/dining rooms and exceed the recommended Average Daylight Factor levels of 2% and will be bright and well daylighted apartments. The report proves that the north facing one bedroom units offer excellent amenity value and are not inferior to one-bedroom units with south facing balconies and living spaces.
- North facing units were previously approved in the parent permission by DCC and An Bord Pleanala. Considers condition 7(a) is not justified when principle of north facing apartments has already been approved.
- North facing balconies will have views looking onto the Royal Canal and Luas and Irish Rail lines.
- There is a need for one bed units in the area to provide housing diversity.

- Site is suited to higher density development due to its proximity to public transport.

6.1.3. A Third Party Appeal received on 04/01/2023 by Serena Quinn and Stephen Hassett raises the following issues:

- Inadequate car parking to serve development will exacerbate existing issues with illegal parking in area.
- Traffic congestion and inadequate road capacity to serve development resulting in traffic hazard.
- Inadequate capacity in water and wastewater infrastructure.
- Objects to extent of 1 bed units proposed, build to rent nature of occupancy which is considered inappropriate for the area, and concerns in relation to demographic of future occupants of apartments.
- Non-compliance with development plan policies relating to housing mix and tenure, building height, zoning objective, and policies relating to sustainable neighbourhoods in Section 14 and Section 16 of development plan.
- Impact on visual and residential amenities due to height, overlooking, privacy issues, overbearing, noise and impact on wellbeing as a result of proximity of proposed development to appellants' house.
- Considers development incorporating 2 and 3 bed units and of similar scale to development on adjoining site to west more appropriate.

## 6.2. **Applicant Response (to Third Party Appeal)**

On 01/02/2023 a response was received in relation to the third-party appeal from the first party. The response can be summarised as follows:

- Many of the issues raised have been addressed by DCC and An Bord Pleanala in decision 3308/20 and PLABP-309366-21. Proposal is for amendment to this extant permission which reduces the quantum of development. There is no change in traffic, demand on water and waste water treatment, height, noise disturbance, zoning or compliance with development plan in comparison to the previously granted development.

- Disputes claims that development fails to comply with development plan, noting proposal provides for tenure mix in the area which is predominantly houses, refers to Housing Needs Demand Assessment for area and considers development supports diversified and mixed communities.
- Development complies with zoning objective and development plan policy relating to infill development, design standards, housing mix, and building height within a rail hub.
- Disputes claims that proposal will lead to additional traffic congestion, noting extent of car, motorbike and bicycle parking to serve development. Outlines that development supports existing and proposed public transport infrastructure in the area.
- No basis for claims relating to water and waste water infrastructure capacity issues and refers to DCC Drainage Divisions report which states no objection, and states Irish Water has capacity for population growth up to 2031.
- The building height has already been permitted on the site and no increase in height is proposed. A reduced density is proposed as a result of reduction in number of units from 69 to 64.
- Disputes claims that roof garden on block B will result in noise nuisance on appellants home, noting setback of block B from Bannow Road and limited areas of access on roof which are restricted by condition of extant permission.
- Third party appellants requests for reduced scale development, omission of roof garden, increase in car parking and omission of one bed units is contrary to national and local policy relating to building heights, infill development and car parking standards and fails to provide for diverse communities.

### **6.3. Planning Authority Response**

Asks that the decision of DCC be upheld and outlines standard conditions to be included in a grant of permission.

#### 6.4. Observations

Three observations received from Architectural Construction Technology, Cabra Racing Pigeon Club and Henry O'Brien and Others. The issues raised can be summarised together as follows:

##### ***Procedural Issues***

- Argues first party request for appeal to be considered under Section 37(6)(d) incorrectly interprets this section of the act and as such appeal should be rejected as invalid. If appeal is not rejected, requests the appeal be considered de novo.
- Queries procedure relating to submission of additional information to the local authority.
- Information provided by applicant to local authority is inaccurate and misleading resulting in local authority planning officer drawing incorrect conclusions that curtail existing unfettered use of pigeon club premises.
- Questions applicants' ownership of site.

##### ***Impact on Cabra Racing Pigeon Club (CRPC)***

- Inaccurate and misleading information provided by applicant to DCC in relation to scale of use and disputes applicants claims that club used for 40 hours per year. Local authority may have made a different decision if correct information available to them.
- Outlines use of club which includes storage of items related to pigeon racing, hosting workshops and seminars and preparation and assembly of birds prior to racing.
- Includes details of club lease which is stated to include an area within appeal site used for parking associated with the club. Considers applicant required to compensate club by providing similar number of parking spaces within proposed development thereby reducing the number of spaces available to serve the proposed development. Local Authority was not provided with this information.

- Concerns relating to impact of construction around and under CRPC building on health and safety, drainage, water supply and electricity and loss of club parking.
- Negative impact of development on pigeon club due to overlooking, overshadowing, downdraft on roof, antisocial behaviour and access to club roof.
- Height of proposed development will reduce ability to track birds and ensure bird safety and will reduce development potential of pigeon club property.

### ***Design & Compliance with DCC Development Plan***

- Outlines development plan considerations which proposal fails to comply with, including zoning objective as proposal fails to protect or improve residential amenity.
- Objects to building height, build to rent nature, tenure mix, density proposed and roof garden resulting in overlooking.
- Requests set back of upper floors and omission of balconies facing Bannow Road.

### ***Impact on Community***

- Queries exclusion of community facility incorporating relocated pigeon club from previous proposals.
- Fails to provide facilities for community, no community gain and loss of community facility (kickboxing club), provision of mostly 1 bed rental units and impact on parking in area all negatively impact local community.
- Concerns in relation to impacts of construction activities and requests conditions be attached to planning permission to address these issues.

### ***Infrastructure Issues***

- Proposal fails to address safety of existing road users, inadequate road infrastructure and pressure on existing car parking spaces in area and will result in traffic hazard.
- Inadequate drainage infrastructure

## 6.5. Further Responses

### **Response received on 06/03/2023 from first party in relation to observation by Cabra Racing Pigeon Club (CRPC):**

- Current proposal makes minor amendments to Block B as a result of exclusion of CRPC reducing extent of development to that previously permitted. Substantive issues relating to height, density, overlooking, and build to rent nature have been previously considered and dealt with. Proposed modifications will reduce impacts on local community.
- Concerns relating to loss of community facilities fail to recognise that CRPC is to be retained.
- Refers to planning history on site and An Bord Pleanála decision requiring the omission of the pigeon club from previously permitted development.
- Engagement took place with CRPC during design and planning process.
- Applicant is the owner of the site and refers to Section 34(13) of Planning and Development Act which requires necessary legal consent to carry out works.
- Considers use of CRPC clubhouse will not be impacted by the proposed development. Considers the development will have no material impact on viability of club lease or any of the current uses within the clubhouse and notes no details submitted regarding claim the development will impinge on the ability of racegoers to meet at the clubhouse.
- No lease arrangement in place for car parking for CRPC and submits parking for up to 6 cars can be provided in proposed basement car park to serve club if required. Considers parking provision for club is not a planning matter and can be agreed between first party and CRPC.
- Refutes allegations of misleading Dublin City Council, notes information provided is the same as that provided in previous applications on this site and that the appeal needs to be assessed on planning merits only.
- In relation to community gain concerns raised, considers development complies with development plan policy to provide compact and sustainable

development on brownfield sites proximate to public transport and active travel infrastructure and proposal increases housing mix in area.

**Responses from observers received from Architectural Construction Technology and Henry O'Brien in relation to observation by CRPC:**

- Queries An Bord Pleanála's procedures for receipt of submissions.
- Supports submission from CRPC which clarifies the extent to which the club is used.
- Reiterates concerns in observations including relating to impact on CRPC, loss of community facility and non-compliance with development plan and site ownership.
- Club activities will be curtailed by complaints from new residents.
- No provision for club parking rights, rights to light and right to connect to drainage.
- Removal of club parking will exacerbate existing issues with on-street parking.

## **7.0 Assessment**

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

- Principle of Development
- Proximity to Cabra Racing Pigeon Club
- Condition No. 7(a)
- Procedural and Other Matters

## **7.2. Principle of Development**

- 7.2.1. This application proposes modifications to planning permission reference 3308/20, herein referred to as the parent permission. The existing Cabra Racing Pigeon Club (CRPC) building was to be demolished as part of the previous application and a new community facility was to be provided in the basement which would provide a new premises for CRPC. However, Condition 6 of the parent permission required omission of the community facility from the basement due to concerns relating to impact on residential amenity. This application modifies the parent permission, including the site boundary to omit the existing CRPC building from the development site.
- 7.2.2. Build to rent is a defined use in the development plan which is considered open for consideration on land zoned Z1 – Sustainable Neighbourhoods. The development plan provides criteria in relation to appropriate locations for Build to Rent use. I consider the proposal which relates to modifications to a previously permitted build to rent development is acceptable in principle on this Z1 zoned site.
- 7.2.3. The parent permission on the site provides for a design, scale and layout very similar to the proposed modifications. No amendments are proposed to Block A on the southern part of the site facing Bannow Road and as such the impact on visual and residential amenities of residents on the opposite side of Bannow Road will not be impacted as a result of the proposed modifications. I acknowledge that the third-party and observers have raised other fundamental concerns about the nature and scale of the proposed development including build to rent use and housing mix. However, I am satisfied that these issues have been addressed in the parent permission. My assessment will therefore be limited to the amendments for which permission is sought.
- 7.2.4. The proposed modifications result in a total of 59 apartments on a site area of 0.3 ha resulting in a density of 196 units per hectare which is less than the previously permitted density of 230 units per site. It is a policy and objective of the Sustainable Residential Development and Compact Settlements Guidelines to provide a density range of 50 dph to 250 dph for urban neighbourhoods in Dublin. The development plan sets out acceptable density ranges with a net density of 100-250 units per



hectare in the City Centre and Canal Belt. The proposed density is considered acceptable.

- 7.2.5. In relation to concerns raised regarding traffic congestion, parking and water and wastewater capacity, I note the proposed modifications will result in a reduced number of units and as such I do not consider any additional impacts on infrastructure will arise. I note the number of car parking spaces proposed has not been reduced in the modified application with 33 car parking spaces and 132 bicycle parking spaces proposed. This is in accordance with the Sustainable Residential Development and Compact Settlements Guidelines SPPR 3 which requires a maximum of 1 car parking space per unit and SPPR 4 which requires a minimum of 1 cycle parking space per bedroom plus visitor cycle parking and as such I do not have any concerns in this regard.
- 7.2.6. Concerns are raised by observers in relation to the omission of the community facility from the previously proposed development. Having reviewed the planning history I am satisfied that, following assessment of the parent application, the planning authority and the Board have omitted the community facility for the reasons stated in their decisions on the matter. I note the development is provided with communal facilities to serve future residents and that a financial contribution has been attached by the planning authority in lieu of the provision of public open space on the site. I consider the omission of the community facility is acceptable.
- 7.2.7. Having regard to the above I am satisfied that the principle of the development providing for modifications to the parent permission is acceptable.

### **7.3. Proximity to Cabra Racing Pigeon Club**

- 7.3.1. The observers, including Cabra Racing Pigeon Club (CRPC) outline that the pigeon club is used more than 40 hours per year as submitted by the applicant, that the club is long standing and has a lease of 150 years and raise concerns in relation to the impact of the development on the operations of the pigeon club, for example nuisance complaints from future residents.
- 7.3.2. In the parent permission the pigeon club was omitted by both the planning authority and the Board as the planning authority considered the nature of the pigeon club

was incompatible with a high density residential development and the Board was not satisfied that the facility on site would not seriously detract from the residential amenity of the proposed development.

- 7.3.3. CRPC is located to the north east of the modified site boundary. The eastern elevation of Block B is set back from the pigeon club building by 1.5m and previously proposed balconies on the eastern side elevation are relocated to the northern elevation. The modified design provides for windows to bedrooms, bathrooms and living rooms on the east elevation. The bedroom windows are stated to be high level non-openable and in living rooms are not the main windows serving these rooms. The windows in apartments at lower floors will face the rear elevation of the club and the upper floor apartments will overlook the roof. No details have been submitted of the revised boundary treatment of the pigeon club following demolition, however I consider that if permission is granted this can be addressed by condition.
- 7.3.4. As a result of the modifications proposed the pigeon club is now located outside of the site boundary and does not have any interaction with the proposed development which has been modified to minimise the interface between the apartments and the club. The main external area of activity associated with the club (the access road and entrance) is located on the eastern side of the club building on the opposite side to the proposed development. This differs from the previous proposal whereby the community facility which was to incorporate the pigeon club was located in the basement of the apartment building, and its access was on the eastern side elevation below balconies serving apartments.
- 7.3.5. Noting the established nature of the club and the design and layout of the proposed modifications to apartments on the eastern side of Block B and having regard to the scale and extent of the use of the club as outlined by the observers, I am satisfied that the existing club will not seriously detract from the residential amenities of future occupants.
- 7.3.6. In relation to concerns raised regarding inaccurate and misleading information relating to the extent to which the club is used, I note the extent of use set out in the observation by CRPC which includes storage and repair and maintenance of items related to racing, meetings, and assembly prior to racing events. I have considered the nature and scale of the use of the club for activities associated with pigeon

rating, and noting the existing established nature of the club, the Z1 zoning objective, and the amended design of apartments on the eastern side of the site adjoining the club as discussed above, I am satisfied that the proposed development is acceptable at this location and is unlikely to negatively impact ongoing use of the club.

- 7.3.7. Regarding concerns relating to impacts on bird tracking and bird safety, no evidence has been submitted to confirm that such impacts would arise. The height of the apartment buildings has previously been permitted on this site and that the proposed amendments are unlikely to result in any additional impacts in this regard.
- 7.3.8. Observers raise concerns regarding the impact on CRPC parking during construction and operation. Submissions state that parking to serve the club is located within the appeal site and forms part of the CRPC lease and this is disputed by the first party. I consider this is a civil matter between the applicant and the CRPC and I note Section 34(13) of the Planning and Development Act provides that a person shall not be entitled solely by reason of a permission to carry out any development. Noting the reduced number of apartments now proposed with no associated reduction in parking spaces, in the event that parking is to be provided in the basement to serve CRPC I do not share the concerns of the observers that this will reduce parking for the apartments to an unacceptable level. However, I note that Condition 14. vii) on the parent permission states 'Car parking spaces shall be permanently allocated to the proposed use and shall not be sold with units but shall be assigned and managed in a separate capacity via leasing or permit arrangements'. I consider that if permission is granted that this can be addressed by amending condition 14 to allocate parking to the proposed use or as otherwise required to facilitate car parking for CRPC.
- 7.3.9. In relation to impacts of construction on the club and the wider area, I am satisfied that conditions 14, 16, 17, 18, 19 and 28 on the parent permission can adequately address these matters.
- 7.3.10. In relation to concerns regarding access to the club roof from the proposed development, I do not consider this likely as the proposed roof garden is set back from the building edge as required by condition 11 of the parent permission and condition 8 attached by the planning authority to the modified permission. In relation

to concerns regarding overlooking, overshadowing, downdraft and impact on development potential of club site, I note the scale of development permitted is similar to that previously permitted and whilst the pigeon club was proposed to be demolished, the nature and scale of development was considered appropriate for this site.

- 7.3.11. Having regard to the above I am satisfied that the proposed modifications to revise the site boundary and modify the proposed development such that it is located on a site adjoining the existing pigeon club is acceptable.

#### **7.4. Condition 7(a)**

##### ***Background***

- 7.4.1. The first party appeal against Condition No. 7(a) attached to the Planning Authority's decision to grant permission requests that this condition be removed. The first party requests that the appeal be considered under Section 37(6)(d) of the Planning and Development Act which they state sets out the right to request An Bord Pleanala to solely look at a specific condition attached to the decision of the local authority. Section 37(6)(d) relates to applications for leave to appeal and I do not consider it appropriate to consider the appeal under this section of the act. Section 139 of the Act provides for an appeal against a condition however in this instance a third party appeal has also been submitted in relation to the development and I am satisfied that the Board can consider this appeal in accordance with Section 37 of the Planning and Development Act 2000, as amended.
- 7.4.2. The parent permission provided for apartments on the north/rear elevation of Block B with north and east facing windows serving the main living areas and east facing balconies [the relevant apartments are identified as Apartments B01, B09, B10, B19, B20, B29, B30, B39, B40, and B49 on 'AS GRANTED' floor plan drawing no.'s AI-101, AI-102, AI-103, AI-104, AI-105]. The subject application sought permission for amendments to apartments at the rear of Block B such that main living rooms are served with north facing windows and balconies [the relevant apartments are identified as Apartments B01, B08, B09, B17, B18, B26, B27, B35, B36, and B44 on 'AMENDMENT APPLICATION' floor plan drawing no.'s AA-101, AA-102, AA-103, AA-104, AA-105].

- 7.4.3. The planning authority raised concerns that the design of these units have been changed from previously permitted tri-aspect units and strongly encouraged dual aspect in apartments that are north facing. The planning officer considered that the proposed apartments are effectively single aspect as the second aspect is within the bedroom and encumbered by the location of the bed below the window and as such the design is sub optimal and would not provide for a reasonable level of residential amenity for future occupants of the apartments.
- 7.4.4. In response to a request for additional information the applicant submitted an addendum report prepared by Digital Dimensions in relation to Daylight and Sunlight Assessment for the north facing apartments in Block B. In relation to sunlight to the proposed development, the report states BRE209:2022 “Site Layout Planning for Daylight and Sunlight” is advisory and numerical targets may be varied to meet the needs of the development and its location and that the recommendations are not suitable for rigid application to all developments. In relation to Daylight the report concludes that 100% of the living, dining, kitchen and bedroom spaces to the apartments achieve the BS:EN17037:2021+A1 UK National Annex target values with all the main living / kitchen / dining spaces achieving the target 200 lux over 50% of the assessment grid.
- 7.4.5. Notwithstanding the conclusions of the Daylight and Sunlight assessment, the additional information response also included an alternative design proposal for Block B. This would replace 2 no. 1 bed apartments [removing north facing units B08, B17, B26, B35 and B44] with 1 no. 2 bed (4 person) apartment at the north-eastern side of the building on all floors [shown on drawing ‘BLOCK B – OPTION A’ drawing no. AA-108]. The two bed apartments would be dual aspect (south and east facing) with south facing balconies, apart from Unit B06 at ground floor level, which is a south facing single aspect apartment. No changes were proposed to apartments on the north-western side of Block B which are similar in aspect and orientation. The Planning Officer considered that this revised plan provides for a superior layout for future residents and that it would increase the overall number of two bed units, which would be encouraged by the planning authority.
- 7.4.6. Section 28 Guidelines ‘Sustainable Urban Housing: Design Standards for New Apartments, July 2023’ (Apartment Guidelines) provide guidance in relation to apartment design and layout. This document updated previous versions of these

guidelines published in 2022 which omit Specific Planning Policy Requirements (SPPRs) 7 and 8 relating to Build to Rent(BTR) 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. However, the 2023 Guidelines also include transitional arrangements which outline that planning applications that were subject to consideration within the planning system on or before 21st December 2022, will be considered and decided in accordance with the previous version of the Apartment Guidelines, that included SPPRs 7 and 8. 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.

### ***Housing Mix***

- 7.4.7. The planning authority considered the proposed alterations under condition 7(a) would increase the overall number of two bed units which the planning officer considered would be encouraged by the planning authority. In this regard, SPPR 8 of the 2020 guidelines states 'For proposals that qualify as specific BTR development in accordance with SPPR 7: (i) No restrictions on dwelling mix and all other requirements of these Guidelines shall apply, unless specified otherwise'. As the planning criteria which may be applied include no restrictions on unit mix I do not consider Condition 7(a) is required for the purposes of increasing the proportion of two bed units.

### ***Aspect***

- 7.4.8. The Apartment Guidelines in Section 3.18 state 'north facing single aspect apartments may be considered, where overlooking a significant amenity such as a public park, garden or formal space, or a water body or some other amenity feature. Particular care is needed where windows are located on lower floors that may be overshadowed by adjoining buildings'. The guidelines also state in Section 3.35 'Private amenity space should be located to optimise solar orientation and designed to minimise overshadowing and overlooking'.
- 7.4.9. Section 15.9.3 of the development plan outlines considerations relating to Dual Aspect including the following definition 'A dual aspect dwelling is defined as one

with openable windows on two external walls, which may be either on opposite sides of a dwelling or on adjacent sides of a dwelling where the external walls of a dwelling wrap around the corner of a building'. The development plan goes on to state 'North facing units will only be considered where they face an area of high amenity value such as a public park, water body or another significant view of interest. For clarity, north facing units are units which predominantly face north (i.e. over 50% of the façade). North east and north west units are defined as units that fall within a 45 degree angle of due north. This unit configuration will be considered in limited circumstances on a case by case basis'.

- 7.4.10. Section 6.0 of the Apartments Guidelines highlights the importance of provision of acceptable levels of natural light in new apartment developments, which should be weighed up in the context of the overall quality of the design and layout of the scheme and the need to ensure an appropriate scale of urban residential development. The applicants additional information response indicates that adequate daylight can be achieved for the north facing units and in relation to sunlight notes that recommendations are not suitable for rigid application to all developments.
- 7.4.11. With regard to aspect, I concur with the planning authority assessment that these units are effectively single aspect units with all living spaces within the relevant units facing north and the second aspect is by way of a high-level bedroom window (as stated by the first party in their additional information response). I acknowledge that the BRE recommendations are intended to be applied flexibly and that the criteria for daylight and sunlight are unlikely to be met for all apartments, particularly where rooms face significantly north of due east or west and where higher density schemes are proposed.
- 7.4.12. The amendment application for Block B provides for a total of 10 apartments which are single aspect north facing and which do not have a main window within 90 degrees of due south. The balconies are recessed and stacked such that their amenity value will be further reduced. Condition 7(a) relates to Apartments B08, B17, B26, B35 and B44 located on the north east side of Block B. Apartments B01, B09, B18, B27 and B36 on the north west side of Block B are also single aspect north facing units with all living room windows and balconies facing north and with bedroom windows facing north and west. The first party argue in their appeal that permission has already been granted for north facing units. I note however that

previously permitted apartments on the north elevation were provided with east facing balconies and living room windows. I consider the modified design in the amended application will further reduce the level of amenity to these units.

- 7.4.13. The first party also argue that the apartments are overlooking the Royal Canal located to the north of the site. The Broombridge Luas depot extends across the full width of the rear of the appeal site. The Luas depot will be located approx. 11.5m from the rear façade of the north western side of Block B and 10m from the north eastern side of Block B. The depot building has a height of 9.5m above ground level and in excess of 7.5m above the floor level of the ground floor apartments (as shown on drawing AA-006 Proposed Site Cross Section CC). Whilst the third and fourth floor apartments are likely to have a view over the roof of the Luas depot and across the Luas line and rail line towards the canal located approximately 60 metres from the northern site boundary, the ground, first and second floor apartments will face the rear façade of the Luas depot.
- 7.4.14. Having regard to the north facing orientation of the balconies, their proximity to the Luas depot, and in the absence of overlooking an area of amenity value for most of the units, I consider the proposed north facing apartments would be contrary to guidance relating to single aspect north facing apartments set out in the Apartment Guidelines and the Dublin City Development Plan 2022-2028 and will not provide for a satisfactory level of residential amenity for future occupants. On this basis I therefore consider it appropriate to retain condition 7(a).
- 7.4.15. The amendments in Block B-Option A as shown on Drawing No.AA-108 to which condition 7(a) relates do not propose amendments to apartments B01, B09, B18, B27 and B36 on the north west side of Block B. Similar to the apartments on the north east side of the building these apartments would be single aspect north facing and would have a reduced level of residential amenity compared to the permitted apartments. The board may also wish to consider attaching a condition to amend Apartments B01, B09, B18, B27 and B36 to provide for dual aspect apartments with south facing balconies. This issue was not raised by the planning authority or any party to the appeal and may be regarded as a new issue.



## **7.5. Other Issues**

- 7.5.1. The observers question the applicants' ownership of the site. I am satisfied that the applicants have submitted sufficient evidence to demonstrate their interest in the application site and I note the provisions of Section 34(13) of the Planning and Development Act which provides that a person shall not be entitled solely by reason of a permission to carry out any development.
- 7.5.2. Observers raise concern in relation to the failure of An Bord Pleanála to allow CRPC to make a further submission. I am satisfied that submissions have been accepted in accordance with the provisions of the Planning and Development Act, 2000 (as amended).
- 7.5.3. This is an application for modifications to an existing permission and reduces the total number of units. I consider it appropriate that the conditions of the parent permission shall apply. The planning authority attached a number of additional conditions relating to transportation, requirements of Iarnród Éireann and financial contributions. I do not consider it necessary that these conditions be applied in the event of a grant of permission.

## **8.0 Appropriate Assessment**

- 8.1. Having regard to the nature of the application to modify a permitted development, the nature and scale of the development, the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **9.0 Recommendation**

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

## 10.0 Reasons and Considerations

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

## 11.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity</p>
2.	<p>The proposed development shall be amended as follows:</p> <ul style="list-style-type: none"><li>a) The layout of Block B shall be undertaken in line with Block B-Option A as shown on Drawing No.AA-108;</li><li>b) All Cosentino Dekton Soke finishes shall be replaced with a brick to match the rest of the development;</li><li>c) Details of the proposed treatment of the boundary between the site and the pigeon club shall be to the satisfaction of the planning authority.</li></ul> <p>Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with the planning authority prior to commencement of development.</p>

	<b>Reason:</b> In the interests of clarity and visual and residential amenity
3.	<p>Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission(s) granted under 3308/20 and any agreements entered into thereunder.</p> <p><b>Reason:</b> In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission(s)</p>
4.	<p>Car parking spaces shall be permanently allocated to the proposed use or as otherwise required to facilitate Cabra Racing Pigeon Club, and shall not be sold with units but shall be assigned and managed in a separate capacity via leasing or permit arrangements. A minimum of 1 no. car parking space within the development basement car park shall be permanently allocated to Car Club use, unless otherwise agreed in writing with the planning authority.</p>
5.	<p>Access to the roof garden shall be restricted to the deck / hardstand area within the fences as shown on Drawing No. AA-109. Access to the green roof areas of the roof garden shall be for maintenance purposes only.</p> <p><b>Reason:</b> In order to protect the residential amenity of future occupants of the development and the surrounding properties.</p>
6.	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health.</p>
7.	<p>The developer shall comply with the requirements of Irish Water.</p> <p><b>Reason:</b> In the interest of public health.</p>
8.	<p>The developer shall comply with all requirements of the planning authority in relation to transport and traffic matters.</p> <p><b>Reason:</b> In the interest of traffic safety and the proper planning and development of the area.</p>

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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Bernadette Quinn  
Planning Inspector  
29<sup>th</sup> January 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

**[EIAR not submitted]**

<b>An Bord Pleanála Case Reference</b>	ABP-315459-23		
<b>Proposed Development Summary</b>	Modifications to previously permitted Build to Rent residential development (permitted under Reg. Ref. 3308/20; ABP Ref. 309366-21).		
<b>Development Address</b>	76, 76G & 280 Bannow Road, Cabra, Dublin 7.		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	✓
		<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) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>	✓		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 (if relevant)</b>
<b>No</b>		N/A	
<b>Yes</b>	✓	Class 10(b)(i) and (iv) of Schedule 5 Part 2	
			<b>Conclusion</b>
			No EIAR or Preliminary Examination required
			Proceed to Q.4

<b>4. Has Schedule 7A information been submitted?</b>		
<b>No</b>	√	<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## Appendix 1 - Form 2

### EIA Preliminary Examination

An Bord Pleanála Case Reference	ABP-315459-23	
Proposed Development Summary	Modifications to previously permitted Build to Rent residential development (permitted under Reg. Ref. 3308/20; ABP Ref. 309366-21).	
Development Address	76, 76G & 280 Bannow Road, Cabra, Dublin 7	
<p>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</p>		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development</p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>Proposal for modifications to previously permitted residential development on land zoned Z1 – Sustainable Residential Neighbourhood located in an urban area is not considered exceptional in the context of the existing urban environment.</p> <p>No, the proposal will be connected to the existing water supply and waste water drainage infrastructure. Construction and demolition waste can be managed through standard waste management conditions.</p>	No
<p>Size of the Development</p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having regard to other existing and/or permitted</p>	<p>The proposed development seeks permission for 64 apartments on a site measuring 0.3 ha which is not considered exceptional in the context of the existing urban environment.</p> <p>No</p>	<p>No</p> <p>No</p>

projects?		
<p>Location of the Development</p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>The appeal site is located 60 metres from the Royal Canal Proposed Natural Heritage Area. It is not considered that the development would have a significant impact on this site. The nearest European site is the South Dublin Bay and River Tolka Estuary SPA located c. 5 km east of the appeal site.</p> <p>There are no other locally sensitive environmental sensitivities in the vicinity of relevance.</p>	No
Conclusion		
<p>There is no real likelihood of significant effects on the environment.</p> <p>EIA not required.</p>		

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

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

(only where Schedule 7A information or EIAR required)