



An
Bord
Pleanála

Inspector's Report

ABP-315468-23

Development	The development will consist of 8 no. three-bed terraced houses and all associated site works.
Location	Fortal, Killiney Road, Dalkey, Co. Dublin, A96K744
Planning Authority	Dún Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D22A/0639
Applicant	Greythorn Developments 2 Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant, subject to conditions.
Type of Appeal	Third Party
Appellants	Alexander and Alix Lentijes.
Observers	None.
Date of Site Inspection	2nd August 2023.
Inspector	Terence McLellan

1.0 Site Location and Description

- 1.1. The appeal site refers to the 0.21 hectare plot located to the rear of Fortal House, a substantial period dwelling located on the north side of Killiney Road, Dalkey, which is an established residential area. The roughly L shape/dog legged site has been carved out of the rear garden ground of Fortal House, thereby subdividing the plot for development purposes. Access to the appeal site is via Fortlawns, a private shared driveway from Killiney Road that also provides access to Fortal Villa, Fortal House and the small development of three detached, single storey/split level homes which is also known as Fortlawns and forms the northern boundary of the appeal site. To the east, the site shares a boundary with the rear garden of the two storey dwelling at No. 20 Ard Mhuire Park, and the two storey dwelling known as Wythburn on Killiney Road. The northern boundary of the site is marked by Fortal House and Fortal Villa, whilst the Dalkey Manor development forms the western boundary of the site.
- 1.1.1. The north, east and west boundaries of the site are heavily planted with mature trees and shrubbery. Trees are a prominent feature of the landscape in the immediate vicinity and the grouping of trees between Fortlawns and Dalkey Manor are protected. None of the trees on the Fortal House side of Fortlawns are protected. Levels decrease northwards from Killiney Road, consequently the appeal site sits approximately 2.5 metres lower than Fortal House. The closest dwelling at Fortlawns (No. 1) sits approximately half a metre below the appeal site. Bus services are available from Killiney Road and Dalkey Dart Station is a 15 minute walk to the north east.

2.0 Proposed Development

- 2.1.1. Permission is sought for the subdivision of the garden ground and redevelopment to provide eight terraced dwellings with front and rear gardens. Each home would provide three bedrooms and would be three storeys in height. A total of 17 car parking spaces would be provided, one in the front garden of each dwelling and a further nine dispersed throughout the site, including an accessible bay. Cycle parking would be provided in external, covered cycle racks (12 spaces). In design terms the proposed dwellings would be finished in brickwork on the front elevation and render on the rear. The new homes would have mansard style green roofs, the front and rear face of which would be clad in zinc. A new access would be created from the Fortlawns

driveway, and a retaining wall would be constructed to bridge the change in levels between Fortal House and the development site.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Notification of the Decision to Grant Permission for the proposed development, subject to 16 conditions, was issued on 7th December 2022. The conditions applied to the permission are generally standard. Condition 7 seeks to secure compliance with Section 96 of Part V of the Act in relation to the provision of social housing, whilst conditions 12-14 relate to Development Contributions.

3.2. Planning Authority Reports

- 3.2.1. The Planner's Report was issued on the 6th December 2022 and forms the basis of the Council's assessment and decision. The report indicates acceptance of the development in principle, in terms of zoning, and considers that housing quality is acceptable, with internal space standards being met and policy compliant levels of private amenity space and public open space being provided.
- 3.2.2. Neighbour amenity has been considered and the report concludes that there would be no significant impacts. The report states that whilst the proposed dwellings would have a bulky form in relation to the surrounding context, this would not have any significant visual impact. The density, layout and design of the proposed development is assessed as being acceptable, as are the landscaping arrangements and the removal of some trees.
- 3.2.3. Further information was requested on 21st October 2022 in relation to transport, drainage and Irish Water matters. The applicant complied with the request for further information on 10th November 2022 to the satisfaction of the Council and the relevant consultees. Further details are provided below.
- 3.2.4. **Other Technical Reports**
- 3.2.5. **Drainage Planning (04.10.2022):** The Drainage Department requested further information seeking clarity regarding the water attenuation system being proposed and

the ongoing maintenance responsibilities. Confirmation was also sought that the proposed hardstanding areas would be permeable and designed in accordance with Council policy. These items were suitably addressed in the applicant's further information submission and the Drainage Department raised no objections subject to conditions.

3.2.6. **Housing Department (26.09.2022):** The Housing Department note that the applicant intends to comply with Part V of the Act by way of the transfer of one dwelling to the Council. It is also noted that the indicative costs of such a transfer currently exceed the Council's acquisition threshold, although it is acknowledged that these costs are currently estimated. The Housing Department raise no objection, subject to a condition requiring the applicant to enter into an agreement under Part V, Section 96 of the Act.

3.2.7. **Transportation Planning (20.10.2022):** The Transportation Planning Department requested further information as follows:

- Submit a drawing showing the location of underground attenuation within the scheme.
- Submit a DMURS Compliance Statement.
- Amend the scheme to narrow the entrance from Killiney Road to make pedestrian crossing easier, provide a minimum of a 1.8 metre wide footpath on both sides of Fortlawns up to the proposed car parking, and narrow the crossing point at the entrance to Fortal.
- Submit detailed drawings showing the provision of a 'STOP' sign and associated road markings at the redesigned entrance on Killiney Road.

3.2.8. These items were suitably addressed in the further information submission and the Transportation Planning Department raised no objections, subject to conditions.

3.2.9. It should be noted that the Biodiversity Officer, Building Control Department, Parks Department, and Public Lighting Department were consulted on the planning application but did not submit comments for the Planner's Report.

3.3. Prescribed Bodies

3.3.1. **Irish Water (05.10.2022):** Further information was requested in order to assess the feasibility of a connection to public water/waste water infrastructure. These items were

suitably addressed in the applicant's further information submission and Irish Water raised no objections, subject to compliance with conditions.

3.4. Third Party Observations

3.4.1. An observation was received from Michael and Marella McLeavey of Fortal Villa, Killiney Road, Dalkey. The observation raised the following points:

- The proposed development is at the front of Fortal House and not the rear as stated on the application.
- The current volume of traffic causes access issues, this will be made worse by the additional vehicles.
- The proposed development would obstruct views of the sea.
- The trees that are proposed for removal currently offer privacy and shelter.
- The proposed houses will overlook Fortal Villa.
- No open space is provided for residents of the proposed development.
- The development would negatively affect property values.
- The development would lead to building noise, traffic and pollution.

3.4.2. An observation was received from Siobhán Smyth of 1 Fortlawns, Killiney Road, Dalkey. The observation raised the following points:

- Cutting down ancient trees to build new houses goes against the Climate Change Action Plan.
- Some of the trees overhang the boundary wall and as such form part of the adjacent garden.
- The area is already congested in terms of traffic.
- The proposed dwellings would overlook 1 Fortlawns.
- The entrance to the site is too close to Fortlawns.

3.4.3. Observations were also received from:

- Geraldine and Michael Whelan of 3 Dalkey Manor, Killiney Road, Dalkey.

- Anna Livia and Joseph Flood of 5 Dalkey Manor, Killiney Road, Dalkey.
- Alexander and Alix Lentijes of 8 Dalkey Manor, Killiney Road, Dalkey (the appellants).

3.4.4. These observations raise similar issues to the grounds of appeal and are set out in detail in section 6.1.1 below.

4.0 Planning History

4.1.1. There is no planning history for the subject site that is of specific relevance to the appeal. The adjacent site at Clonlost House/Dalkey Manor does however have planning history that is of relevance. The most relevant case is planning consent D14A/003 which was approved in July 2014 for the provision of 22 new homes to the rear and side of Clonlost House. This application also included the change of use of Clonlost House from a retreat to a residential unit, incidental alterations and the relocation and renewal of the site entrance. This development has been completed and is known as Dalkey Manor.

5.0 Policy Context

5.1. Development Plan

Dún Laoghaire-Rathdown County Development Plan 2022-2028

5.1.1. The Dún Laoghaire-Rathdown County Development Plan 2022–2028 (CDP), categorises the site as zoning objective 'A', which seeks to provide residential development and improve residential amenity while protecting the existing residential amenities.

5.1.2. Chapter 3: Climate Action, sets out the detailed policy objectives in relation to climate and the role of planning in climate change mitigation, climate change adaptation and the transition towards a more climate resilient County. The relevant policy objectives of this chapter are:

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

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

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

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

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

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

- 12.3.3.1: Residential Size and Mix
- 12.3.3.2: Residential Density
- 12.3.4.2: Habitable Rooms
- 12.3.7.7: Infill
- 12.4.5.1: Car Parking Standards
- 12.4.6: Cycle Parking
- 12.4.8: Vehicular Entrances and Hardstanding Areas
- 12.8.3: Open Space Quantity for Residential Development
- 12.8.3.1: Public Open Space
- 12.8.3.3 (i): Private Open Space for Houses
- 12.8.7.1: Separation Distances
- 12.8.7.2: Boundaries

- 12.8.8: Financial Contributions in Lieu of open Space
- 12.8.11: Existing Trees and Hedgerows

5.2. Regional Policy

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

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

5.3. National Policy

The National Planning Framework - Project Ireland 2040

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

5.4. Section 28 Ministerial Guidelines

- Part V of the Planning and Development Act 2000 (including Circular PL 10/2015 and Housing Circular 36/2015) (January 2017).
- Regulation of Commercial Institutional Investment in Housing, Guidelines for Planning Authorities (May 2021).

5.5. Natural Heritage Designations

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

Heritage Area lie a short distance to the east and south of the site (0.3km and 0.5km respectively).

5.6. EIA Screening

5.6.1. Having regard to:

- (a) the nature and scale of the development,
- (b) the built nature of the site,
- (c) the zoning afforded to the site and the availability of public services and infrastructure,
- (d) the location of the development outside of any sensitive location specified in article 109(4) of the Planning and Development Regulations 2001 (as amended),

5.6.2. It is concluded that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A third party appeal has been lodged by Alexander and Alix Lentijes of 8 Dalkey Manor, Killiney Road, Dalkey, against the decision of Dún Laoghaire Rathdown County Council (DLR) to grant planning permission for the proposed development. The appellant's submission has been endorsed by Geraldine and Michael Whelan of 3 Dalkey Manor, and Anna and Joseph Flood of 5 Dalkey Manor. The grounds of appeal can be summarised as follows.

- The driveway to Fortal House (shared with Fortal Villa and Fortlawns) is close to the corner with the Wyvern Estate and is crossed by school children and pedestrians daily. The location of the corner of the Wyvern Estate lying diagonally from the entrance to Fortal makes this site unsuitable for any multi-unit development.

- The entrance to Fortal House on Killiney Road is just 40 metres from the entrance to Dalkey Manor. The development would add a significant number of cars and would increase the risk of collision between cars accessing and exiting the site and cars, cyclists and pedestrians on Killiney Road.
- The development would create a dangerous traffic situation in close proximity to a busy corner and school due to the location and number of cars associated with the proposed development.
- The Transport Statement refers to 16 car parking spaces whilst the plans show 17 spaces. This ignores the fact that two cars could be parked in front of each house, which would allow for 25 spaces in practice. This is contrary to the maximum parking numbers set out in the development plan.
- Protected wildlife would be displaced and compromised through destruction of their habitat as a result of the proposed development and the loss of trees on site. This would affect various recorded species of bird as well as Pygmy Shrew and Grass Frog.
- Trees planned to be removed are of amenity value and their preservation is considered to be essential in the interests of amenity. These trees are ancient and dominate the treescape of Killiney Hill as well as providing refuge to wildlife.
- The affected trees are mature, of high value and in A1 condition with no threat to building, health or safety. The Monterey Cypress Tree is the third largest in Ireland.
- The trees between the entrances to Dalkey Manor and Fortlawns are designated with the objective 'to protect and preserve trees and woodlands' and this should be extended to the trees adjoining this area.
- The loss of the trees would prevent carbon absorption and would result in the felled trees releasing stored carbon. This would be contrary to the Climate Change Action Plan.
- The height, massing and material finish of the proposed dwellings are not sympathetic to their surroundings. Car parking provision and density does not integrate into the existing surroundings and conflicts with the authentic Georgian features of Fortal House.

- Fortal House has historical significance and provides a positive contribution to the historic built environment of the County.
- The height of the proposed houses would block sea views from Fortal House on the north side and this would equally affect Fortal Villa.
- The height of the proposed development would tower over the single storey houses at Fortlawns and would be overbearing.
- It is impossible for the development to comply with Part V of the Planning and Development Act 2000 due to the marketable value of the proposed dwellings.

6.2. Applicant Response

6.2.1. A response to the grounds of appeal has been submitted by Brock McClure Planning and Development Consultants on behalf of the applicant. The response can be summarised as follows:

Traffic Concerns and Excess Car Parking

- Amendments have been made to the junction to prioritise pedestrians and slow traffic, as advised by DLRCC. The revised plans detail that the entrance has been narrowed.
- The development has limited ability to generate additional traffic and it has been demonstrated to have a minimal impact on the adjoining road network.
- Footpaths have been provided to at least 1.8 metres width on both sides of the access road in line with the Council's advice.
- The uncontrolled pedestrian crossing to the east of the Killiney Road/Fortlawns junction is understood to be a school warden crossing which provides safe accessibility for school children.
- The existing footpath across the Fortlawns junction on Killiney Road is continuous across the junction, giving pedestrians priority over vehicles.
- Additional safety measures include the provision of a STOP sign and line. This is also provided at the Wyvern Estate junction.

- The proposed development would not generate significant additional traffic and the trip generation estimates from TRICS are for an additional 11 peak trips per day (six morning peak and five evening peak).
- Fortlawns would be a shared surface which increases awareness among users leading to safer streets and there would be clear visibility for road users accessing and exiting the site.
- The appellant claims two spaces could be provided within each front garden leading to a total of 25 spaces however the front gardens are too small for two spaces. A total of 17 would be provided, in line with the CDP.
- The proposals car parking and access does not conflict with Fortal House.

Animal Conservation and Tree Preservation

- None of the trees proposed for removal are protected nor do they contain protected species. The existing green infrastructure and extensive tree cover will sustain wildlife.
- Compensatory planting would be provided in the form of tree and hedge planting.
- No evidence of roosting bats has been recorded and there was no evidence of any bats during an emergence survey.
- The loss of trees on this site is necessary to provide housing in this suburban and highly accessible location.
- Mitigation would be in place to ensure no impacts from the development on retained trees.

Building Design and Character

- There is a strong precedence for infill development of this type in the area, such as Dalkey Manor which sits to the west of the site.
- The proposed scheme follows the established pattern of development in the area and respects/enhances the character of Fortal House.
- At three storeys and nine metres, the proposed dwellings comply with the Building Height Strategy in the CDP and the dwellings are set well away from

the boundaries to ensure the development would not be overbearing or visually dominant.

- The houses have been designed to minimise overshadowing and overlooking. Flat, green roofs have been incorporated to further minimise visual impact. The applicant chose a flat roof to minimise impact on sea views from Fortal House
- The proposed materials are sympathetic to the surroundings and the sites designation and will enhance and protect Killiney's Architectural Conservation Area.
- The development would result in a very small amount of overshadowing and would be in accordance with the BRE. Additionally, windows have been positioned to minimise potential overlooking.

Social Housing

- The Council's Housing Department have issued a Part V validation letter.
- While the unit cost exceeds the Council's acquisition cost threshold, the cost is only estimated, and the actual cost cannot be quantified at preliminary stage. As such the proposal is capable of complying with the requirements of Part V.
- The Housing Department have stated that any proposal for compliance with Part V will be subject to planning permission and funding being made available as well as agreement being reached on land values and development costs.
- Should permission be granted, the Council may seek a revision of the Part V proposal, following evaluation of costs and land values, a review of housing demand, and determination of funding availability.

6.3. **Planning Authority Response**

- 6.3.1. The Planning Authority do not consider that the grounds of appeal raise any new issues and direct the Board to the previous Planner's Report.

6.4. **Observations**

- 6.4.1. None.

7.0 Assessment

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

- Transport and Safety
- Trees and Wildlife
- Design and Amenity
- Part V Compliance
- Other Matters
- Appropriate Assessment

7.2. Transport and Safety

7.2.1. The appellant has raised several transport based concerns regarding the proposed development, primarily that the development would have an adverse impact on traffic and pedestrian safety as a result of the proximity of the access driveway from Killiney Road to the adjacent junctions at Dalkey Manor and the Wyvern Estate. The appellant considers that the increased number of vehicles emanating from the proposed development would increase the risk of collisions with cars, cyclists and pedestrians on Killiney Road and that this would create a dangerous situation in close proximity to a school. On this basis the appellant concludes that the site is not suitable for a multi dwelling development. A further issue raised by the appellant is that the development would have capacity for 25 cars, on the basis that two vehicles could potentially park in the front garden of each dwelling.

7.2.2. The layout of the Fortlawns junction was amended during the course of the application in order to make it narrower, thereby reducing speeds and increasing priority to pedestrians walking on Killiney Road. Additional improvements, such as the provision of a STOP sign and line at the Fortlawns junction head would further improve safety and mitigate any potential impacts regarding the access and egress of vehicles. On this basis, I do not consider the proximity of the junction at Fortlawns/Killiney Road to

adjacent junctions, or the interaction between the junction and the local road network around the site, to be problematic or a risk to traffic, cyclist or pedestrian safety.

- 7.2.3. The trip generation figures presented as part of the application are reasonable and I am satisfied that the modest increase in vehicles associated with the proposed development would not have any significant impact on the local road network or pedestrian/traffic safety. I note that the crossing from the north side of Killiney Road to the Wyvern Estate is used by pupils at Glenageary Killiney National School and that this is already supervised by a school warden. As such, I do not consider that the safety of pupils would be compromised as a result of the proposed development.
- 7.2.4. On the matter of car parking, I do not agree with the appellant that two cars could park within the front garden of each dwelling. The front gardens are not large enough to practically accommodate two cars in addition to providing adequate pedestrian access to the dwellings. The total car parking provision for the development would therefore be 17 spaces, as shown on the submitted plans, and this would be in line with the provisions of the CDP.

7.3. Trees and Wildlife

- 7.3.1. The grounds of appeal state that the removal of trees is unacceptable as they are in good condition and are of high amenity value. The appellant considers that the loss of the trees would be a threat to the existing wildlife through the destruction of habitats. Further concerns raised are that the loss of the trees would prevent ongoing carbon absorption and that the felled trees would release stored carbon, contrary to the Climate Change Action Plan. The appellant notes that the trees between Fortlawns and Dalkey Manor are protected and considers that this protection should extend to the trees adjoining this area.
- 7.3.2. The application includes an Arboricultural Assessment dated July 2022 that surveyed 37 trees on the appeal site and four trees on the Dalkey Manor site. Of the 37 survey entries, 11 trees were assessed as being of high quality (Category A), 19 were assessed as being of moderate quality (Category B), 11 were assessed as being of low quality (Category C).
- 7.3.3. A total of 11 trees are proposed to be removed, including four Category A, six Category B and one Category C tree. All of these trees are on the appeal site and none of them are protected. The protected trees between the entrance of Dalkey Manor and

Fortlawns would be preserved and would remain unaffected by the proposals. The report acknowledges the relatively high number of Category A trees proposed for removal. It should be noted that two of these trees lie outside of the red line plan (trees 432 and 433) but inside the blue line plan on land controlled by the applicant.

- 7.3.4. The site is in private ownership and is bounded on all sides by private properties. I acknowledge that trees make a valuable contribution to the amenity and character of an area and that the retention of the trees must be weighed against the benefits of unlocking the development potential of a serviced and sustainable site in order to provide much needed housing.
- 7.3.5. The protected trees between Dalkey Manor and Fortlawns are the main contributor to the sylvan character and quality of the streetscene when viewed from public roads and it is important to note that all of these trees would be retained. The trees proposed for removal are on the Fortal House side of Fortlawns and do not benefit from the same protection. All of the affected trees are located well within the site, at a physical and visual remove from Killiney Road and the main public and vehicular routes. As such, despite the maturity and undoubtedly high quality of some of the trees proposed for removal, specifically the Category A trees, the trees have a limited beneficial impact on the overall character, quality and amenity of the area and I am satisfied that their removal would not have a significant detrimental impact.
- 7.3.6. The proposed development does include replanting of trees within the rear gardens and taken in addition to the high number of retained trees on site, including the protected trees between Fortlawns and Dalkey Manor, I am satisfied that the development would retain a strong woodland character on the site and its surrounds. On balance, I am therefore satisfied that the benefits of bringing the site forward for housing outweigh the potential adverse impacts of the removal of the Category A trees and that the trees can be removed without causing significant harm to the character or amenity of the area.
- 7.3.7. In addition to amenity, I acknowledge that trees play an important role in respect of sustainable development and climate change, notably with regards to carbon absorption and retention. However, in balancing the desire to retain trees whilst enabling the appropriate redevelopment of underused sites in sustainable locations, some extent of tree loss is inevitable. I am satisfied that the potential limited impacts

of tree loss on carbon absorption and retention are sufficiently balanced against the more sustainable use of the site as a form of higher density compact development in line with the provisions of the CDP.

- 7.3.8. In terms of wildlife habitat, the appellant considers that the trees on the appeal site offer habitats to several protected species of bird as well as shrews and frogs, although no documentation has been submitted that demonstrates this. A Bat Survey submitted with the application found no evidence of roosting bats and no bats were recorded during an emergence survey. No further ecological surveys have been undertaken by the applicant with regards to other species. Trees provide habitats to many species of bird and other animals, in addition to providing important foraging grounds. Given the significant number of retained trees on site (30 of 41 surveyed), in addition to the extensive tree cover in the immediate and wider area, I am satisfied that the loss of 11 trees would not have a significant impact on the habitat or foraging ground of species referred to by the appellant. Should the Board be minded to grant permission then I would recommend the application of a condition regarding the timing of tree removal in order to avoid the nesting season.

7.4. Design and Amenity

- 7.4.1. The appellant has raised concerns that the height, massing and material finish of the dwellings are not sympathetic to their surroundings. It is argued that the car parking provision and density would not integrate well/would be in conflict with Fortal House, which is considered to have historical significance and makes a positive contribution to the County. Further concerns raised are that the development would be too high and overbearing in relation to the dwellings at Fortlawns and that the dwellings would block views of the sea from Fortal House and Fortal Villa. Whilst the grounds of appeal reference the site in connection with the Killiney Architectural Conservation Area (ACA) I would advise the Board that the site is not located within either an ACA or a candidate ACA in the CDP.
- 7.4.2. In assessing the design suitability of the proposed dwellings as well as their impact on surrounding amenity, I have considered the scale, massing, form and materials proposed, in addition to the separation distances from the plot boundaries and the adjacent dwellings. On the matter of design, I acknowledge that the provision of flat roofed dwellings is uncommon in the immediate area, however, I consider this to be

an appropriate response to the difference in levels at the site, particularly with regards to the northern and southern neighbours (Fortlawns and Fortal House/Fortal Villa respectively). I consider the overall height, scale and massing of the proposed dwellings, as well as the car parking and density, to be acceptable in the context of Fortal House and the surrounding context.

- 7.4.3. Materials proposed include brick on the front elevation, render on the rear elevation and zinc on the face of the mansard style roof. I consider brick and zinc to be appropriate materials that would provide a suitable contrast to Fortal House whilst also successfully contextualising with recent surrounding development such as that at Dalkey Manor. I am of the opinion that render is not a suitably robust material to be employed on this site given the detailed design of the proposed dwellings and the fact that it would be used on a north facing façade. Render is particularly susceptible to weathering and staining and this is a significant concern given the low levels of direct sunlight to the north facing façades and the potential for at least some run off from the green roofs. Both of these issues would likely exacerbate staining and diminish the quality and appearance of the render over time. For that reason, I would recommend that the Board apply a condition requiring the Planning Authority to agree final materials, excluding render at the upper levels.
- 7.4.4. In terms of amenity, I note the proximity of the dwellings to No. 1 Fortlawns, however I consider this relationship to be acceptable given that the rear of the proposed dwellings would face onto the gable elevation of the neighbouring dwelling. I am satisfied that the separation distances to all of the plot boundaries and the adjacent dwellings is sufficient to ensure that the proposal would not be overbearing in nature, nor would there be any significant overlooking impacts. Whilst there would be some additional overshadowing of garden ground to the north during the winter months, I do not consider this to be so significant that it would have a detrimental impact on amenity.
- 7.4.5. The grounds of appeal raise the issue of the impact of the development on sea views from Fortal House and Fortal Villa. I do not consider the potential incursion of the development into these long distance views to be a significant material consideration, particularly in the case of Fortal Villa, whereby these views are over a third party's land. In conclusion, I am satisfied that the development would have no significant impact on residential amenity to surrounding dwellings and occupiers.

7.5. Part V Compliance

- 7.5.1. The appellant claims that it is impossible for the development to comply with Part V of the Planning and Development Act 2000, due to the marketable value of the proposed dwellings. The core tenet of this issue is that the value of the proposed dwellings would significantly exceed the indicative cost quoted in the application. The applicant has not sought an exemption to Part V and intends to comply with the Act by transferring one three bedroom dwelling on site to the Council or an Approved Housing Body for on-site affordable housing.
- 7.5.2. Updated Ministerial Guidelines regarding Part V of the Act were published in January 2017 and require that the Housing Department be notified of the application and that, where it is decided to grant permission for the development, it is essential that the Part V condition comply with the provisions of the Act. The DLR Housing Department were consulted on the application in line with the guidance and they noted that the applicant intends to comply with Part V of the Act by way of the transfer of one dwelling to the Council. In their response for the Planner's Report, the Housing Department noted that the costs of such a transfer currently exceed the Council's acquisition threshold, although it was acknowledged that these costs are currently indicative and that the actual cost cannot be quantified at this stage.
- 7.5.3. It is recognised that there may be occasions whereby units may not be suited to the needs of the Planning Authority, such as when land and development costs are too high, and in these cases, the Planning Authority must pursue one of the other available pathways to compliance with Part V. This is acknowledged by the Housing Department who have stated that, should the post planning validated costs be similar to the indicative costs, then the Council may review the proposal and seek an alternative compliance option. Circular PL 10/2015 and Housing Circular 36/2015 recognise that it is not realistic at planning application stage for an applicant to provide detailed actual costs for a development for which permission has not yet been granted and for which site valuations are not required until the date of the grant of planning permission.
- 7.5.4. Ultimately the Housing Department raised no objection to the applicant's proposal and consider that the development is capable of compliance, subject to a condition requiring the applicant to enter into an agreement under Part V, Section 96 of the Act and I am satisfied that this is in accordance with the relevant guidance.

7.6. Other Matters

- 7.6.1. Regulation of Commercial Institutional Investment in Housing, Guidelines for Planning Authorities (2021), should apply to developments comprising five or more houses or duplex units. The purpose of these guidelines is to ensure that own-door housing units and duplex units in lower density housing developments are not bulk purchased for market rental purposes by commercial institutional investors in a manner that causes the displacement of individual purchasers and/or social and affordable housing including cost rental housing. Should the Board be minded to grant permission for the proposed development, I recommend that 'Condition RCIIH1', as per the wording provided in the Guidelines, is used as it enables the developer to carry out any enabling or preparatory site works whilst providing the necessary safeguards required by the guidance.

7.7. Appropriate Assessment

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

8.0 Recommendation

- 8.1. From my assessment above, I recommend that the Board should uphold the decision of the Planning Authority and grant planning permission for the proposed development, based on the reasons and considerations set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the zoning objective relating to the site and the nature and extent of the proposed development, it is considered that the proposal, subject to the conditions set out below, would not seriously injure the amenities of the area or property in the vicinity, would not be prejudicial to public health or the environment and would generally be acceptable in terms of design, traffic safety and amenity.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 10th day of November 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Details of the materials, colours and textures of all the external finishes to the proposed dwellings (excluding render to the rear upper level) shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
3.	<p>The following tree protection measures shall apply in accordance with the drawings and documentation submitted to the Planning Authority on the 10th day of November 2022:</p> <p>(a) The existing trees and hedgerows on site shall be retained and protected in accordance with the 'Tree Protection' (Dwg Ref: 103, CMK Horticulture and Arboriculture).</p> <p>(b) Excavations in preparation for foundations, drainage, laying of new surfaces and all works above ground level in the immediate vicinity of trees to be retained shall be carried out under the supervision of a specialist arborist, in a manner that will ensure that all major roots are protected, and all branches are retained.</p> <p>(c) No trees or hedgerows shall be cleared between the months of March to August (inclusive).</p> <p>Reason: To ensure that the trees are not damaged or otherwise adversely affected by building operations and in the interests of wildlife protection.</p>

4.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health</p>
5.	<p>Prior to commencement of development, the developer shall enter into water and wastewater connection agreement with Irish Water.</p> <p>Reason: In the interest of public health</p>
6.	<p>The construction of the development shall be managed in accordance with a Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise and dust management measures, environmental protection measures and traffic management arrangements.</p> <p>Reason: In the interest of public safety, environmental protection, and residential amenity</p>
7.	<p>The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of public open spaces, roads and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: To provide for the satisfactory future maintenance of this development in the interest of residential amenity.</p>
8.	<p>Hours of work shall be confined to 0700 to 1900 Mondays to Fridays inclusive, excluding bank holidays, and 0800 to 1400 hours on Saturdays. Deviation from these times will only be allowed in exceptional circumstances subject to the prior written agreement of the planning authority.</p> <p>Reason: In the interest of residential amenities of surrounding properties and in the interest of clarity.</p>

9.	<p>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.</p> <p>Reason: In the interests of visual and residential amenity.</p>
10.	<p>Proposals for an estate/street name, house numbering scheme and associated signage (in Irish and English) shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.</p> <p>Reason: In the interests of urban legibility and to ensure the use of locally appropriate placenames for new residential areas.</p>
11.	<p>Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of social and affordable housing in accordance with the requirements of section 96 of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 97(7) applies) may be referred by the planning authority or any other prospective party to the agreement to the Board for determination.</p> <p>Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan for the area.</p>

12.	<p>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 of roads, footpaths, watermains, drains, 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 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.</p> <p>Reason: To ensure the satisfactory completion of the development.</p>
13.	<p>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. The contribution shall be paid prior to the 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 of 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 the Board to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000 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.</p>
14.	<p>(a) Prior to the commencement of any house or duplex unit in the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning</p>

authority (such agreement must specify the number and location of each house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all houses and duplex units permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.

(b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each specified house or duplex unit for use by individual purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.

(c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified housing units, in which case the planning authority shall confirm in writing to the applicant or any person with an interest in the land that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.

Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the interests of the common good.

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.

Terence McLellan
Senior Planning Inspector

28th August 2023