



An
Bord
Pleanála

Inspector's Report ABP-315582-23

Development

Alterations to residential development previously approved under Reg. Ref. 3740/20 and An Bord Pleanála Ref. No. ABP-309448-21 comprising the construction of 3 dwellings and associated site works.

Location

257-259 Mount Prospect Avenue,
Clontarf, Dublin 3

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

4375/22

Applicant(s)

JM Dunluce Ltd

Type of Application

Permission

Planning Authority Decision

Grant

Type of Appeal

Third Party

Appellant(s)

Tom Soye

Niamh and T.J. Farrelly

Fergal McNamara and Sinead Gargan

Suzanne and Ross Young

Observer(s)

Clontarf Residents Association

Date of Site Inspection

February 03rd, 2024

Inspector

Lorraine Dockery

1.0 Site Location and Description

- 1.1. The site, which has a stated area of approximately 0.5816 hectares, is located on the south-western side of Mount Prospect Avenue, Dublin 3, close to its junction with Clontarf Road and the adjoining Dublin Bay. St Anne's Park is located on the opposite (north-east) side of Mount Prospect Avenue.
- 1.2. The site was previously occupied by two large, detached dwellings with relatively substantial associated garden areas fronting onto Mount Prospect Avenue. Works are presently on-going on the construction of the development permitted under ABP-309448-21.
- 1.3. This is a mature residential area, generally characterised by two-storey, semi-detached and detached dwellings.

2.0 Proposed Development

- 2.1. Permission is sought for alterations to a residential development previously approved under Reg. Ref. 3740/20 (ABP-309448-21) comprising:
 - (i) the construction of 3 no. three-storey, four-bedroom flat roofed dwellings, with 1 no. balcony at first floor level and 2 no. balconies at second floor level, to the rear of the approved apartment block;
 - (ii) provision of 6 no. car parking spaces (of the 37 no. permitted) to serve the 3 no. dwellings;
 - (iii) all ancillary works, including boundary treatment and SuDS, necessary to facilitate the development.
- 2.2. It is stated in the public notices that the proposal does not necessitate any tree removal (this is discussed further under 'Biodiversity' section).

3.0 Planning Authority Decision

3.1. Decision

The planning authority GRANTED permission, subject to 21 conditions.

The planning authority requested FURTHER INFORMATION in relation to a number of items including: details of outline of previously refused Block B; demonstration of how proposal complies with private open space provision; overlooking/privacy matters; access to daylight/sunlight; bin storage; bicycle parking; relocation of car parking to address biodiversity matters; submission of Arboricultural Constraints Plan; impact on tree root zones; management of woodland; play areas; updated ecological assessment; updated bat surveys and updated badger survey.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The main points of the planner's report include:

- Reflects decision of planning authority; recommends grant of permission

3.2.2. Other Technical Reports

Transportation Planning Division- Grant permission, with conditions (report dated 07/12/22)

Drainage Division- No objections, subject to conditions (report dated 26/07/22)

Parks, Landscape and Biodiversity Division- Object to this development, specifically due to its proposed negative impact on the existing Holm Oak woodland and absence of biodiversity information

3.3 Prescribed Bodies

3.3.1 None

4.0 Planning History

3740/20 (ABP-309448-21)

SPLIT DECISION

Permission GRANTED for demolition of two dwellings and outbuildings and construction of 1 apartment block (Block A) (5 storeys plus setback, 31 apartments) and ancillary site development works.

Permission REFUSED for Block B (4 storey building; 20 apartments) for one reason relating to extent of loss of existing mature trees, primarily non-native Holm Oaks, which was considered excessive and would seriously injure the visual amenities of the area.

ABP-306314-20

Permission REFUSED for demolition of 2 existing dwellings and the construction of 2 no. 5- storey (with setback penthouse) apartment blocks accommodating a total of 69 no. apartments and all associated works and services. The reasons for refusal related to scale and massing; size of units; impacts on bat species and their habitat and extent of tree loss.

5.0 Policy and Context

5.1 National Planning Policy

The following list of section 28 Ministerial Guidelines are considered to be of relevance to the proposed development. Specific policies and objectives are referenced within the assessment where appropriate.

- Guidelines for Planning Authorities on Sustainable Residential Development and Compact Settlements
- Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities
- Architectural Heritage Protection, Guidelines for Planning Authorities
- Design Manual for Urban Roads and Streets
- The Planning System and Flood Risk Management (including the associated Technical Appendices)
- Urban Development and Building Heights, Guidelines for Planning Authorities
- Childcare Facilities – Guidelines for Planning Authorities
- Climate Action Plan
- Appropriate Assessment of Plans and Projects in Ireland - Guidelines for Planning Authorities

- Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government

Other policy documents of note:

- Regional Spatial & Economic Strategy for the Eastern & Midland Regional Assembly
- Dublin Metropolitan Area Strategic Plan
- Housing For All
- National Planning Framework

Objective 35

Increase residential density in settlement, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

5.2 Development Plan

The Dublin City Development Plan 2022-2028 is the operative City Development Plan.

The site is in an area zoned ‘Objective Z1’ which seeks ‘to protect, provide and improve residential amenities’.

‘Residential’ is a permissible use under zoning ‘Objective Z1’.

Chapter 5 Quality Housing and Sustainable Neighbourhoods

Chapter 15 Development Standards

Section 15.5.2 Infill Housing and Section 15.13.4 Backland Housing are noted

Policy QHSN6 Urban Consolidation: To promote and support residential consolidation and sustainable intensification through the consideration of applications for infill development, backland development, mews development, re-use/adaption of existing housing stock and use of upper floors, subject to the provision of good quality accommodation.

Policy GI41 Protect Existing Trees as Part of New Development: To protect existing trees as part of new development, particularly those that are of visual, biodiversity or

amenity quality and significance. There will be a presumption in favour of retaining and safeguarding trees that make a valuable contribution to the environment.

Appendix 16 Sunlight and Daylight

5.3 Natural Heritage Designations

The nearest Natura 2000 sites are located c. 70m to the southeast of the appeal site- North Bull Island SPA (Site Code 004006) and North Dublin Bay SAC (Site Code 000206).

5.4 EIA Screening

Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- Construction of more than 500 dwelling units,
- Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. (In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)

The current proposal is for a development of 3 dwellings on a stated site area of 0.58 hectares located within the built-up area but not in a business district, therefore well below the applicable threshold of 10 hectares. Previously 31 residential were permitted on the overall site by An Bord Pleanála and it was concluded in that case that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that, on preliminary examination, an Environmental Impact Assessment Report (EIAR) or a determination in relation to the requirement for an EIAR was not necessary in this case.

Inclusive of the 31 previously permitted units, having regard to the nature and scale of the development proposed, the planning history on the site, the site location within an established built-up urban area which is served by public infrastructure and

outside of any protected site or heritage designation, the nature of the receiving environment and the existing pattern of residential development in the vicinity, and the separation distance from the nearest sensitive location, 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 The Appeal

6.1 Grounds of Appeal

In total, four appeals were received. All submissions have been taken into account in my assessment. Reference is made to more pertinent issues, which are expanded upon, within the main assessment. The issues raised of concern can be broadly categorised under the following headings:

- Contrary to Development Plan and national policy; backland development
- Impacts on residential amenity- overlooking, impacts on privacy and security; overshadowing; overbearing; noise/disruption impacts from car parking; quality of communal open space; design and environmental quality of proposed houses
- Biodiversity- inadequate landscaping information; boundary treatment; removal of mature vegetation to facilitate works; inadequate bat and badger surveys; proximity to designated site and UNESCO Biosphere of Dublin Bay; impacts on ecological corridor; Holm Oaks should be given maximum protection; impacts on woodland understated; impacts on badgers; location of House 1 relative to badger den, fox den or both; bait marking or camera trap surveys not undertaken
- Impacts on character of area; position, height and scale of House 1 relative to No. 6 The Oaks;
- Traffic and transportation concerns- inadequate car parking, congestion,
- Setting of precedent/ not sufficiently different to previous refusal on site

- AA- screening took account of mitigation measures; did not comply with requirements of legislation
- Procedural/Legal Matters- boundary encroachment/positioning of fence relative to The Oaks; drawings do not accurately depict impact of proposal on historic woodland; geotechnical survey/analysis not provided; conditions attached by PA in previous decision 3740/20 relating to buffers should be attached to any grant of permission; applicants not responded to 3rd party residents to discuss joint development opportunities; application form queries; prepared NIS not referenced in public notices
- Photographs submitted with some appeals
- Bat survey commissioned by third-party appellant included in appeal submission (Suzanne and Ross Young).

6.2 Planning Authority Response

If permission is granted, requests that the following conditions be specifically included:

- Section 48 development contribution condition
- An open space condition (in lieu of open space requirement not being met)
- Bond condition
- Social housing condition

6.3 Observations

One observation was received from Clontarf Residents' Association. The issues raised in the observation are broadly similar to those summarised above, in relation to the appeal submissions. In the interests of brevity, I will not reiterate but refer the Board to same. Additional matters raised include:

- Zoning compliance
- Requests Board consider all matters that may impact on neighbouring properties in terms of backland and infill development
- Impact of pedestrian entrance on No. 255 Mt Prospect Avenue

- Overlooking of No. 430-436 Clontarf Road and Mount Prospect House and impact of House No. 1 on The Oaks

6.4 Applicant Response

A response was received from the first party, which may be summarised as follows:

- Refutes the grounds of appeal
- Ecological Appraisal Report, commissioned at FI stage, noted no badger setts in the subject site and that existing trees had few features of bat roosting potential- comprehensive conditions attached by PA to ensure on-site habitat protection
- Subject proposal does not necessitate any tree removal
- Arboricultural note provides details as to construction of woodland walkway; woodland walkway and communal amenity space permitted under 309448-21
- Pedestrian entrance, bicycle parking area, playground and communal open space referred to in appeals were also previously approved under ABP-309448-21
- In terms of concerns raised re: overshadowing of No. 6 The Oaks by proposed House No. 1, considers that overshadowing cannot occur in any meaningful way due to footprint of proposed house and orientation; any shadow impact will be limited to mornings at the northern-most section of the rear garden of this property
- Separation distances are sufficient to dispel concerns regarding overlooking of No. 432 Clontarf Road
- Refutes claims made in relation to boundary encroachment and submits letter from HBMO Solicitors which notes that ownership and title are not a matter for determination by ABP
- No requirement to discuss joint development with residents
- Vehicular parking will be allocated; no requirement to provide vehicular parking/open space to the front of dwellings
- Proposal designed and scaled in an appropriate manner

6.5 Further Responses

None

7 Oral Hearing Request

None

8 Assessment

8.1 I highlight to the Board that this application was assessed by the planning authority under the Dublin City Development Plan 2016. In the interim, a new Plan has been adopted. I have assessed the proposal under the operative Development Plan 2022-2028.

8.2 I have read all the documentation attached to this file including inter alia, the appeal submissions, observations, further responses, the report of the Planning Authority, in addition to having visited the site. The primary issues, as I consider them, are:

- Principle of proposed development/policy context
- Impacts on amenity
- Biodiversity
- Other matters

8.3 I highlight to the Board that there is a planning history on this site. In the most recent decision (ABP-309448-21), a split decision issued whereby permission was GRANTED for demolition of two dwellings and outbuildings and construction of 1 apartment block (Block A) (5 storeys plus setback, 31 apartments) and ancillary site development works. Permission was REFUSED for Block B (4 storey building; 20 apartments) for one reason relating to the extent of loss of existing mature trees, primarily non-native Holm Oaks, which was considered excessive and would seriously injure the visual amenities of the area.

8.4 This current proposal provides for the construction of three dwellings partly within the footprint of the previously refused Block B. I refer the Board to Drawing No. 2018-94-FI-100 submitted to the planning authority as part of the Further Information request in this regard, which outlines the footprint of that currently proposed relative

to that previously refused on the site (yellow dotted line). This proposed development, if permitted, will read as part of the overall previously permitted development utilising previously permitted open space, roads, access, services and parking. It is noted that works are currently on-going in the construction of that previously permitted development. I highlight to the Board that many of the issues raised in the third-party submissions in this current appeal relate to wider issues/concerns relating to the previously permitted development, including, inter alia, wider landscaping of the overall development; communal open space; location of pedestrian access gate; boundary treatments; bicycle parking area and location of playground. These matters were all assessed and permitted in the previous grant of permission on the overall site (ABP-309448-21) and dealt with by condition in many instances. In this appeal, I shall only be dealing with the third-party issues raised as they relate to this current proposal before me.

Principle of proposed development/Policy Context

- 8.5 I have had regard to the submissions received in relation to this matter. The subject site is zoned 'Objective Z1' which seeks 'to protect, provide and improve residential amenities'. 'Residential' is a permissible use under zoning 'Objective Z1'. The principle of residential development on this site was accepted by the Board previously on this site.
- 8.6 Section 15.5.2 Infill Housing and Section 15.13.4 Backland Housing of the operative City Development Plan are noted. Backland development is generally defined as development of land that lies to the rear of an existing property or building line. I note that the development permitted under ABP-309448-21 is currently under construction on the site. I consider the proposal before me to represent backland, infill development.
- 8.7 The previous decision on these lands omitted the apartment block proposed in this general location on grounds of impacts on the existing trees on site (see planning history above). In this current proposal, the applicants have reduced the overall scale and footprint of the development proposed in this area from a four-storey apartment block containing 20 apartments with much greater footprint to that currently proposed- three detached dwellings, three-storey in height. The submitted

public notices state that the current proposal will not necessitate any tree removal. I shall deal with this matter further below.

8.8 I am of the opinion that the previous reason for refusal in relation to tree removal and impacts on amenity have been substantially overcome in this current application. Having regard to the nature and scale of development proposed, namely an application for three residential units, located on lands on which such development is permissible under the zoning objective, I am of the opinion that the proposed development is acceptable in principle and consistent with the zoning objective for the area.

8.9 In addition to the zoning objective, I have also had regard to the Council's Core Strategy with respect to housing. The core strategy states that compact growth will be promoted throughout the city through appropriate infill development and consolidation of brownfield sites and targeted growth along key transport corridors (section 2.3). The proposal underpins the principles of a compact city, with good public transport options and a range of services and amenities existing within this established area of the city. I am satisfied that the proposal is in compliance with the operative City Development Plan in this regard. The proposal is also considered to be in compliance with national guidance in this regard in relation to the densification of established parts of the city.

8.10 I am generally satisfied in this regard and consider the proposal to be consistent with local and national policy in this regard. The Board did not express concerns in this regard in the previous appeal on this site (ABP-309448-21). In terms of setting of precedent, I note that each application is assessed on its own merits.

Impacts on Visual and Residential Amenity

8.11 Many of the submissions received raised concerns in relation to impacts on the amenity of the area.

8.12 In terms of visual amenity, I am generally satisfied with the design approach put forward in this instance. I do not consider the proposal to be excessively dominant and I am of the opinion that the massing, scale and heights of the proposed development are generally considered acceptable and reflect height permitted/existing within the general area. I do not consider it to be out of character with existing development in the vicinity. The proposed development incorporates

an innovative and quality contemporary design response that respects the sensitivities of the site. I consider that the proposal does not represent over-development of the subject site. In terms of density proposed, I am satisfied that the proposal makes an appropriate proposal for the further development of this sensitive site. I am satisfied that the proposed development is in accordance with the operative City Development Plan in this regard.

- 8.13 I am of the opinion that given its zoning, the delivery of a residential development on this prime site that in my opinion has capacity to accommodate this development of three dwellings, in a compact form comprising well-designed units would be consistent with the zoning objective for the site and with the policies and intended outcomes of current Government policy, including the National Planning Framework, which seeks to increase densities in suitable locations. The site is considered to be located in a central and accessible location, proximate to good public transport, within an established area of the city. The Board did not express concerns in this regard in the previous appeal on this site (ABP-309448-21). I therefore consider the proposal to be acceptable in this regard.
- 8.14 The Development Plan sets out requirements in relation to public open space in new residential schemes, namely a requirement for 10% of the site area ((or a payment in lieu if usable space cannot be provided on site) (Section 15.8.6 of operative City Development Plan). It is noted that there is a shortfall in public open space provision. The planning authority are satisfied that this matter could be adequately dealt with by means of condition (by payment of a contribution in lieu). I am satisfied in this regard, given the proximity of the site to existing, quality open space and natural environments. Adequate private open space is provided to all units to comply with Development Plan standards.
- 8.15 In terms of impacts on residential amenity, concerns in this regard have been put forward in all of the submissions received. I acknowledge that, without doubt, there will be some limited change in outlook as the site moves from its current permitted level of development to that accommodating a development, such as that proposed. This is not necessarily a negative.
- 8.16 I am cognisant of the relationship of the proposed development to neighbouring properties. In my opinion, the location of the proposed dwellings is such that they

would have limited impacts on any nearby residential properties. Separation distances in excess of what would normally be anticipated within such an established, urban area are proposed with existing properties. This will ensure that any impacts are in line with what might be expected in an area such as this. Separation distances with the rear building line of properties on Baymount Park are approximately 62m at their nearest point while a separation distance of 27m is proposed with properties fronting onto Clontarf Road (with a shared surface, access lane and rear gardens in this intervening area). The nearest property to that proposed is No. 6 The Oaks with proposed House No. 1. Proposed House No. 1 is gabling onto this property and steps forward of the existing building line with The Oaks. I am satisfied with this layout, common within such urban areas, and I do not anticipate there to be any negative residential impacts in this regard due to the height, location and design rationale put forward. The proposed development is considered not to be excessively overbearing given this context.

- 8.17 Given the locational context of the site, the orientation of existing and proposed development, together with the design rationale proposed, which includes for extensive setbacks and separation distances, I consider that matters of overlooking would not be so great as to warrant a refusal of permission. Given the urban location of the site, a certain degree of overlooking and overshadowing is to be anticipated. I am satisfied that impacts on privacy would not be so great as to warrant a refusal of permission. I have no information before me to believe there would be security issues if the proposal were permitted. There is an acknowledged housing crisis and this is a serviceable site, in an established city area, where there are adequate public transport links with ample services, facilities and employment in close proximity.
- 8.18 A Daylight Analysis and Overshadowing Report was submitted with the application. I am satisfied with the conclusions contained therein. I note that the submitted Report has been prepared in accordance BRE BR209 'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice', 3rd Edition 2022 and had regard to the Design Standards for New Apartments- Guidelines for Planning Authorities (2020). I have considered the report submitted by the applicant and have had regard to BS 8206-2:2008 (British Standard Light for Buildings- Code of practice for daylighting) and BRE 209 – Site Layout Planning for Daylight and Sunlight: A guide to Good Practice

(2011). The latter document is referenced in the section 28 Ministerial Guidelines on Urban Development and Building Heights (2018). While I note and acknowledge the publication of the updated British Standard (BS EN 17037:2018 'Daylight in Buildings'), which replaced the 2008 BS in May 2019 (in the UK), I am satisfied that this document/UK updated guidance does not have a material bearing on the outcome of the assessment and that the more relevant guidance documents remain those referenced in the Urban Development and Building Heights Guidelines. I have carried out a site inspection.

- 8.19 In designing a new development, it is important to safeguard the daylight to nearby buildings. I have had regard to the guidance documents referred to in the Ministerial Guidelines and the Dublin City Development Plan to assist in identifying where potential issues/impacts may arise.
- 8.20 Negligible impacts on daylight/sunlight are anticipated given the substantial separation distances with existing properties, orientation and the design rationale put forward. I consider such potential impacts to be reasonable, having regard to the need to provide new homes within an area identified for residential development/compact growth, and increase densities within zoned, serviced and accessible sites, as well as ensuring that the potential impact on existing residents is not significantly adverse and is mitigated in so far as is reasonable and practical. The planning authority did not raise concerns in this regard. The Board did not express concerns in this regard in the previous appeal on this site (ABP-309448-21) for a much larger development than that currently proposed.
- 8.21 I am of the opinion that the proposal would not depreciate the value of property in the vicinity. I consider that the site has the capacity to absorb a development of the nature and scale proposed, namely three dwellings, without detriment to the amenities of the area. I am generally satisfied in this regard.

Biodiversity

Trees

- 8.22 All of the third part party submissions received raise concerns in relation to impacts on biodiversity and contend that many of the surveys undertaken in this regard are inadequate in nature. I note that a number of documents were submitted with the application in this regard and I highlight to the Board that the planning authority

requested a number of points in relation to this matter as part of their Further Information request. Additional documents were submitted with the applicant's Further Information response including Arborists Peer Review, Arboricultural Note, Bat Fauna Assessment, Woodland Management Plan and Ecological Appraisal. A Tree Survey Plan, Tree Protection Plan and Tree Works Plan were also submitted. It is stated in the submitted public notices that the proposal will not necessitate any tree removal. I note that while the proposal will not necessitate any Holm Oak tree removal, the proposal does include some tree removal from the site. In particular, I note the concerns of the Parks Division of the planning authority in relation to the proposed removal of 8 no. trees along the boundary with The Oaks development, due to impacts on screening and visual amenity for residents of the The Oaks. The applicants have responded by stating that while these trees do provide screening, of the 8 requested trees to be retained, 5 are Category U (poor quality) and are proposed for removal either due to their poor quality or because they are posing significant structural damage to the boundary wall. Their retention is stated to be not practical, sustainable or in accordance with good arboricultural practice. A submitted Peer Review of the findings contained in the Arboricultural Response concurs with the opinions contained therein. I note that the planning authority did not specify the retention of these trees in their decision to grant permission. Given the justification put forward by the applicants, I am satisfied with the rationale for the removal of these trees.

- 8.23 Many of the submissions received also raised concerns in relation to the impact of the proposed development on the existing Holm Oak trees within the site, including impacts on their roots and canopies. This was also raised as a concern by the Parks Division of the planning authority. The applicants addressed the matter in their response to Further Information and I refer the Board to same. This matter formed the basis for refusal of the previous appeal on this site ABP-309448-21. In response to this appeal, the applicants state that moving the dwellings so they are completely outside the theoretical RPA (Root Protection Area) and canopy spread of all trees is not possible nor do they consider it necessary considering the levels of incursions within their RPAs and the response of the trees to previous working operations that have occurred on site, both through excavations works within their rooting areas and pruning of their canopies. With the exception of tree T642, the extent of incursion

within the areas of ground most likely to contain roots is stated to be less than 8%, with this figure increasing to 20.4% for tree T642. House No. 3 is located closest to the canopies of existing trees. The applicants notes however that this proposed house is located in a similar location to the existing dwelling on site (now demolished) and that the crown pruning works will be similar that to which has previously been carried out. The applicants have also addressed concerns raised in relation to the proposed woodland path and the impacts its construction may have on the root zones of existing trees. It is stated that it shall be constructed above existing ground level using a cellular confinement system and the decking and platform paths will be suspended above the existing ground using posts or mini piles. Excavation works will be localised to post holes only and would be carried out manually and under arboricultural supervision. I am satisfied in this regard and consider that such a pathway will add to the amenity of the area.

- 8.24 I am of the opinion that it is inevitable that there will be some loss of trees, given the development proposal put forward. A balance needs to be achieved on such sensitive sites. Many of the trees proposed for removal are of poor quality, likely to require felling in any event in the future. No Holm Oaks are required to be removed. Compensatory planting is proposed, and I consider that the scale of tree removal is not so great as to warrant a refusal of permission. I am satisfied within the proposals to protect the tree protection areas and canopies of the Holm Oak and consider that this matter can be adequately dealt with by means of condition. The recommendations outlined in the submitted reports should be fully implemented. Notwithstanding the concerns expressed by the Parks Division, the planning authority are satisfied in this regard and consider that this matter could be adequately dealt with by means of condition. I am of the opinion that the proposal is substantially in compliance with Policy GI141 of the operative City Development Plan in relation to protection of existing trees in new developments. I am satisfied in this regard.

Badgers

- 8.25 Concerns relating to impacts of the proposal on badgers were raised in the third-party submissions. The matter was also raised by the planning authority as part of their request for Further Information requesting an updated survey. An Ecological Appraisal was prepared as part of the Further Information submission, which

includes for a Badger Survey Report within Appendix B. Additional surveys were undertaken in September 2022 which covered all publicly accessible lands within a 150m radius of the proposed development. Access was not granted to private gardens and residences within the 150m buffer, notwithstanding the concerns expressed by third parties, therefore the presence or absence of badger setts within these areas cannot be determined. I note the DAU did not make comment on this application.

- 8.26 It is stated in the submitted reports that evidence of badger foraging was noted within the application site with no badger setts found within the survey area and no evidence of badgers within the back garden areas of the two houses on site (now demolished). Within the woodland area, one instance of evidence of badger activity was noted in the form of a badger scat and snuffle holes. It was noted that a mammal path led to a gap in the security fencing along the northern boundary of the woodland. No other field signs or presence of any other mammal was identified at the time of the mammal survey. The conclusion of the Ecological Appraisal was that the mammal paths leading into the woodland suggest that badgers are commuting from outside the application site into the woodland forage area. Notwithstanding that habitats within the application site do provide suitable habitat for badgers, it can be concluded that there are currently no badger setts within the application site or within accessible lands in the 150m surrounding the application site. No construction works are proposed for the woodland area and it is recommended in the report that this habitat is maintained. A number of recommendations are outlined. The report concludes that with the implementation of these mitigation measures, the proposed development will not significantly impact upon local badger populations. The planning authority were satisfied in this regard and attached conditions to their grant of permission. I am generally satisfied in this regard and consider the proposals put forward in this regard to be reasonable.

Bats

- 8.27 Concerns were raised in the third-party submissions regarding impact of the proposal on bats and one party (Ross and Suzanne Young) submitted their commissioned 'Report of bat monitoring at a site adjacent to 257-259 Mount Prospect Avenue'. Their commissioned report finds that the bat survey undertaken on behalf of the applicants was 'wholly inadequate and unfit for purpose' and I refer

the Board to same. The planning authority raised the matter of bats as part of their Further Information request and a Bat Fauna Assessment was submitted in response, together with the matter being addressed in the Ecological Appraisal. Surveys were undertaken in September 2020 and 2022 while a Bat Fauna Assessment was undertaken in November 2022. No bats were found to be roosting in any of the buildings or trees within the site, however foraging behaviour was noted. Each tree proposed to be removed was assessed for roosting potential, no definitive roosts or trees with large cracks/hollows were observed. Mitigation is proposed. Bat foraging was noted and would be expected to continue on site following the implementation of the proposed lighting plan, which has undergone consultation. Feeding and commuting routes that support bat populations roosting in St. Anne's Park were not observed in the vicinity of the proposed development. The planning authority have recommended that the matter be dealt with by means of condition.

- 8.28 I highlight to the Board that this matter was comprehensively assessed in the previous permission on this site, ABP-309448-21, and the Board did not raise concern in this regard. I would concur the opinion of the Inspector in that report that given the relatively low level of bat activity recorded, together with the mitigation measures put forward, I am satisfied that the site will continue to provide for the protection of bats on site. I have no reason to dispute the findings of the submitted reports and am satisfied in this regard.

Conclusion

- 8.29 I note the scale of the development (three dwellings), the location of the site which is zoned for development in the operative City Development Plan, the existing permitted use of the overall lands for residential development and the proposal to integrate ecological features, designated open space and landscaping into the proposed development. As a result, I do not consider the proposal will have a significant negative long-term impact on the biodiversity of the site or any designation for Dublin Bay and consider that any outstanding matters can be adequately dealt with by means of condition.

Other Matters

- 8.30 I am satisfied with the quality of development permitted for future occupiers of these units in terms of living accommodation, private open space provision and compliance with other development standards. The planning authority have attached a number of conditions in this regard and I consider it reasonable to attach similarly worded conditions to this grant of permission, if the Board is so disposed. The proposed dwellings would integrate well with existing and permitted development in the vicinity. I am satisfied in this regard.
- 8.31 Some third-party appellants raised concerns in relation to the noise generated by the location of car parking spaces. I note that these spaces were permitted under the previous grant of permission on site. I am satisfied with their location. In addition, concerns regarding increased congestion are noted. No additional car parking spaces are proposed in this current appeal. In fact, the planning authority attaches a condition relating to the omission of two no. spaces. There is some discussion in the documentation between the applicants and the planning authority regarding the number of spaces previously permitted. I am satisfied that 35 spaces are appropriate for the overall development, given its locational context, the nature of the development proposed and proximity to public transport facilities and pedestrian/cycle facilities. I concur with the planning authority in this regard and recommend the omission of two spaces. This matter could be adequately dealt with by means of condition. I am satisfied that the proposal will lead to no greater levels of congestion than that previously permitted on site.
- 8.32 Matters raised in relation to legal/boundary matters are outside the remit of this planning appeal. It is clearly an issue between parties. I refer the Board to section 5.13 of the Development Management Guidelines 2007, which acknowledge that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In addition, I also note section 34(13) of the Planning Act, which states that a person shall not be entitled solely by reason of a permission to carry out any development. I recommend that a note in this regard be attached to any grant of permission.

- 8.33 The submission of an NIS was not referenced in submitted public notices as no NIS was submitted with application documents. The need for appropriate assessment was screened out at Stage 1. In addition, I note that validation of the application in terms of the application form is a matter for the planning authority. As stated elsewhere, I am satisfied that there is adequate information before to undertake a comprehensive assessment of the proposed development.
- 8.34 I do not consider a geotechnical survey to be necessary in this instance given the nature of the site in question and the scale of development proposed (namely three dwellings) with no basement works proposed. I am satisfied that there is adequate information before to undertake a comprehensive assessment of the proposed development.
- 8.35 There is no provision in the legislation which obliges the applicants to hold discussions with adjoining landowners relating to possible future joint development proposals.

9 Appropriate Assessment Screening

- 9.1 The planning authority references an Appropriate Assessment Screening Report, but it appears to me that there is no such stand-alone document in the application documentation. The applicants addressed Appropriate Assessment in section 9.0 of the Planning Report, submitted with the application documentation. The matter of designated sites is also addressed in the submitted Ecological Appraisal. The applicants state that the proposal was screened for appropriate assessment, which found that the proposed development will not result in significant adverse impacts on Natura 2000 sites in vicinity, which include North Bull Island SPA (Side Code 004006), North Dublin Bay SAC (Site Code 000206), South Dublin Bay and River Tolka SPA (Site Code 004024) and South Dublin Bay SAC (Site Code 000210).
- 9.2 It is stated in the documentation that the main potential indirect risk from the development of the subject site to any Natura 2000 site is considered to be indirect hydrological connection of the development to the surrounding aquatic Natura sites. However foul and surface water management in accordance with current standards and best practice will ensure no negative impacts on any protected habitats. The

applicants therefore conclude that progression to Stage 2 Appropriate Assessment is not required.

- 9.3 The nearest Natura 2000 sites are located c. 70m to the southeast of the appeal site, namely North Bull Island SPA (Site Code 004006) and North Dublin Bay SAC (Site Code 000206). The project is not directly connected with, or necessary to the management of any Natura 2000 sites. The Board is referred to Table 1-6 of the Ecological Appraisal for details of the Qualifying Features, Potential Connectivity and distances from designated sites.
- 9.4 The proposed development site is not directly hydrologically linked to a Natura 2000 site. There is an indirect pathway between the proposed development site and designated sites via foul and surface water drainage networks. The management of surface water for the proposed development has been designed to comply with the requirements of planning authority. The proposed development is designed in accordance with the principles of Sustainable Urban Drainage Systems (SuDS). I am of the opinion that any mitigation measures put forward in the documentation are not for the purposes of the protection of any Natura designated site, they are purely for the protection of local ecology only. These measures would be undertaken by any competent developer for such a development, irrespective of its location or proximity to designated sites. There are no rivers in the vicinity of the site. It is located within Flood Zone C and the proposed project is deemed 'Appropriate'. Neither the planning authority nor Uisce Eireann have expressed any objections to the proposal in this regard. The new foul drainage system for the development will connect to the Uisce Eireann network and they made no comment to the proposal. The Board did not express concerns in this regard in the previous appeal on this site (ABP-309448-21) for a larger development and I refer the Board to the detailed assessment undertaken by the Inspector and Board in that appeal.
- 9.5 Foul wastewater discharge from the proposed project will be treated at the Irish Water Wastewater Treatment Plant at Ringsend prior to discharge to Dublin Bay. I am aware that the Ringsend WWTP operates under licence from the EPA (Licence no. D0034-01) and received planning permission (ABP Reg. Ref.: 301798) in 2019 for upgrade works. Regardless of the status of the WWTP upgrade works, the peak discharge from the proposed project is not significant in the context of the existing

capacity available at Ringsend. I am of the opinion that this matter does not require further in-depth scientific examination.

- 9.6 Having regard to the nature and scale of the proposed development, the location of the site within an adequately serviced urban area, the brownfield nature of the site, the physical separation distances to designated European Sites, and the absence of an ecological and/ or a hydrological connection, the potential of likely significant effects on European Sites arising from the proposed development, alone or in combination effects, can be reasonably excluded.

10 Recommendation

- 10.1 I recommend permission be GRANTED subject to conditions.

11 Reasons and Considerations

Having regard to the pattern of development in the area and its residential zoning under the Dublin City Development Plan 2022-2028, and to the standards for the development of infill houses on backland areas set out in section 15.13.3 and 15.13.4 of that Plan relating to infill development and backland housing respectively, it is considered that, subject to compliance with conditions below, the proposed houses would not seriously injure the character of the area or the amenities of property in the vicinity and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

12 Conditions

1.	The development shall be carried out in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted to the planning authority on the 22 nd 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
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	<p>development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity</p>
2.	<p>That all conditions attached to Register Reference ABP-309448-21 be strictly adhered to, save as may be amended by other conditions attached hereto</p> <p>Reason: In the interest of clarity</p>
3.	<p>This grant of permission shall expire with that of the permission granted under Register Reference ABP-309448-21</p> <p>Reason: In the interest of clarity</p>
4.	<p>(a) the south-west facing window serving House 01 kitchen/dining area shall be reduced to a high level ope 1.8m above finished floor level and shall be permanently fitted with opaque glazing</p> <p>(b) the 2nd floor side opes to kitchen/dining room in House No. 2 and 3 shall be permanently fitted with opaque glazing</p> <p>(c) Any glazing to balconies shall have an opaque treatment</p> <p>(d) Timber fencing to the rear private terraces shall be finished in a dark stain and fronted with buffer planting</p> <p>(e) Car parking spaces No. 27 and 28 on Drawing No. 2018-94-FI-100, submitted to the planning authority on 22nd day of November 2022 shall be permanently omitted. Cycle parking for a minimum of 3 no. standard bicycles and 3 no. non-standard bicycles shall be provided at this location in lieu of these spaces</p> <p>(f) adequate details of an appropriate enclosure of the bin store shall be submitted to the planning authority for agreement, prior to the commencement of development</p> <p>Reason: In the interests of residential amenity and to provide an adequate standard of development</p>

5.	<p>The mitigation measures and monitoring commitments identified in the Ecological Appraisal, Arboricultural Reports, Bat Fauna Assessment and all other plans and particulars submitted with the application shall be carried out in full except as may otherwise be required in order to comply with other conditions.</p> <p>Prior to the commencement of development, the developer shall submit a schedule of mitigation measures and monitoring commitments identified in the submitted reports, and details of a time schedule for implementation of the mitigation measures and associated monitoring, to the planning authority for written agreement</p> <p>Reason: In the interest of clarity and protection of the environment during the construction and operational phases of the proposed development.</p>
6.	<p>Details of the materials, colours and textures of all the external finishes to the proposed dwellings 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>
7.	<p>Each dwelling shall be used as a single dwelling unit only and shall not be sub-divided in any manner or used as two or more separate habitable units.</p> <p>Reason: In the interests of sustainable development and proper planning</p>
8.	<p>All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground.</p> <p>Reason: In the interests of visual and residential amenity.</p>
9.	<p>The construction of the development shall be managed in accordance with a Final 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 inter alia: details and location of proposed construction compounds, details of intended construction practice for the development, including hours of working, noise</p>

	<p>management measures, details of arrangements for routes for construction traffic, parking during the construction phase, and off-site disposal of construction/demolition waste and/or by-products.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
10.	<p>Prior to commencement of any permitted development, the developer shall engage the services of a qualified arborist as an arboricultural consultant, for the entire period of construction activity. The developer shall inform the planning authority in writing of the appointment and name of the consultant, prior to commencement of development. The consultant shall visit the site at a minimum on a monthly basis, to ensure the implementation of all of the recommendations in the tree reports and plans. To ensure the protection of trees to be retained within the site, the developer shall implement all the recommendations pertaining to tree retention, tree protection and tree works, as detailed in the in the submitted Tree Survey Report. All tree felling, surgery and remedial works shall be completed upon completion of the works. All works on retained trees shall comply with proper arboricultural techniques conforming to BS 3998: 2010 Tree Work – Recommendations. The clearance of any vegetation including trees and shrub shall be carried out outside the bird-breeding season (1 March–31 August inclusive) or as stipulated under the Wildlife Acts 1976 and 2000. The arborist shall carry out a post construction tree survey and assessment on the condition of the retained trees. A completion certificate is to be signed off by the arborist when all permitted development works are completed and in line with the recommendations of the tree report. The certificate shall be submitted to the planning authority upon completion of the works.</p> <p>Reason: To ensure and give practical effect to the retention, protection and sustainability of trees during and after construction of the permitted development.</p>
11.	<p>The landscaping scheme shall be carried out within the first planting</p>

	<p>season following substantial completion of external construction works.</p> <p>All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p>The developer shall retain the services of a suitably qualified Landscape Architect throughout the duration of the site development works. The developer's Landscape Architect shall certify to the planning authority by letter his/her opinion on compliance of the completed landscape scheme with the approved landscape proposal within six months of substantial completion of the development hereby permitted.</p> <p>Reason: In the interest of residential and visual amenity.</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 reinstatement of public roads which may be damaged by the transport of materials to the site, 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</p>

	<p>Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application 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 An Bord Pleanála 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, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission</p>
14.	<p>The developer shall pay to the planning authority a financial contribution in lieu of the public open space requirement in respect of public open space facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions*** of the Scheme at the time of payment. Details of the application 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 An Bord Pleanála 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, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

Note: The applicants are advised to note section 34(13) of the Planning and Development Act, 2000 (as amended) which states that a person shall not be entitled solely by reason of a permission to carry out any development.

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.

Lorraine Dockery
Senior Planning Inspector
06th February 2024

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

An Bord Pleanála Case Reference	ABP-315582-23		
Proposed Development Summary	Alterations to residential development previously approved under Reg. Ref. 3740/20 and An Bord Pleanála Ref. No. ABP-309448-21 comprising the construction of 3 dwellings and associated site works		
Development Address	257-259 Mount Prospect Avenue, Clontarf, Dublin 3		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	x
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No	x		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			

		Threshold	Comment (if relevant)	Conclusion
No		N/A		No EIAR or Preliminary Examination required
Yes			x	Proceed to Q.4

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

Inspector: Lorraine Dockery

Date: 06/02/2024