



An  
Bord  
Pleanála

## Inspector's Report

### ABP-315627-23

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<b>Development</b>	Mixed use building comprising 91 apartments and all other site works.
<b>Location</b>	1.045 Ha site towards north-eastern corner of the car park, Nutgrove Shopping Centre, Rathfarnham, Dublin 14
<b>Planning Authority</b>	Dún Laoghaire-Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D22A/0812
<b>Applicant</b>	Percy Nominees Limited.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse.
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Percy Nominees Limited.
<b>Observers</b>	Six observations (including petition), see section 6.3 for full details.
<b>Date of Site Inspection</b>	18 <sup>th</sup> October 2023.

**Inspector**

Terence McLellan

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## 1.0 Site Location and Description

- 1.1. The appeal site refers to an approximately 1.045h hectare irregularly shaped plot spanning the north east corner of the Nutgrove Shopping Centre car park, and a section of the adjoining public open space close to the junction of Nutgrove Avenue and Meadow Park Avenue in Rathfarnham. The site is bounded to the north by Nutgrove Avenue and the adjacent Nutgrove Retail Park and associated car park. Nutgrove Retail Park comprises large scale retail outlets and offices in buildings ranging from two storeys (equivalent) to four storeys in height and is accessed from Nutgrove Avenue.
- 1.2. To the east, the site is bounded by Meadow Park Avenue, which is largely characterised by two storey terraced homes, as are the adjacent streets of Mountain View Park and Mountain View Drive. Meadow Park Avenue is separated from the main shopping centre site by a large expanse of public open space that runs in a north south direction, the northern part of which forms part of the appeal site. Also to the east of the site are further large scale retail units associated with Nutgrove Retail Park, as well as the Nutgrove Office Park, all of which are accessed via Meadow Park Avenue.
- 1.3. Nutgrove Shopping Centre and associated car park sit to the south of the site and the Nutgrove Enterprise Park is located to the south east. The western boundary is marked by the remainder of the Nutgrove Shopping Centre car park, including a McDonalds Drive-Thru restaurant and a petrol station which sit adjacent to the main car park access and egress on Nutgrove Way. Further to the west on the opposite side of Nutgrove Way is Loretto Park and the adjacent dwellings which are generally two storeys.
- 1.4. There are bus stops on either side of Nutgrove Avenue providing access to Go Ahead Ireland bus services S6 (Tallaght to Blackrock), and 161 (Dúndrum Luas to Rockbrook). Additional bus services are available from other bus stops to the east. Dúndrum Luas is located approximately 1.5km to the east.
- 1.5. Site levels generally increase towards the south. The appeal site is in a slightly raised position in relation to Nutgrove Avenue, approximately 1 metre, however, this levels out towards the west. The northern and eastern boundaries are planted with several mature trees.

## 2.0 Proposed Development

- 2.1. Planning permission is sought for the redevelopment of the site to provide 91 apartments and a café in a single building up to eight storeys in height. The building would incorporate 47 retail car parking spaces internally within the ground floor and 60 residential car parking spaces at first floor level. An additional three accessible spaces are provided externally at ground floor level for the residential use.
- 2.2. Separate accesses would be provided to the internal parking for retail and residential use, with the retained shopping centre parking access/egress being located on the west elevation, and the residential parking access/egress located on the southern elevation. External ground level retail parking would be reconfigured to accommodate the development with surface level parking surrounding the building on its east, south, and west sides. A set down/service space would be provided adjacent to the eastern elevation close to the communal bin store.
- 2.3. A café would be provided at ground floor level fronting Nutgrove Avenue in addition to the double height main residential entrance/lobby and an internal residential amenity area. Two apartments would be provided at first floor level, above which the building would be exclusively residential. All dwellings would have private amenity space in the form of terraces and/or balconies.
- 2.4. A podium roof garden would be provided at second floor level and a further communal roof terrace would be located at sixth floor level. A communal residents garden would be provided at ground floor level, adjacent to the eastern façade. The development would also incorporate the upgrading and landscaping of the existing open space to the east of the site, which forms the boundary to Meadow Park Avenue and is in the ownership of Dun Laoghaire-Rathdown County Council.
- 2.5. At roof level the development incorporates PV panels in addition to six telecommunications antennae within three shrouds, and six transmission dishes with all associated equipment. The antennae would be located at the southern end of the roof and the dishes would be fixed to the lift overrun. A list of the key development statistics is provided below:

Key Figures
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Total Site Area (development site and public open space)	1.045 hectares		
Development Site	0.602 hectares		
Public Open Space	0.441 hectares		
Maximum Height	8 storeys (c.6.7m – 54.7m)		
Total GFA	11,211sqm		
No. of Homes	91		
Schedule of Accommodation	<b>1 Bed</b>	27	30%
	<b>2 Bed</b>	44	48%
	<b>3 Bed</b>	20	22%
	<b>Total</b>	91	100%
Open Space	Internal Communal – 180.78sqm External Communal – 842.75sqm Public (including park) – 4,551sqm Public (excluding park) – 141sqm		
Vehicle Parking	Residential – 63 Retail – 132 (47 internal)		
Bicycle Parking	133		
Residential Density	151dph		
Plot Ratio (Development Site)	1.86		
Site Coverage (Development Site)	35%		

### 3.0 Planning Authority Decision

#### 3.1. Decision

3.1.1. Notification of the Decision to Refuse Permission was issued by Dún Laoghaire-Rathdown County Council (DLRCC) on 19 December 2022. Permission was refused for the following three reasons:

1. The proposed development as it stands is not presented within the context of or informed by a holistic approach to the potential redevelopment of this landholding, such as a masterplan. The development comprises piecemeal development that could ultimately compromise the successful

redevelopment of the balance of the site and could hinder the County Development Plan 2022-2028 policies and objectives for the Nutgrove District lands. There are aspects of the proposed scheme that are considered could prejudice successful redevelopment of the site and it is considered to be contrary to policies MFC1, MFC3 and RET6 of the County Development Plan, which relate to the development of multifunctional centres, placemaking in towns and villages, and the nature of mixed use district centres respectively, and as such would be contrary to the proper planning and sustainable development of the area.

2. The provision of an 8 storey building comprising what would largely be an above ground car park at ground and first floor levels, would represent a poor interface with surrounding lands and public realm and does not accord with the principles established in the Guidelines on Urban Development and Building Heights for Planning Authorities 2018 for the provision for taller buildings and the criteria set out in the Building Height Strategy of the Dún Laoghaire-Rathdown County Development Plan 2022-2028, particularly in a context where alternatives for the provision of the required spaces exist. The proposal would therefore set an undesired precedent contrary to the proper planning and sustainable development of the area.
3. The proportion of dual aspect units that meet the quality requirements set out in the County Development Plan is below the requirements set in the Dún Laoghaire-Rathdown County Development Plan 2022-2028 in the context of an unencumbered receiving environment. The proposed development would therefore provide unsatisfactory levels of residential amenity for future residents.

## **3.2. Planning Authority Reports**

- 3.2.1. The Planner's Report was issued on the 19<sup>th</sup> December 2022 and forms the basis of the Council's assessment and decision. The report confirms the two zoning objectives for the site, including Objective DC 'To protect, provide for and/or improve mixed use district centre facilities' and Objective F 'To preserve and provide for open spaces with

ancillary active recreational amenities', and concludes that there is scope to incorporate residential use in principle.

- 3.2.2. The report states that the scheme must be looked at within its wider context and not in isolation, including the context of the site within the Nutgrove Shopping Centre car park, as well as the functional and locational characteristics of the site and wider area. The Planning Authority consider that Policy MFC3 requires a framework for renewal (where relevant), and in this instance it is considered essential that this be in the form of a masterplan. The report states that development must not compromise the function of the shopping centre and also that the CDP zoning objectives are met in terms of enhancement.
- 3.2.3. The Planning Authority strongly take the view that the development of the site should be considered as part of a masterplan to avoid a situation whereby individual applications and decisions could affect the overall goals of the CDP. In the absence of a masterplan, the proposal is considered to comprise piecemeal development that would hinder development plan aims and objectives.
- 3.2.4. Density is considered acceptable having regard to the sites locational characteristics (suburban centre) but notes that a balance has to be struck between higher densities and the protection of character and residential amenity. On amenity, the proposal is not considered to have any significant adverse impacts on the area or existing residents in terms of overlooking, noise, or daylight/sunlight.
- 3.2.5. The report considers unit mix and unit size to be acceptable, and whilst housing quality is generally considered acceptable, concerns are raised regarding internal daylight levels as well as the number of dual aspect units which is considered to be below policy requirements and therefore unacceptable.
- 3.2.6. The report notes that no public open space is being provided within the development site boundary and that this indicates overdevelopment. The proposal to upgrade the public open space adjacent to the site is accepted and the Planning Authority consider that this space should be completed prior to the occupation of any units. The Planning Authority do not support the offset of contributions against the cost of upgrading this space.
- 3.2.7. Concerns are raised as to the quantum/location of communal open spaces (including podium and roof terraces), as well as the quality of communal open space at the base



of the building, with the report stating that an increased set back should be considered in order to provide more acceptable amenity space.

3.2.8. In terms of height, the Planning Authority do not consider the eight storey building to be justified due to the parking at lower levels, and that this is a consequence of piecemeal development and the absence of a masterplan. The Planning Authority consider that the development would not meet the requirements of the CDP Building Height Strategy and that the development is considered unacceptable on these terms.

3.2.9. Various transport issues are raised in the report which the Planning Authority generally consider could be addressed by Further Information, but this was not sought due to the substantive reasons for refusal. Additionally, whilst the Planning Authority note the absence of the provision of a childcare facility, as the development would be below the threshold, they are of the view that this also needs to be considered as part of a masterplan, due to the possibility of cumulative developments.

#### 3.2.10. **Other Technical Reports**

3.2.11. **Drainage Planning (02.12.2022):** No objection, subject to conditions. The conditions relate to surface water discharge rates, hardstanding and SuDS, Blue/Green Roofs, provision of suitable wayleaves, and a Construction Management Plan.

3.2.12. **Environmental Enforcement (03.11.2022):** No objection, subject to conditions. The conditions relate to Construction Waste, Community Liaison, Noise Management, Pest Control, Operational Waste Management, Monitoring, and Construction Environmental Management.

3.2.13. **Environmental Health Officer (24.11.2022):** Recommend requesting Further Information regarding the assessment of noise from demolition and construction on the receiving environment and measures to reduce this. Details of Community Liaison are also considered relevant.

3.2.14. **Housing (08.11.2022):** The response notes that the indicative unit costs exceed the Council's cost threshold. However, it is acknowledged that the costs are indicative and cannot be quantified at this stage. Should the costs exceed the cost threshold then an alternative compliance option will be sought. A Part V condition is therefore recommended.

3.2.15. **Parks Department (29.11.2022):** The proposal to upgrade the public open space is accepted subject to the costs of the upgrade being fully met by the applicant. Overall, there is no objection subject to conditions. The list of conditions is extensive and includes Landscaping Specification and Quality Audit, Tree Protection, Arboricultural Method Statement, Post Construction Assessment, Prior Notification on tree removal, payment of a tree bond, provision of play equipment, and a specification for the green roof.

3.2.16. **Transport Planning (06.12.2022):** The Transport Planning team raised a significant number of issues, although these were mostly to be addressed by way of Further Information which ultimately was not sought due to the substantive reasons for refusal. Concerns raised include:

- Pedestrian access and permeability including improving environment on Nutgrove Avenue, increased setbacks for the provision of a wider pavement and potential two way cycle route and ensuring the upgraded park is fully usable by cyclists.
- Vehicular access is considered unacceptable. A separate access in and out along the northern boundary of the car park would be better. A separate service road is needed for the development.
- The Quality Audit designer's response is too important to resolve through compliance and should be addressed by Further Information.
- Clarity on Taking in Charge areas.
- A DMURS Statement of Consistency has not been submitted nor has a DMURS Placemaking Audit.
- It is agreed that there is excess parking in the area and a relaxation of the required parking quantum can be implemented.
- The proposed set down areas are not acceptable and a parallel set down should be provided instead.
- Lack of detail on visitor parking, car sharing, and detailed design of parking spaces.

- Motorcycle and bicycle parking are acceptable. Covered bicycle spaces for visitors should be provided.
- There are issues regarding the layout of the car park and clarity is required on headroom heights/electric vehicle charging.
- The Phasing Plan submitted is not acceptable and the access road should be delivered first.
- Issues are raised regarding signage, bus shelter replacement plans, and ensuring access routes to bus shelters and taxi ranks are designed in accordance with DMURS and other relevant guidance.
- Consultation should also be undertaken with Dublin Bus and the NTA.

### 3.3. Prescribed Bodies

- 3.3.1. **Uisce Éireann (02.12.2022):** No objection. The applicant must sign a connection agreement prior to the commencement of development. Further observations are made regarding capacity requirements and compliance with codes and practices.

### 3.4. Third Party Observations

- 3.4.1. A total of 16 observations were received in response to the planning application. The points raised are similar to and covered by the observations made on the appeal which are set out in detail at section 5.3 below.

## 4.0 Planning History

- 4.1.1. There is a detailed planning history for minor works to the shopping centre and car park, as well as domestic works to many of the surrounding homes. Applications of specific relevance to the proposal are set out below:

### *Nutgrove Shopping Centre*

- 4.1.2. Pre-application discussions were held in 2021 and 2008 for a Strategic Housing Development and a Nutgrove District Centre Urban Framework respectively.

4.1.3. **Planning Authority Ref. D15A/0819:** Permission was granted by DLRCC in March 2016 for new glazed entrance lobbies as an extension to the existing shopping centre in addition to other elevational amendments and new signage.

4.1.4. **Planning Authority Ref D06A/1241:** Permission was granted by DLRCC in February 2007 for four new storage units to service existing and proposed tenants at the back of existing shopping centre.

*Nutgrove Enterprise Park – South of the appeal site.*

4.1.5. **Planning Authority Ref D23A/0604:** Permission was granted by DLRCC in January 2024 for a 1788.3sqm three storey office building and associated ancillary development.

*Nutgrove Retail Park - North of the appeal site.*

**Planning Authority Ref D18A/0620:** Permission was granted by DLRCC in August 2018 for the continued use of the car park as currently operated, i.e., without footbridge across Nutgrove Avenue as required under Condition No. 3(b) and Condition No. 2(1) of the Retail Park's Parent Permission (DLRCC Reg. Ref. D04A/0893; ABP Ref. PL06D.210084). Modifications were granted to the permitted surface and basement parking layout, including the provision of 25 no. additional parent and child and disabled car spaces on both levels, 11 no. electrical charging point car spaces on both levels, 16 no. additional motorbike spaces at basement level and 24 no. additional cycling spaces at surface level. This would result in an overall net reduction of 14 no. car parking spaces.

*Hazelbrook Square – North of the site behind Nutgrove Retail Park*

4.1.6. **ABP Ref. 242257/Planning Authority Ref D12A/0484:** Permission was granted by the Board in December 2013 for a residential development of 69 houses and 28 apartments, vehicular access via existing entrance, ESB substation, revisions to parking provision, site development and landscaping works.

*Loretto Abbey Grange Road – West of the appeal site.*

4.1.7. **Planning Authority Ref SD22A/0153:** Permission was granted by South Dublin County Council (SDCC) in June 2023 for Phase 1 of a 2-phase future masterplan. Works included partial demolitions, refurbishment and a new circulation link extension

to the existing Loreto Abbey Complex and protected structures (RPS no.s 252 and 253) at the Grange Road Loreto Rathfarnham for use as Gaelcholaiste an Phiarsaigh.

- 4.1.8. **Planning Authority Ref SD21A/0101:** Permission was granted by SDCC in January 2022 for a residential development comprising a total of 28 apartments, in a building up to 4-storeys in height.

*Loretto Primary School, Grange Road – West of the appeal site.*

- 4.1.9. **ABP Ref 310027/Planning Authority Ref SD20A/0296:** Permission was granted by the Board in November 2021 for the demolition of buildings and portacabins and the construction of a 21 classroom school building, alterations and change of use of Theresa Ball House to educational use, and construction of prefabricated accommodation.

## 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 shopping centre car park part of the site (known as the Main Development Site) as Zoning Objective ‘DC’, which seeks to protect, provide for and/or improve mixed-use district centre facilities. Residential use is listed as permitted in principle on these lands. The open space part of the site to the east of the car park (known as the Proposed Park Site) is categorised as Zoning Objective ‘F’, which seeks to preserve and provide for open space with ancillary active recreational amenities.
- 5.1.2. Chapter 2 of the DCP is the Core Strategy which sets out the settlement and growth strategy for the County, taking into account housing need, residential capacity, population growth, Compact Growth, and regeneration.
- 5.1.3. 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.
- 5.1.4. 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 include:

- PHP18: Residential Density – Seeks to increase housing supply and promote compact urban growth through the consolidation and re-intensification of infill/brownfield sites, having regard to proximity and accessibility considerations, and development management criteria set out in Chapter 12.
- PHP20: Protection of Existing Residential Amenity - to ensure the residential amenity of existing homes in the Built Up Area is protected where they are adjacent to proposed higher density and greater height infill developments.
- PHP35: Healthy Placemaking - to ensure that development proposals are cognisant of the need for proper consideration of context, connectivity, inclusivity, variety, efficiency, distinctiveness, layout, public realm, adaptability, privacy and amenity, parking, wayfinding and detailed design.

5.1.5. 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 include:

- T11: Walking and Cycling
- T19: Car Parking Standards

5.1.6. Chapter 7: Towns, Villages, and Retail Development, sets out the approach to multifunctional centres in the County, listing Nutgrove as one of five District Centres. Relevant policies from this chapter include:

- MFC1: Multifunctional Centres, seeks to embrace and support the development of the County's Major Town Centres, District Centres and Neighbourhood Centres as multifunctional centres which provide a variety of uses that meet the needs of the community they serve.
- MFC3: Placemaking in our Towns and Villages, aims to support proposals for development in towns and villages that provide for a framework for renewal where relevant and ensure the creation of a high quality public realm and sense of place.

- RET6: District Centres, has an objective to maintain the District Centres at Blackrock, Stillorgan, Nutgrove and Cornelscourt, and to promote the mixed-use sustainable town centre which is currently under construction in Cherrywood in accordance with the approved SDZ Planning Scheme.

5.1.7. Chapter 8: Green Infrastructure and Biodiversity includes policies for the protection, creation, and management of this resource in an integrated manner by focusing on key themes within GI such as: landscape and the coast; access; biodiversity; and parks.

5.1.8. Chapter 9: Open Space, Parks and Recreation recognises that having safe and easy access to a network of open space and parks, means that the recreational needs of residents are met, while enhancing their health and well-being. The relevant policies from this chapter include:

- OSR4: Public Open Space Standards

5.1.9. Chapter 10: Environmental Infrastructure and Flood Risk recognises the critical importance of high quality infrastructure networks and environmental services in creating sustainable, healthy, and attractive places to live and work.

5.1.10. 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 include:

- 12.3.1: Quality Design
- 12.3.3.1: Residential Size and Mix
- 12.3.3.2: Residential Density
- 12.3.4.2: Habitable Rooms
- 12.3.4.5: Management Companies and Taking in Charge
- 12.3.5: Apartment Development
- 12.3.7.7: Infill
- 12.4.5.1: Car Parking Standards
- 12.5.4.2(i): Assessment Criteria for deviation from 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
- 12.8.7.1: Separation Distances
- 12.8.7.2: Boundaries
- 12.8.8: Financial Contributions in Lieu of Open Space
- 12.8.11: Existing Trees and Hedgerows

5.1.11. Appendix 5 sets out the County's Building Height Strategy and Policy Objective BHS1: Increased Height, states that it is a policy objective to support the consideration of increased heights and also to consider taller buildings where appropriate, including the District Centre of Nutgrove.

## 5.2. Regional Policy

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

5.3. The primary statutory objective of the Strategy is to support implementation of Project Ireland 2040 - which links planning and investment through the National Planning Framework (NPF) and ten year National Development Plan (NDP), and the economic and climate policies of the Government by providing a long-term strategic planning and economic framework for the Region. The RSES seeks to promote compact urban growth by making better use of under-used land and buildings within the existing built-up urban footprint and to drive the delivery of quality housing and employment choice for the Region's citizens. The RSES seeks to build a resilient economic base and promote innovation and entrepreneurship ecosystems that support smart specialisation, cluster development and sustained economic growth.

## 5.4. National Policy

### **The National Planning Framework - Project Ireland 2040**

5.4.1. The NPF addresses the issue of 'making stronger urban places' and sets out a range of objectives which it considers would support the creation of high quality urban places. Relevant Policy Objectives include:

- National Policy Objective 2a: A target of half (50%) of future population and employment growth will be focused in the existing five cities and their suburbs.



- National Policy Objective 6: Regenerate and rejuvenate cities, towns and villages of all types and scale as environmental assets, that can accommodate changing roles and functions, increased residential population and employment activity and enhanced levels of amenity and design quality, in order to sustainably influence and support their surrounding area.
- National Policy Objective 11: In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth.
- National Policy Objective 13: In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.
- National Policy Objective 33: Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.
- National Policy Objective 35: Increase residential density in settlements, 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.

## 5.5. Section 28 Ministerial Guidelines

5.5.1. Having considered the nature of the proposal, I consider that the directly relevant section 28 Ministerial Guidelines and other national policy documents are:

- Urban Development and Building Heights, Guidelines for Planning Authorities (2018). The guidelines state that increased building height and density will have a critical role to play in addressing the delivery of more compact growth in urban areas and should not only be facilitated, but actively sought out and brought

forward by our planning processes, in particular by Local Authorities and An Bord Pleanála. These Guidelines caution that due regard must be given to the locational context and to the availability of public transport services and other associated infrastructure required to underpin sustainable residential communities.

- Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (December 2023). These guidelines seek to achieve both high quality apartment development and a significantly increased overall level of apartment output. Standards are provided for apartment sizes, dual aspect ratio and private/communal amenity space.
- Sustainable Residential Development and Compact Settlement - Guidelines for Planning Authorities (2024). The guidelines support the application of densities that respond to settlement size and to different place contexts within each settlement, recognising in particular the differences between cities, large and medium-sized towns and smaller towns and villages. They will also allow greater flexibility in residential design standards and cover issues such as open space, car and cycle parking, and separation distances.

## 5.6. Natural Heritage Designations

- 5.6.1. The site is partially an urban brownfield site and is not located within any designated site. The closest European sites are the South Dublin Bay SAC (& pNHA)(site code 00210) and the South Dublin Bay and River Tolka Estuary SPA (site code 004024) which are located approx. 4.9km to the north east of the site. The North Dublin Bay SAC (& pNHA)(Site Code 000206), and North Bull Island SPA (Site Code 004006) lie approximately 9.5km to the north east. The Little Dargle River and the Owendoher River lie to the west of the site at a distance of approximately 300m and 1,400m respectively. Both of these watercourses flow into the River Dodder, which is 1,350m to the north of the site.

## 5.7. EIA Screening

- 5.7.1. The development is within the class of development described at paragraph 10(b) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as

amended). An Environmental Impact Assessment would be mandatory if the development exceeded the specified threshold of 500 dwelling units or development involving an area of greater than 2 hectares for a business district. The site is zoned for both mixed use district centre facilities and to preserve and provide open space. The proposal for a mixed use development of 91 new homes, café, and a gallery, on a site of 1.045 hectares, is below the mandatory threshold for EIA. The proposed development is therefore sub-threshold for the purposes of EIA.

5.7.2. The application addresses the issue of EIA within an EIA Screening Report (Enviroguide Consulting, September 2022) that contains information provided in line with Schedule 7A of the Planning Regulations. The information provided in the application EIA Screening Report identifies and describes adequately the effects of the proposed development on the environment. Where an application is made for subthreshold development and Schedule 7A information is submitted, the Board must carry out a screening determination in line with the requirements of Article 103(1A)a, of the Planning and Development Regulations, therefore, it cannot screen out the need for EIA at preliminary examination.

5.7.3. The reports submitted with the application address a variety of environmental issues and the potential environmental impacts of the proposed development. The reports demonstrate that, subject to the various recommended construction and design-related mitigation measures, the proposed development would not have a significant impact on the environment. I have had regard to the characteristics of the site, the location of the proposed development, and the type and characteristics of the potential impacts. Having regard to the Schedule 7A information, I have examined the sub-criteria and all submissions, and I have considered all information that accompanied the application and appeal. I have completed an EIA screening assessment of the proposed development with respect to all relevant considerations, as set out in Appendix 2 to this report. Having regard to:

- The nature and scale of the proposed development, which is below the threshold in respect of classes 10(b)(i)(iv) and 14 of Part 2 to Schedule 5 of the Planning and Development Regulations 2001 (as amended).
- The location of the proposed development on lands zoned objective DC and F as well as the results of the Strategic Environmental Assessment of the Development Plan.

- The nature of the existing site and the pattern of development in the surrounding area.
- The availability of mains water and wastewater services to serve the proposed development.
- The location of the development outside of any sensitive location specified in Article 109(4)(a)(v)(I-VII) of the Planning and Development Regulations 2001, as revised.
- The guidance set out in the 'Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development', issued by the Department of the Environment, Heritage and Local Government (2003).
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as revised, and.
- The features and measures proposed by the applicant that are envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified to be provided as part of the Arboricultural Report, Climate Change Impact Assessment, Energy and Sustainability Statement, Engineering Services Report, Flood Risk Assessment, Noise Impact Assessment, Operational Waste Management Plan, Resource and Waste Management Plan, and Transport Assessment.

5.7.4. It is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an Environmental Impact Assessment Report would not, therefore, be required.

5.7.5. As part of this assessment, I have considered the Planning Authority's concern that, in the absence of a masterplan, a succession of separate applications could comprise project splitting. I am of the view that considering the development as a standalone development that is not reliant on other development taking place, the proposal would not result in project splitting, and that should further development come up on the rest of the site at some point in the future then the proposed development, if approved, would factor into the cumulative screening process.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. A First Party Appeal has been submitted by Thornton O'Connor town planning Consultants of 1 Kilmacud Road Upper, Dúndrum, Dublin 14, for and on behalf of the applicant Percy Nominees Limited. The grounds of appeal can be summarised as follows:

#### Reason for Refusal No. 1 – Masterplanning and Prejudicial Development

- No reference was made to the requirement to prepare a masterplan during the pre-application discussions.
- The Development Plan is supposed to be explicitly clear on any requirements that may impact a development and decisions in respect of a development. None of the relevant policies have a requirement for a masterplan.
- The reason for refusal has no basis in policy and is unfair, unreasonable, and is contrary to the Development Management Guidelines.
- The applicant has sufficient interest to deliver the proposed development, but the Planning Authority cannot expect the applicant to hold or secure all of the private rights necessary to give effect to the development of adjacent lands also.
- There is no requirement for redevelopment of the entire landholding, despite the Planning Authority's preference for a voluntary masterplan, and the applicant does not speak for other stakeholders who have invested in, and taken interest in, the relevant lands.
- Whilst the applicant holds the principal legal interest in Nutgrove Shopping Centre, they do not have access to the entire landholding due to long leasehold interests on elements of the site, as well as clauses limiting the ability to reduce car parking spaces.
- There is no realistic opportunity to carry out any wholesale redevelopment of the site as it would unduly interfere with the existing operations of a large going concern.

- Studies were undertaken and presented as part of the pre-application documentation to show that the development was located on the most appropriate site, and to show how the development would not hamper future regeneration.
- The site is the most appropriate location as it eliminates a sea of parking, provides a positive public realm, encloses a key junction, significantly upgrades underutilised open space (SLOP), avoids existing wayleaves traversing the site, and is located at an appropriate distance so as not to affect the site's primary function as a shopping centre. The site has therefore been masterplanned through the design process.
- There are recent precedents for similar development where a masterplan was not required, including at Westside Shopping Centre in Galway (ABP-313286) which approved student housing in the car park of the existing shopping centre.
- The development complies with the relevant CDP policies that do not require a masterplan, and the location is considered most appropriate when having regard to the existing significant commercial and operational requirements of the site.

#### Reason for Refusal 2 – Design

- The proposed eight storey building appears to be considered unacceptable only on the basis of the parking at the lower levels.
- The applicant is required to maintain commercial parking spaces at the subject site, necessitating the provision of parking on the lower two levels. There are absolutely no feasible alternatives as referred to in the reason for refusal.
- In seeking to deliver housing during the housing crisis, all options should be considered, and the proposal delivers high quality housing in the context of an existing shopping centre and its operational needs.
- The applicant has sought to enliven the ground floor elements. The east elevation/park frontage provides windows and balconies overlooking the public realm and improved open space. Landscaping within the site animates the site and a pedestrian link further activates the space.

- The north elevation fronts onto Nutgrove Avenue and has a dual height entrance space, café, and windows/balconies on upper floors that provide activation and animation. Landscaping softens the urban edge onto the footpath. This is an improvement on the existing car park.
- The west elevation faces the car park and is enlivened by the landscaped podium as well as the new apartments, the new pedestrian link from Nutgrove Avenue, and the café which wraps around the corner.
- All developments have an element of unanimated space to provide the necessary ancillary spaces such as parking, bins etc.
- An Option B is possible if the Board require further animation. This would include a part double height/part two level gallery/eatery (206sqm) in the south west corner which would provide further activation to the pedestrian link.
- The southern elevation provides access to the residential parking and the elevation serves a largely functional role.
- The development will provide animation, activity, and vitality in a car park. The site will engage and interact with the wider context for the first time.
- Increased building height is strongly supported in this location, including the CDP where objective BHS1 specifically mentions the Nutgrove District Centre.
- There are no technical or visual impediments to the height and the Planning Authority acknowledge that the design approach is well considered, save for their preference for no parking at lower levels, which is not deliverable in the context of the application.
- The development would frame Nutgrove Avenue and Meadow Park Avenue, enhancing legibility and wayfinding, and terminating the long diagonal vista when travelling from Churchtown.
- There are appropriate transitions in height and setbacks which help break down the scale and massing of the development. The building is a high quality design that contributes positively to the surrounding context.

- The Landscape and Visual Impact Assessment and the Daylight and Sunlight Assessment demonstrate that the site has the potential to absorb the greater height without any undue negative impact on the receiving environment.
- The scheme is a significant visual and functional improvement to the existing scenario.

### Reason for Refusal 3 – Dual Aspect Units

- Revised plans have been submitted with the appeal that address the concerns regarding dual aspect units. A total of 46 dual aspect units are now proposed and this complies with the CDP.
- These changes would reduce the size of some three bedroom units from 111sqm to 92sqm in order to accommodate the amendments. These changes would also result in an increase in the size of the communal open space at podium level from 306sqm to 330sqm.

### Transport

- The findings of the Transport Assessment have not been challenged.
- The Mobility management Plan has been accepted with a note that further development of the MMP would be a condition requirement.
- DLRCC agree that a relaxation of parking standards is appropriate in this location.
- Trip generation calculations of the development have been accepted as has the assessment of traffic impacts at external junctions.
- DLRCC are generally happy with the quantum and standard of cycle parking with minor comments regarding additional external covered spaces for visitors.

### *Quality Audit Comments*

- A Quality Audit was prepared for the application, comments were made within the audit and a response was submitted by the design team to the auditor who was happy with the responses, including some issues where the matter would be addressed at detailed design stage. DLRCC's wish for the comments to be addressed now, however, the comments are of a minor nature and not fundamental issues.



### *Car Parking Layouts and Loading Bays*

- It would be possible to increase the level of loading bay provision and alter the refuse collection point to improve servicing. Issues regarding car parking marking would require some updates to the drawings. All parking spaces will be delivered with provision for future EV charging. There are no issues with accommodating DLRCC's requirements on these matters.

### *Design Manual for Urban Roads and Streets*

- The submitted Transport Assessment addressed matters covered by DMURS in relation to the integration of the development into the surrounding transport network. The applicant would be happy to accept a condition requiring a statement of consistency in line with the final design.

### *Car Parking Management Plan*

- The Planning Authority have made comments regarding a Car Parking Management Plan, the applicant would be happy to accept a condition for a provision of such a plan.

### *Pedestrian and Cycle Access*

- The Planning Authority have indicated that a set-back should be provided on the northern elevation to facilitate the provision of a future active travel scheme. There are no drawings available from the Council to check what set back would be required. The comments suggest that the proposal is to upgrade the cycleway to a two way cycleway which would equate to a set-back of between 1.5m – 2m. The sketch from the Council indicates a set-back of almost 15m which is significantly in excess of what is required. The current set back is sufficient to accommodate the upgrade without moving the building.

### *Vehicular Access*

- The Planning Authority have asked that consideration is given to the provision of a specific service yard for the development that would not conflict with the existing car park operations and have drawn a route for this, via the existing northern access to the carpark.

- The access route proposed by the Council would have significant impacts on the car parking spaces to the north as well as impacting on the operations of the McDonalds restaurant which is accessed from this alternative route and whose arrangements the applicant cannot change.
- Reasons given for the alternative route include providing an obvious way to access the development. However, resident vehicle trips would be low and pedestrian/cycling links are provided to the north and east. There would therefore be no major conflict between users and as the building would be highly visible, it is not considered that there would be issues finding an obvious route to the development for regular service vehicles.

## 6.2. Planning Authority Response

- 6.2.1. It is considered that the grounds of appeal do not raise any new matter which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development. The Board are therefore directed to the previous Planner's Report.

## 6.3. Observations

A total of six observations have been made on the appeal (including a petition) from the following:

- Andrew Keena of 43 Meadow Park Avenue, Churchtown, Dublin 14.
- Antoinette and Coleman Yates of 47 Meadow Park Avenue, Churchtown, Dublin 14.
- Enda Fanning Architect of Dúnáras, Whitehall Road, Churchtown, Dublin 14.
- Local Residents of Area c/o Patrick Doyle of 132 Mountview Park, Dublin 14. (Including a petition of 340 signatures).
- Stephen Mason Architectural and Planning Services, for and on behalf of Mr and Mrs Paddy Doyle of 132 Mountview Park, Dublin 14.
- Whitebarn, Nugent and Oakdown Residents' Association.

- 6.3.1. The observations made on the appeal can be summarised under the following headings:

### 6.3.2. Amenity

- The development would result in a loss of privacy, overshadowing/loss of daylight, and would be visually obtrusive. This would impact on residential amenity and dwarf the surrounding houses.
- The development would result in traffic, noise and dust impacts and disturbance to residents, both during construction and once completed/operational. This would impact on quality of life.
- No consideration has been given to reflected sunlight impacting on drivers.
- Outdoor gym equipment could cause antisocial behaviour.

#### 6.3.3. Design

- Despite the housing crisis, it is not a guarantee that every application for residential will be granted, development must accord with the development plan and be in suitable locations.
- If Nutgrove Shopping Centre is not exemplar of good design, then investment could improve it.
- Development with new residential would make the shopping centre look worse, not better.
- The development is poorly designed, monolithic in scale and excessive in bulk.
- There are no substantial design changes to the building or reductions in height. Reduced height would mean reduced number of units which may make the development uneconomical for the applicant.

#### 6.3.4. Views

- The Landscape and Visual Impact Assessment is vague, inadequate, lacking in substance wrong in adopting a 5km radius. Views have been taken from points that would be favourable to the development.
- Views from the junction of Mountain View Park and Meadow Park Avenue should be taken.
- The development would impact on the long view along Nutgrove Avenue that currently terminates in green space and sets Nutgrove apart for other areas.

#### 6.3.5. Quantum of Development

- The proposed density is excessive and does not comply with the CDP.
- The proposal is overdevelopment.
- The owners have benefited from the long leases, particularly during the recession, the proposal is overdevelopment for the cheapest price possible and at great expense to the local community.
- The housing crisis is not an excuse for poor planning and overdevelopment.

#### 6.3.6. Height

- The development is too tall and would be overbearing and out of scale with its surroundings, including the dwellings on Meadow Park Avenue.
- Heights should be in line with the current skyline of Nutgrove.
- The development does not comply with the Building Height Strategy.
- The development raises the skyline for future developments to take place and does not contribute to retaining the open character of Nutgrove.
- There are no contiguous elevations showing the development in context to the existing two storey dwellings.

#### 6.3.7. Housing

- The social housing offer is unacceptable and should include 3 bedroom units.
- Three bedroom apartments are better suited at ground floor where there is an opportunity to provide safe and secure private open space for the benefit of children.
- There are no ground floor apartments due to traffic and parking restrictions. This is another reason why this development type is not suitable in this location or in accordance with the development plan.

#### 6.3.8. Masterplanning

- The pre-application submission shows plans for the future development of Nutgrove Shopping Centre. There has been a lack of transparency around these plans.

- Planning should show what is intended for the full site instead of a piecemeal approach.
- It is irrelevant that the need for a masterplan was not mentioned in pre-application discussions as these meetings are not binding.
- The appeal states that this is a standalone development but how can it be guaranteed that no further development would take place on the site.

#### 6.3.9. Miscellaneous

- The reports submitted with the application are subjective and not independent.
- The precedent example provided by the applicant is irrelevant.
- The carrying out of pre-application consultations cannot prejudice the decision taken by a Planning Authority.
- The appeal has been made out of time.
- The development description is incorrect as it states 91 apartments and 64 houses when there are no houses proposed.

#### 6.3.10. Open Space

- The local community have not been consulted on the use of the public open space.
- The area is not a sea of car parking, it is landscaped, and a substantial number of trees are to be removed which is unacceptable, especially trees with visual or ecological value.
- The development does not meet the CDP open space requirements, the open space is already in existence/use and should not be built on.
- Unacceptable that the developer is only paying part of the costs to develop part of the park. The developer should pay the costs in full.
- By not providing open space, the proposal is overdevelopment.
- No landscaping is proposed for Nutgrove Avenue, and this is contrary to the CDP.

- The upgrading of only part of the open space, facing the new apartments only, will create a two tier system. The whole space should be landscaped.

#### 6.3.11. Parking

- Insufficient assessment has been undertaken of the car parking at peak times.
- A traffic survey should be undertaken by the Council, not the developer.
- The shopping centre must be required to continue to provide adequate parking.
- There is insufficient car parking and electric vehicle charging points and this will result in overflow parking on local streets.
- Construction workers parking at the site and the construction process, including deliveries, is likely to have an impact on parking, access, traffic and disturbance.
- The proposal does not eliminate parking, it simply replaces it within the building. A simple solution would be investing in landscaping on the boundaries to ensure adequate step backs.
- An underground car park could be provided, and this would reduce the height of the building by two floors.
- The Planning Authority have stated there are alternatives for the provision of required parking spaces.
- The applicant's blanket statement that alternatives are not feasible should not be accepted.
- A Car Parking Management Plan must be proved before the development is approved.
- High rise accommodation and reduced parking in an already densely populated area diminishes everyone's ability to enjoy the area.
- If there is a plan to develop the north side of the car park for housing, then there is scope for a further reduction in commercial spaces under the commercial lease obligations. Car parking in the north east corner could then be reallocated to the development and the car park redeveloped in a cohesive, sustainable and respectful manner.

- No details of parking management are provided, and parking issues could affect the Shopping Centre in terms of business.
- The land is not underutilised, it provides much needed car parking for the shopping centre.

#### 6.3.12. Traffic and Access

- Access to the development will add to existing access problems at peak times, leading to traffic and congestion.
- The access arrangements are insufficient for both the construction of the development and its ongoing operation.
- The development would present obstacles to emergency services.
- The new park is next to a heavily trafficked four way junction and there could be safety issues, such as young children straying from the park.
- The new park and eight storey building could distract drivers using the junction.

#### 6.3.13. Public Transport and Infrastructure

- The Travel Survey/Bus Capacity Survey was undertaken during the summer, which is not appropriate.
- Public transport is not sufficient enough to allow a relaxation in parking standards or to support the development.
- Transport infrastructure for cycling has to be put in place prior to building more developments.

#### 6.3.14. Use

- Nutgrove Shopping Centre has survived for 38 years without needing an eight storey apartment building to give it a clearer identity.
- The area is not in decline, the shopping centre is popular, there are no derelict buildings, and the area is an established and sought after residential area.
- The café doesn't add any value to the community. There is limited need for further retail and the space should be used to provide a benefit to the community such as a creche.

- There are limited childcare facilities in the area, the development should include a creche.
- The application would set a precedent and would be the beginning of the end for the shopping centre.
- The development does not provide or improve facilities.
- Objection to erection of more high powered microwave antennas.
- The appeal focuses on the lack of opportunity to redevelop the shopping centre due to long leases, but the development does nothing to support the shopping centre.

#### 6.4. Further Responses

6.4.1. None.

### 7.0 Assessment

7.1.1. At the outset I would advise the Board that the applicant has submitted revised plans in order to address the issues raised by the Planning Authority with regards to the number of dual aspect units and the issue of active frontages at ground floor level. The revisions include:

- Minor elevational amendments and internal reconfiguration to increase the number of dual aspect units.
- Introduction of gallery/eatery on the south west corner at ground and first floor levels.
- Reduction of car parking to accommodate gallery/eatery (53 residential spaces now provided instead of 63).
- Internal changes to car park to reduce cul-de-sac length on Level 1, and turning point added to cul-de-sac at ground floor level.
- Communal podium space increased to 330sqm.
- Green roof area reduced from 381sqm to 365sqm.
- GFA of building increased to 11,322sqm from 11,211sqm.



7.1.2. These revisions result in minor amendments to the elevations and do not, in my opinion, constitute revisions of such significance that the development would need to be readvertised. I am therefore satisfied that the revisions can be considered as part of the appeal and the following assessment is based on these amendments.

7.1.3. Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

- Principle of Development and Masterplanning
- Quantum of Development
- Design
- Views and Visual Impact
- Open Space
- Quality of Accommodation
- Amenity
- Transport
- Other Matters
- Appropriate Assessment

## **7.2. Principle of Development and Masterplanning**

7.2.1. A core issue in the Planning Authority's decision to refuse planning permission is the fact that the development is not presented within the context of a masterplan, and that the development would constitute piecemeal development that could prejudice the redevelopment of the rest of the shopping centre/car park site.

7.2.2. These concerns are echoed by observers on the appeal, who have raised concerns that the pre-application submission shows plans for the future redevelopment of the shopping centre, and that there has been a lack of transparency around these plans. The observers consider that the full intentions for the site should be shown and that, if

considered as a standalone application, it is not clear how it could be guaranteed that no further development would take place on the site.

- 7.2.3. Further issues raised by the observers are that the proposed uses are not appropriate, that the development would be contrary to zoning, that the café doesn't add any value to the community, that there is limited need for further retail, that the space should be used to provide a benefit to the community, that the development does not provide/improve facilities or support the shopping centre, and that a creche should be provided.

### Zoning

- 7.2.4. The site currently benefits from two zoning designations. For clarity, the site can be divided into the Main Development Site, which constitutes that part of the site that sits within the shopping centre car park, and the Proposed Park, which sits to the east of the Main Development Site and is proposed to constitute the open space provision for the development.
- 7.2.5. The Main Development Site is categorised as Zoning Objective DC which has the stated objective to protect, provide for and/or improve mixed-use district centre facilities. The proposed development includes residential use (91 units), a café (59sqm) and a gallery/eatery space (210sqm), all of which are permitted in principle in the zoning designation. Whilst the café and gallery/eatery are small spaces in the context of the scheme as a whole, I am satisfied that they will complement and support the existing uses within the area, and in the case of the gallery/eatery, would introduce a cultural use that would be locally beneficial.
- 7.2.6. The Proposed Park Site is categorised as Zoning Objective 'F', which seeks to preserve and provide for open space with ancillary active recreational amenities. The proposal to landscape and upgrade this space is fully compliant with the zoning objective.
- 7.2.7. Policy MFC1: Multifunctional Centres, sets out the objective to support the development of the County's various centres as multifunctional centres that provide a variety of uses to meet the needs of the community. Section 7.5: Overall Strategy for Centres Identified in the Retail Hierarchy, states in Table 7.2 that the strategy with regards to the Nutgrove District Centre is to encourage potential redevelopment as a higher density urban mixed-use centre, with limited expansion of convenience and

comparison retail floorspace. Policy RET6: District Centres, reiterates this intention and states that the net retail sales area in the Nutgrove District Centre is to be capped at 25,000sqm. This policy also seeks to encourage a broader range of uses into the District Centre, including good quality residential, leisure, and commercial office floorspace.

7.2.8. Having regard to the existing Nutgrove Shopping Centre and the adjacent Retail P. it is clear that the District Centre has a substantial retail offer as it stands. Given the CDP intention to cap retail floorspace, the level of existing retail floorspace, and the broader objective of introducing other uses, including residential, I am satisfied that the development as a whole, is acceptable in terms of the range of uses proposed, which would assist the CDP objective of supporting the development of multifunctional centres.

7.2.9. Observations on the appeal have raised concerns that a crèche is not being provided as part of the development, expressing the view that there is a shortage of childcare facilities in the area. Section 12.3.2.4 of the CDP deals with childcare facilities and states that one childcare facility (equivalent to a minimum of 20 childcare spaces), shall be provided for every 75 dwelling units, with the exception of one bedroom or studio type units, which should not generally be considered to contribute to a requirement for any childcare provision and, subject to location, this may also apply in part or whole, to units with two or more bedrooms. I would agree with the Planning Authority, that when disregarding the 27 one bedroom units, the development would fall below the 75 unit threshold at which a childcare facility is required. I note the concern of the Planning Authority that if future applications come forward on other parts of the site that are sub threshold, then the need for a creche would not arise. In the event that future applications come forward then the need for a creche would need to be assessed in the context of the scale of the future application, its relationship to the currently proposed development, and whether cumulatively, a creche would be required, taking into account local provision and the views of the DLR County Childcare Committee.

#### Masterplanning

7.2.10. The Planning Authority's view that the development should come forward as part of a wider masterplan rests on CDP Policy MFC3: Placemaking in our Towns and Villages,

which states that it is a policy objective of the Council to support proposals for development in towns and villages that provide for a framework for renewal, where relevant, and ensure the creation of a high quality public realm and sense of place.

- 7.2.11. The applicant contends that the policy does not require a masterplan and that they are impeded from developing the rest of the site due to various leasehold interests, the need to continue to provide sufficient car parking for the shopping centre, and to ensure its ongoing operation. The applicant indicates in the grounds of appeal that the reason for refusal on the masterplan issue has no basis in policy, is unfair, unreasonable, and is contrary to the Development Management Guidelines on the basis that the development plan is supposed to be explicitly clear on any requirements that may impact a development and decisions in respect of a development. The applicant considers that none of the relevant policies have a requirement for a masterplan.
- 7.2.12. For the purposes of the appeal, I note that the policy refers to a 'framework for renewal', as opposed to a masterplan, but I consider them to essentially have the same function despite the terminology used. I therefore do not consider it unreasonable that the Planning Authority interpreted this as requiring a masterplan. I note that Policy MFC3 has applied the caveat 'where relevant', to the potential framework. As such, the key issue is relevance, as stated in the policy. Neither Policy MFC3 nor the Planning Authority elaborate on what constitutes relevance in this context.
- 7.2.13. I would consider the appeal site to be a 'relevant' site based on its locational characteristics, the priority for any redevelopment of this site to provide an appropriate and high quality interface with the surrounding lands and the existing shopping centre, to ensure that the development potential of these lands would not be compromised, particularly in the context of the CDP's objectives for the Nutgrove District Centre in terms of introducing mixed uses and a denser form of development.
- 7.2.14. The appeal site holds a strategic position within the Nutgrove District Centre and whilst only located in the north east corner of the shopping centre car park, it is part of a larger contiguous site. The wider car park lands extend to two hectares and the Nutgrove Shopping Centre site has an overall area of approximately 4.8 hectares. All

of this land is within the applicant's control, although I recognise that there are other stakeholder interests in these lands.

- 7.2.15. The applicant has set out various reasons why the remainder of the site cannot currently be developed. Central to this argument are the lease requirements of existing shopping centre tenants and other stakeholders regarding the need to retain a certain level of car parking to serve the shopping centre. Therefore, deliverability is considered to be the main impediment.
- 7.2.16. No details of these lease agreements have been provided as part of the appeal and leases are not a planning matter, as such I cannot adjudicate on whether or not there is adequate headroom to allow further parking to be lost, therefore unlocking other parts of the car park for redevelopment and removing one of the key obstacles to deliverability. This would usually be informed by a Parking Survey to demonstrate parking occupancy levels, but no information has been provided in this regard. Whilst it is certainly reasonable that car parking needs to be retained to serve the current and ongoing operation of the shopping centre, the extent of car parking retention has not been fully demonstrated in this case.
- 7.2.17. The grounds of appeal also state that several of the shopping centre tenants have very long leases. Of specific importance is the fact that the McDonalds restaurant, which is located centrally within the car park, benefits from a 10,000 year lease, according to the applicant's submission. Again, leases are not strictly a planning matter, but the fact that there are existing long term leasehold interests on the wider site certainly indicates that there would be commercial impediments to developing the whole car park.
- 7.2.18. However, these impediments are not insurmountable, and the mere presence of these commercial constraints does not, in my opinion, outweigh the benefits and importance of considering the development potential of the wider site including how the proposed development could integrate with a future development. Masterplans can be drafted with regards to various scenarios. In terms of the subject site these scenarios could include wholesale redevelopment of the entire car park, redevelopment of the car park with various levels of parking retention, and redevelopment of the car park but retaining the McDonalds restaurant or any other appropriate combination depending on the commercial realities of the site. Consideration could also be given to how the

proposed scheme could be adapted in the event that parking requirements change in the future.

7.2.19. I am aware that the applicant presented an indicative masterplan as part of their pre-application enquiry for a Strategic Housing Development in 2021. This was limited to a single visualisation of how the development could integrate with future development and does not, in my view, constitute a masterplan, but instead sought to demonstrate that the development of the appeal site would not prejudice the redevelopment potential of the wider lands. I do however consider that it at least tacitly acknowledges that there is potential for the redevelopment of the wider site.

7.2.20. A masterplan is a critical instrument for guiding development, transforming spaces, optimising urban growth, promoting high quality placemaking, and securing high standards of urban design. I acknowledge that the provision of a masterplan is not an explicit requirement in the CDP, but high quality design is, and the relationship between the proposed development and the shopping centre/car park is constrained and compromised by the failure to take a mindful and inclusive approach to the wider site. In the absence of a masterplan or framework, I consider that the proposal would represent an isolated, piecemeal development that would compromise the ability to successfully redevelop the balance of the site and create a coherent high quality environment and appropriate high quality placemaking.

### **7.3. Quantum of Development**

7.3.1. The proposed development would provide 91 apartments, and for the purposes of density assessment, I would agree with the Planning Authority that the Proposed Park Site should be excluded from the calculation. The provision of 91 apartments on the 0.602 hectare Main Development Site would therefore result in a density of 151 units per hectare. The Main Development Site would have a plot ratio of 1.86 and a site coverage level of 35%.

7.3.2. The Planning Authority consider density to be acceptable in principle, having regard to the location of the development, albeit noting concerns that this would be higher than the prevailing density in the area. Observations made on the appeal consider that the density would be excessive and that the scheme would represent overdevelopment.

- 7.3.3. Policy PHP18: Residential Density, states that where a site is located within a 1km pedestrian catchment/10 minute walking time of a rail station, Luas line, Core/Quality Bus Corridor and/or 500 metres/5 minute walking time of a Bus Priority Route, and/or 1 km/10 minute walking time of a Town or District Centre, higher densities at a minimum of 50 units per hectare will be encouraged. The minimum density of 50 units per hectare would therefore apply to the appeal site as it is located within the Nutgrove District Centre. The CDP strategy for Nutgrove (Table 7.2 of the CDP) is to encourage potential redevelopment as a higher density urban mixed-use centre.
- 7.3.4. The NPF promotes the principle of 'compact growth' at appropriate locations, facilitated through well-designed, higher-density development. Of relevance are NPOs 13, 33 and 35 of the NPF, which prioritise the provision of new homes at increased densities through a range of measures including, amongst others, increased building heights and promoting more compact and sustainable urban development within the existing urban envelope. The NPF recognises that a significant and sustained increase in housing output and apartment type development is necessary.
- 7.3.5. The RSES for the region further supports consolidated growth and higher densities, promoting compact urban growth by making better use of under-used land and buildings within the existing built-up urban footprint, and to drive the delivery of quality housing and employment choice for the region's citizens.
- 7.3.6. The Building Heights Guidelines (2018), the New Apartments Guidelines (2023), and the Compact Settlements Guidelines (2024), all provide further guidance in relation to appropriate densities and are supportive of increased densities at appropriate locations in order to ensure the efficient use of zoned and serviced land. All national planning policy indicates that increased densities and a more compact urban form is required within urban areas, subject to high qualitative standards being achieved in relation to design and layout.
- 7.3.7. The Building Heights Guidelines state that increased building height and density will have a critical role to play in addressing the delivery of more compact growth in urban areas and should not only be facilitated, but actively sought out and brought forward by our planning processes, and in particular by Local Authorities and An Bord Pleanála. The Guidelines caution that due regard must be given to the locational

context, to the availability of public transport services and to the availability of other associated infrastructure required to underpin sustainable residential communities.

- 7.3.8. The New Apartment Guidelines (2023) note that increased housing supply must include a dramatic increase in the provision of apartment development to support population growth, a shift towards smaller average household sizes, an ageing and more diverse population with greater labour mobility, and a higher proportion of households in the rented sector. The Guidelines address in detail, suitable locations for increased densities by defining the types of location in cities and towns that may be suitable, with a focus on the accessibility of the site by public transport and proximity to city/town/local centres or employment locations. Under the Apartment Guidelines, the site would be considered an intermediate urban location due to its location within the District Centre and access to public transport.
- 7.3.9. The Compact Settlements Guidelines echo the Government objectives of promoting increased residential densities in appropriate locations. The Guidelines refine the assessment of location and set recommended density ranges. Under the Guidelines, the appeal site would be categorised as a suburban/urban extension where densities in the range of 40dph – 80dph shall be applied.
- 7.3.10. The Guidelines state that densities up to 150dph shall be open to consideration at accessible suburban/urban extension locations. This is defined as being within 500m of existing or planned high frequency urban bus services. Intermediate locations are considered to be lands within 500-1,000 metres (10-12 minute walk) of existing or planned high frequency (i.e. 10 minute peak hour frequency) urban bus services; and lands within 500 metres (i.e. 6 minute walk) of a reasonably frequent (minimum 15 minute peak hour frequency) urban bus service.

#### *Local Assessment*

- 7.3.11. The Planning Authority do not consider the site to be served by high capacity/frequency public transport and this is echoed by observers. Bus routes and service frequency have changed since the application reports were drafted, and the BusConnects orbital route S6 has since come into operation. The site is served by two bus stops in the immediate vicinity which are served by route S6 (Tallaght to Blackrock), which operates at 15 minute intervals on weekdays, and service 161 (Dúndrum to Rockbrook) which operates on a roughly 1.5 hour basis on weekdays.



- 7.3.12. Other bus stops in the area include Marley Court (550m) which is served by route 14 (Beaumont to Dúndrum), which operates a peak service of between 10-12 minutes on weekdays. All of these services link to Dúndrum Luas which is located approximately 1.5km away, or a 20 minute walk. I note that the bus stop served by route 14 is located beyond the 500m threshold set out in the Guidelines but only marginally so. An additional planned service in this area by way of BusConnects A4 (Swords to Dúndrum) will stop at the site when operational and will offer a service of every 12 minutes at peak weekdays, also connecting to the Luas at Dúndrum.
- 7.3.13. In my opinion the site is well served by public transport. The site would technically be considered an Intermediate Location in the context of the Compact Settlement Guidelines, based on the bus services within a 500m boundary which include BusConnects S6 (15min), and the planned BusConnects A4 (12 min). However, bus route 14 (10-12min) is only marginally beyond the 500m zone given in the guidelines. I do not consider the additional 50m distance to be so significant to disregard the usage of this service by potential future residents. I am therefore of the view that the site has attributes of both an Accessible Location and an Intermediate Location in the context of the guidelines. Overall, I am satisfied that public transport is of a scale and level of provision/frequency that could adequately support the resultant future population of this development.
- 7.3.14. The Public Transport Capacity Report submitted by the applicant illustrates that there was sufficient capacity on the previous bus services that were in operation. However, I would advise the Board that the bus services have changed since that report was originally drafted and the overall number of routes has reduced, although frequency has generally increased. I would note that the capacity of services is intrinsically linked to frequency. Whilst I therefore do not consider the report to be fully representative of the current public transport provision, I do consider that it gives an indication of the level of public transport usage in the area and the report could be updated by Further Information, should the Board minded to grant permission.
- 7.3.15. The Guidelines indicate that appropriate density for Intermediate Locations should be in the range of 40dph – 80 dph. As I have mentioned previously, the site also has access to transport provision that would meet an accessible designation and I consider that the site has further attributes that would indicate that increased density beyond the 40dph-80dph set out in the guidelines would be appropriate. In addition to the

public transport services near the site outlined above I have also given consideration to the fact that public transport improvements can be strengthened by developments such as that proposed, by supporting a critical mass of population that will make services, including public transport, more viable.

- 7.3.16. I also acknowledge the site's location within the Nutgrove District Centre, including the range of services, employment opportunities, shops, and facilities that would be available to future occupiers. The broad CDP objective for the Nutgrove District Centre is to encourage potential redevelopment as a higher density urban mixed-use centre and the site is relatively unconstrained in terms of the surrounding built form.
- 7.3.17. Whilst having regard to the density ranges set out in the Compact Settlements Guidelines, I am therefore satisfied that the proposed density would be acceptable for the reasons set out above, taking account of the site's location within the wider District Centre site.

#### **7.4. Design and Height**

- 7.4.1. The Planning Authority's second reason for refusal relates to design and the implications of providing car parking on the bottom two floors which would, in the view of the Planning Authority, result in inactive frontages, a poor interface with the surrounding lands and public realm, and non-compliance with the Building Height Guidelines and the Building Height Strategy of the CDP, particularly where alternatives to the provision of the required parking exists. The primary design issue for the Planning Authority therefore relates to the lower floors of the building.
- 7.4.2. The grounds of appeal refer to the absolute need to re-provide shopping centre car parking and the lack of any feasible alternatives, noting that the Planning Authority have not elaborated on what the possible alternatives might be. The applicant considers that the revisions to the scheme submitted as part of the appeal would improve the lower floors of the building, and that the development would provide animation, activity and vitality in the existing car park. It is further suggested that the development would be a visual and functional improvement on the existing situation and that the proposal delivers high quality housing in the context of an existing shopping centre and its operational needs.
- 7.4.3. Observations on the appeal are that the building is too tall, monolithic in scale and would be overbearing and out of scale with its surroundings. It is stated that the height

should be in line with the current skyline of Nutgrove and that the development would raise the skyline for future developments. Further concerns are that the proposal would make the shopping centre look worse.

- 7.4.4. Appendix 5 of the CDP sets out the County's Building Height Strategy that aligns with the Building Height Guidelines. Policy Objective BHS1: Increased Height, states that it is a policy objective to support the consideration of increased heights and also to consider taller buildings where appropriate, including in the District Centre of Nutgrove, and in areas well served by public transport links, subject to the protection of existing amenities/sensitivities, and compliance with the criteria outlined in Table 5.1 of the Strategy. Table 5.1 of the Strategy outlines performance based criteria for the assessment of applications at various levels, which is similar to the criteria outlined in the Building Height Guidelines. Having considered the Table 5.1 criteria, I would summarise as follows:

#### County Level

- 7.4.5. Part (a) of the criteria relates to securing the objectives of the NPF in terms of focussing development in key urban centres, fulfilling targets in relation to brownfield/infill development, and delivering compact growth. The location of this infill development within the Nutgrove District Centre, would ensure that development is being focused in a key urban centre and as such would assist in securing the objectives of the NPF.
- 7.4.6. Part (b) requires that the site be well served by public transport, with high capacity, frequent service, and good links to other modes of public transport. As set out previously in section 7.3.13, I consider the site to be well served by public transport, including planned service improvements, and that the public transport serving the site would be adequate to support the resultant future population of this development.
- 7.4.7. Part (c) requires developments to successfully integrate into/enhance the character and public realm of the area, having regard to topography, cultural context, setting of key landmarks. In relation to character and public realm the proposal may enclose a street or crossroads or public transport interchange to the benefit of the legibility, appearance, or character of the area.
- 7.4.8. In my opinion, the development would generally successfully integrate into its surroundings, marking the junction of Nutgrove Avenue and Meadow Park Avenue, as

well as providing a landmark that marks arrival into the District Centre itself. The development proposes significant improvements to the open space to the east of the site, creating an improved public park.

- 7.4.9. However, I share the Planning Authority's concerns regarding the base of the building and the poor standard of design that would result from the provision of internal parking at ground and first floor level. I consider the principal elevation onto Nutgrove Avenue to be adequately animated at ground floor where the café, residential entrance and resident amenity area would activate the base of the building. The first floor of this façade is less successful due to the presence of the internal car park and openings giving views into same. Whilst I accept that this relates to a relatively small proportion of the façade, it is in a prominent, elevated location on the principal elevation facing onto the street and is not acceptable in design terms.
- 7.4.10. On the western elevation, the parking implications on the lower façade are mitigated somewhat by the cafe, the proposed green wall, and the newly proposed art gallery/eatery. However, the first floor parking is unduly prominent and, in my opinion, it significantly detracts from the appearance of the upper floors and, together with the central inactive portion of the ground floor, would not provide a satisfactory design response for a building of this scale in a prominent location. This provides a very poor interface with the remainder of the car park site and would be particularly visible in views from the west.
- 7.4.11. The southern façade accommodates the residential parking entrance at ground/first floor level, I generally consider the amendments to introduce the gallery/eatery to be successful in mitigating the presence of internal parking at ground and first floor level on this short façade. However, the lower floors of the eastern elevation are inactive and stark by comparison. Whilst I note the presence of the resident lounge at ground floor level and two flats at first floor level, this is limited to the far northeast corner and the rest of the entire lower two floors would comprise internal car parking and servicing spaces that would not enhance the public realm, particularly where it fronts onto the open space. I do not consider that this would be a positive interface with public areas such as the ground floor amenity space or the public park.
- 7.4.12. A series of open spaces are provided at the base of the building to the north and the east. The north space, termed Public Plaza on the plans, is essentially the entrance

to the building and would not constitute any beneficial open space of amenity value, instead being defensible space for the building as a result of the 4m-4.5m setback from the northern site boundary. The open space on the east side of the building is part of the ground floor communal amenity space and in my opinion is a narrow and constrained space that is further compromised by the various servicing and access routes that cross it. The rest of the public realm at the base of the building (west and south) are marked by vehicular access routes and retained surface level retail car parking, which do little to improve its setting or create a high quality public realm.

7.4.13. Part (d) relates to protected views and prospects. Whilst there are no protected views or prospects, the applicant has submitted a Landscape and Visual Impact Assessment which considers the development from various viewpoints within the local area. As set out previously, I consider that the development would be a positive addition that would frame the approach to the District Centre and mark the key junction of Nutgrove Avenue and Meadow Park Avenue. I do not consider that there would be any visual amenity impacts as a result of the development and will address the specific concerns raised in the observations in the amenity section later in this report.

7.4.14. Part (e) requires developments to have regard to the infrastructural carrying capacity of the area as set out in the CDP. The site is in a serviced urban area and neither Irish Water nor the Council's Drainage Planning Team have raised any objection to the proposal. I am therefore satisfied that water supply and drainage arrangements would be acceptable in terms of capacity. As set out in the Transport section below, I consider that the adjacent roads and junctions are also within capacity to accommodate the development.

#### District/Neighbourhood/Street Level

7.4.15. Part (a) requires proposals to respond to the overall natural and built environment and make a positive contribution to the urban neighbourhood and streetscape. I consider that the development would make a positive contribution to the neighbourhood, providing a suitable range of uses that would complement the existing offer of the shopping centre whilst introducing residential use in a sustainable location that benefits from a range of services. As well as delivering new housing, the scheme would improve pedestrian connections by providing a new north south route as well

as improved open space to the east. The development would positively reinforce the street edge onto Nutgrove Avenue.

- 7.4.16. In terms of contributing to the streetscape, I consider the design of the base of the building to be poor quality and the public realm is compromised by the level of proposed surface and internal car parking. The design of the base of the building and the surrounding public realm could be improved/informed by taking an inclusive approach to the balance of the site and the needs of the shopping centre and this could be achieved with a masterplan.
- 7.4.17. Part (b) states that developments should not be monolithic and should avoid long, uninterrupted walls of building in the form of slab blocks. I consider the heights and facades to be appropriately modulated and articulated with sufficient variation in elevational treatment to ensure that the building would not appear monolithic.
- 7.4.18. Part (c) the proposal must show use of high quality, well considered materials. I consider the range of proposed materials and the variation in colour, texture, and form to be appropriate for a building of this scale and of a sufficiently high quality. Further refinements to materials could be achieved by condition.
- 7.4.19. Part (d) states that proposals, where relevant must enhance the urban design context for public spaces and key thoroughfares and marine or river/stream frontage. In my opinion, the building is appropriately located in terms of reinforcing street edges, and I consider that this would generally enhance the streetscape on Nutgrove Avenue. The building is appropriately set back from the northern site edge onto Nutgrove Avenue to ensure that this key thoroughfare and potential future improvements would not be hindered or compromised. For reasons set out previously, the lower two floors of the building are not acceptable in design terms and would not enhance the urban design context for public spaces or key thoroughfares.
- 7.4.20. Part (e) requires that proposals must make a positive contribution to the improvement of legibility through the site or wider urban area. Where the building meets the street, public realm should be improved. As set out previously, I am of the view that the development would improve legibility, marking the key junction of Meadow Park Avenue and Nutgrove Avenue as well as marking arrival to the District Centre. I acknowledge the design of the lower floors of the building and the concerns expressed by the Planning Authority. I consider the base and first floor of the building to be poor

quality in terms of design, due to the lack of animation and activity on important façades that bound public spaces.

- 7.4.21. Part (f) states that the proposal must positively contribute to the mix of uses and /or building/dwelling typologies available in the area. The introduction of residential use is positive and entirely in line with CDP policy. The provision of a café and a gallery/eatery would complement the existing offer of the shopping centre as well as providing a cultural use that would be of local benefit.
- 7.4.22. Part (g) requires that proposals should provide an appropriate level of enclosure of streets or spaces. I consider that the development would appropriately enclose the key streets, including Nutgrove Avenue and the enhanced open space to the east.
- 7.4.23. Part (h) Proposal should be of an urban grain that allows meaningful human contact between all levels of buildings and the street or spaces. I am satisfied that the ground floor uses (café, gallery/eatery), pedestrian connections, the ground floor amenity space, and the enhanced public park would provide an urban grain that would facilitate human contact. This would be further supplemented by the podium garden and roof space garden that would allow for interaction between building residents.
- 7.4.24. Part (i) Proposal must make a positive contribution to the character and identity of the neighbourhood. The character of the immediate area is mixed, comprising large retail sheds and the shopping centre within the immediate vicinity and two storey dwellings further to the east. The proposed building would therefore represent an opportunity to improve and reinforce the identity of the District Centre by introducing a new form of residential. I am satisfied that the development would make a positive contribution to the character and identity of the area, notwithstanding my significant concerns regarding the base of the building.
- 7.4.25. Part (j) the proposal must respect the form of buildings and landscape around the site's edges and the amenity enjoyed by neighbouring properties. As above, the immediate context comprises large retail sheds and the proposed building is considered to be an improvement. The proposal would positively reinforce the principal street edge and provides opportunities for improved landscaping. My concerns regarding the base/lower floors and public realm have previously been expressed. The building would be located a sufficient distance from the nearest residential properties to ensure

there would be no significant amenity impacts. This issue is discussed in more detail in the amenity section below.

#### At Site/Building Scale

- 7.4.26. Part (a) requires that the proposed design should maximise access to natural daylight, ventilation and views and minimise overshadowing. The development would meet the minimum requirement of 50% dual aspect units. Communal spaces and amenity spaces would meet daylighting standards. I have concerns regarding the daylight and sunlight quality of several of the proposed homes/rooms and these are set out in further detail in section 7.7.4 below.
- 7.4.27. Part (b) states that the proposal should demonstrate how it complies with quantitative performance standards on daylight and sunlight as set out in BRE guidance “Site Layout Planning for Daylight and Sunlight” (2nd Edition). Where a proposal does not meet all the requirements, this must be clearly identified and the rationale for any alternative, compensatory design solutions must be set out. On relatively unconstrained sites requirements should be met. As set out in section 7.7.4 below, I have concerns regarding the daylight and sunlight standards to the new homes which in many cases are significantly below the minimum standards, in the absence of robust and significant compensatory measures.
- 7.4.28. Part (c) the proposal should ensure no significant adverse impact on adjoining properties by way of overlooking overbearing and/or overshadowing. The proposal would not result in any significant overlooking or overshadowing. The building would not be overbearing either on the streetscene, the local area or the nearest residential properties.
- 7.4.29. Part (d) the proposal should not negatively impact on an Architectural Conservation Area (ACA) or the setting of a protected structure. The proposal would have no impact on any ACA or Protected Structures.
- 7.4.30. Part (e) requires that proposals must demonstrate regard to the relative energy cost of and expected embodied and operational carbon emissions over the lifetime of the development. Proposals must demonstrate maximum energy efficiency to align with climate policy. Building height must have regard to the relative energy cost of and expected embodied carbon emissions over the lifetime of the development. The Planning Authority is satisfied that the proposal has sufficient regard to the relative



energy cost and expected embodied and operational carbon emissions over the lifetime of the development, and that the development is capable of complying with Part L of the Building Regulations. I am satisfied that the development would be acceptable in this regard, having reviewed the Building Lifecycle Report and Energy/Sustainability Statement.

#### County Specific Criteria

- 7.4.31. Parts (a), (b), (c), (d), and (i) of the County Specific Criteria are not, in my opinion, relevant to the proposed development.
- 7.4.32. Part (e) requires consideration of the potential interaction of building, materials and lighting on flight lines in locations in proximity to sensitive bird/bat areas. Given the buildings location within an existing car park, I consider it unlikely that the development would negatively interact with flight lines and the site is not in close proximity to sensitive bird or bat areas.
- 7.4.33. Part (f) requires an assessment that the proposals allow for the retention of telecommunications channels, such as microwave links. The applicant has submitted a Telecommunications Report that has identified a need to provide both microwave and radio links in order to mitigate potential interference. These antennae would be located on the roof, concealed within shrouds and would be well set back from the principal elevation and would not, in my opinion, have a significant visual impact or diminish the appearance of the building.
- 7.4.34. Part (g) requires an assessment that the proposal maintains safe air navigation. The applicant submits that the site is not located within any of the designated approach areas or safety zones.
- 7.4.35. Part (h) requires relevant environmental assessment requirements, including SEA, EIA (schedule 7 information if required), AA, and Ecological Impact Assessment, as appropriate. The application is accompanied by An Appropriate Assessment Screening Report and an Environmental Impact Assessment Screening Report, both of which I have considered in this report at sections 7.11 and 5.7 respectively, as well as Appendix 2.
- 7.4.36. Part (j) requires that proposals should make a positive contribution to place making, incorporating new streets where appropriate, using massing and height to achieve

densities but with variety and scale and form to respond to scale of adjoining development. There is limited ability to provide new streets due to the location of the site within an operational shopping centre car park. The height, scale and massing are, in my opinion, acceptable in design terms. However, the constraints placed on the site by the need to retain retail parking has compromised the design quality of the building on the lower floors (east elevation) and the building offers very little benefit in terms of commensurate open space around the base of the building, neither of which would make a positive contribution towards placemaking.

- 7.4.37. Part (k) For larger unconstrained redevelopment sites BRE standard for daylight and sunlight/any forthcoming EU standards on daylight sunlight should be met. As set out previously and in more detail in section 7.7.4 below, a significant number of units/rooms would be deficient in daylight/sunlight. I consider that this compromises the quality of accommodation provided and would not be justified given the relatively unencumbered nature of the site and in the absence of significant compensatory measures for the affected homes.

#### Conclusions on Design

- 7.4.38. Core to the Planning Authority's issue with the development on design terms, in addition to the masterplan issues previously addressed, is that the height is not justified, largely due to the implications of providing two levels of parking at the base of the building and the impact this has on the lower facades and their lack of active use and animation. It is indicated in the Planner's Report that a six storey building would be more appropriate and that this could be achieved by the removing the parking on the lower levels.
- 7.4.39. I would certainly agree that the form and design of the building has been compromised by the requirement to retain a certain level of parking for the shopping centre. The difficulty on this issue is that no details of the required level have been provided, nor has a parking survey showing current car park use and vacancy been provided. No viable alternatives to the proposed parking arrangement have been proposed. Proposing a lower level than the lease requirements could result in a planning permission that cannot be implemented. Conversely, a parking survey could potentially show that there was sufficient headroom in parking numbers to allow a further reduction, thereby allowing an improved design at the base of the building. In

my opinion, insufficient information has been provided on the parking requirements to justify the proposed design at the base of the building or the lack of commensurate high quality public realm and is illustrative of the need to consider the shopping centre site as a whole, through a masterplan.

- 7.4.40. I note that the building would be significantly taller than the prevailing heights in the area (range 2-4 storeys), however, I have given consideration to Policy Objective BHS1: Increased Height, which states that it is a policy objective to support the consideration of increased heights and also to consider taller buildings where appropriate, including in the District Centre of Nutgrove. Whilst I broadly consider the height, scale, and massing of the building to be acceptable, I have significant concerns about the quality of the lower floors on the north, east and west elevations as well as the quality of public spaces at the base of the building and the interface with the wider car park/shopping centre site. I am of the view that there is little in the way of promoting high quality placemaking as part of the scheme, notwithstanding the improvements to the open space to the east of the site. As such, I consider that the proposal would be contrary to the Building Height Guidelines and the Building Height Strategy of the CDP and it would not contribute to quality placemaking.

## **7.5. Views and Visual Impact**

- 7.5.1. The applicant has submitted a Landscape and Visual Impact Assessment that considers visibility of the proposed development from a selection of viewpoints through the local and wider area. I have considered this assessment and the various views in my assessment. Observations on the appeal raise concerns that the Landscape and Visual Impact Assessment is vague, inadequate, lacking in substance and wrong in adopting a 5km radius. It is suggested that views have been taken from points that would be favourable to the development and that views from the junction of Mountain View Park and Meadow Park Avenue should be taken. Further concerns raised are that the development would impact on the long view along Nutgrove Avenue that currently terminates in green space and sets Nutgrove apart for other areas.
- 7.5.2. Views have been taken from 10 points around the site, including from both the east and west approaches on Nutgrove Avenue, from Stonemasons Way which is to the south of the site, and from within Mountain View Park which is east of the site. I have

viewed the site from a number of locations in the surrounding area, and I consider that the photomontages are taken from locations, contexts, distances, and angles, which provide an appropriate and fulsome representation of the visibility of the scheme, providing a reasonably accurate portrayal of the completed development in summer settings. Overall, I consider the viewpoints to be appropriate and not particularly advantageous to the developer as they provide a clear indication of visibility within the surrounding area. I acknowledge the observation that a view should have been taken from the junction of Mountain View Park and Meadow Park Avenue, however, I do not consider that the absence of this view makes the LVIA inadequate, and I have considered this view during my site inspection.

- 7.5.3. In my opinion, whilst the development would undoubtedly be visible within the immediate and surrounding area, I do not consider that it would have a significant adverse impact on visual amenity, nor would it have significant negative impacts on any views or vistas. I consider the visibility of the scheme in the views from Nutgrove Avenue to be acceptable as it would mark the key junction of Meadow Park Avenue and Nutgrove Avenue and would provide a landmark that would mark the entry to the Nutgrove District Centre, improving legibility and reinforcing the street edges.

## 7.6. **Open Space**

- 7.6.1. The applicant proposes to meet the majority of the open space requirement by facilitating the upgrade of the existing open space to the east of the site. The Planning Authority generally consider this to be acceptable and no objections have been raised to this proposal by the County's Parks Department.
- 7.6.2. Observations on the appeal raise concerns that the development fails to comply with the Open Space requirements of the CDP, that the open space is existing and should not be built on and that the local community have not been consulted on its use. Further concerns are raised to the loss of trees, the overall landscaping, and the proposal by the developer to only pay for part of the open space upgrade.
- 7.6.3. Policy OSR4: Public Open Space, states that it is an objective to promote public open space standards generally in accordance with overarching Government guidance. The policy states that in the event that these standards of public open space provision are not met, an additional contribution in lieu may be attached to any permission, by way of planning condition.

- 7.6.4. Policy 5.1: Public Open Space of the Compact Settlements Guidelines recognises that in some circumstances, a planning authority might decide to set aside (in part or whole) the public open space requirement arising under the development plan. This can occur in cases where the planning authority considers it unfeasible, due to site constraints or other factors, to locate all of the open space on site. In other cases, the planning authority might consider that the needs of the population would be better served by the provision of a new park in the area or the upgrade or enhancement of an existing public open space or amenity. It is recommended that a provision to this effect is included within the development plan to allow for flexibility. In such circumstances, the planning authority may seek a financial contribution within the terms of Section 48 of the Planning and Development Act 2000 (as amended) in lieu of provision within an application site.
- 7.6.5. As such, the principle of facilitating the upgrade of the existing open space in lieu of on-site provision is acceptable in policy terms, subject to the inclusion of a condition requiring a financial contribution. The required amount of open space would be 903.45sqm and the proposed size of the upgraded park is 4,410sqm. The applicant has provided a specification for the upgrade of this space which equates to a cost of €635,000 and notes that if the Planning Authority were to levy a contribution in lieu of the open space, this would amount to €182,000. On this basis, the applicant considers that the balance of €453,000 should be offset in respect of development contributions levied on the development of the site.
- 7.6.6. The DLRCC Development Contribution Scheme 2023-2028 sets out the various development contributions for different classes of development in different parts of the County in line with the requirements of Section 48 of the Planning and Development Act, 2000 (as amended). Section 6 relates to the standard contributions required in lieu of public open space and sets a levy of €7,500,000 per hectare which shall be calculated on a pro rata basis on the quantum of the shortfall in public open space. As the applicant is not providing any open space on their site, the pro rata figure would be 903sqm or 0.0903ha equating to a total required contribution of €677,250. Clearly the applicant's figure does not correspond to the required levy in the Development Contribution Scheme 2023-2028 which would be in excess of the €635,000 specification, ensuring that the space could be upgraded within the remit of the standard contributions scheme and without additional cost to DLRCC.

- 7.6.7. Whilst I note concerns that the local community have not been consulted on the use of this space, it has formed part of the current application and I do not consider that observers or the wider community have been prevented from making comments on the proposed use or the design of the space put forward by the applicant.
- 7.6.8. I consider the proposed loss of trees to be acceptable considering the overall significant increase in replanting and the removal of trees limited to Categories B (11no.), C (7 no.) and U (5 no.).

### 7.7. **Quality of Accommodation**

- 7.7.1. The Planning Authority consider that the development meets housing quality standards with regards to unit mix, apartment size, floor to ceiling heights, lift and stair cores, internal and external storage, and private open space.

#### *Dual Aspect*

- 7.7.2. The Planning Authority's third reason for refusal relates to the deficient number of dual aspect units which would fail to meet the CDP objective of securing at least 50% dual aspect provision. As originally submitted, the Planning Authority determined that only 45% dual aspect units were provided, as some units considered dual aspect by the applicant relied on setbacks within the elevation, resulting in windows that faced other units or blank walls. Having reviewed the original plans, I would agree with this assessment.
- 7.7.3. As part of the appeal the applicant has sought to address this issue and has made minor elevational amendments as well as some minor internal reconfigurations to increase the number of dual aspect units. Taking these amendments into consideration, I consider that the scheme would now provide 50.5% dual aspect units which would meet the policy requirement of the CDP as well as the requirements of the Apartment Guidelines in terms of the 50% standard.
- 7.7.4. However, the development would include five north facing single aspect units. The Apartment Guidelines state that north facing single aspect apartments may be considered, where overlooking a significant amenity such as a public park, garden or formal space, or a water body or some other amenity feature. The five proposed single aspect north facing units would overlook Nutgrove Avenue and the adjacent retail park/car park (units 216, 317, 417, 517, 615). In the absence of sufficient

compensatory measures and with no outlook over a significant amenity feature or open space, I do not consider that these units would provide a satisfactory standard of living accommodation and they would not comply with the Apartment Guidelines.

*Internal Daylight and Sunlight – New Issue*

- 7.7.5. Although not forming a reason for refusal of the permission, concerns were raised by the Planning Authority regarding the level of daylight and sunlight to the proposed new homes. At the outset I would state that the proposed communal amenity areas would all be BRE compliant and as such I consider them to be acceptable. The applicant has considered the level of sunlight to the proposed homes by way of a Sunlight Exposure Assessment, whilst daylight has been assessed via a Spatial Daylight Autonomy Assessment. The Sunlight Exposure Assessment demonstrates that 80 of the proposed units would meet the requirements of BRE, resulting in a compliance rate of 88% and only marginally below the County's preferred compliance level of 90%. I note that four of the non-compliant units would be dual aspect units with open aspects to the north and west and views over the communal amenity space (units 211, 311, 411, 511), and two units would be single aspect units facing south, with views over the communal amenity space towards the southern arm of the block (units 314 and 414).
- 7.7.6. The remaining five non-compliant units are single aspect north facing units. North facing units by their nature will not achieve adequate sunlight which is why it is recommended that they are avoided unless they have appropriate compensatory measures such as outlook over a significant amenity feature. I have addressed the single aspect nature in section 7.7.4 above. In terms of the failure to achieve the sunlight standards, I note the limited number of affected units and that the units pass the Spatial Daylight Autonomy Assessment, but this does not outweigh my concerns regarding the lack of sunlight and the single aspect north facing nature of these units.
- 7.7.7. The Spatial Daylight Autonomy Assessment assessed 266 habitable rooms, with 250 rooms complying with BRE 209, giving a compliance rate of 94%. The 16 rooms that would fail to comply are located across 11 units (nos. 102, 202, 203, 211, 212, 213, 313, 413, 414, and 514). Three of the affected units would also fail the Sunlight Exposure Assessment (units 211, 314, and 514). Nine of the rooms which fall below the minimum standards would be the principal living spaces (living/kitchen/diner - LKD) and this represents almost 10% of the total number of units within the scheme.

7.7.8. When applying European Daylighting Standard EN 17037, the total number of LKD's that would fail to meet the minimum standard increases to 19, representing approximately 21% of units within the scheme, which is significant in my opinion, given the relatively unconstrained nature of the site in terms of the surrounding built form. The applicant has put forward compensatory measures for some of the apartments, such as large floor to ceiling windows, floor to ceiling heights being slightly above the minimum, and apartment sizes/private amenity spaces being increased above the minimum standards but I do not consider these measures to be significant or robust enough to outweigh my concerns regarding the overall quality of accommodation in terms of daylight and sunlight. This is a new issue, and the Board may wish to seek the views of the parties. However, having regard to the other substantive reasons for refusal set out in section 9.0 below, it may not be considered necessary to pursue the matter'.

## 7.8. **Amenity**

7.8.1. The Planning Authority are generally satisfied that the development would not result in any significant residential amenity issues. Observations on the appeal express concerns that the development would result in a loss of privacy, overshadowing/loss of daylight, and that the development would be visually obtrusive. Additional concerns are that the development would result in traffic, noise, and dust impacts as well as disturbance to residents, both during construction and once completed/operational. It is also argued that no consideration has been given to reflected sunlight impacting on drivers, and that outdoor gym equipment proposed for the public park could cause antisocial behaviour.

7.8.2. The nearest residential properties are located on Mountain View Park and Meadow Park Avenue to the east of the site. The distance between the east façade of the building and the junction of Mountain View Park would be 72m and the distance to the nearest dwellings on Meadow Park Avenue would be approximately 90m. I am therefore satisfied that this distance is more than sufficient to ensure that there would be no overlooking or loss of privacy. In terms of being overbearing and causing overshadowing, the height of the building at a proposed maximum of 29.75m in combination with the significant separation distances is such that I do not consider the development would be overbearing on any of the nearest dwellings, nor would it result



in overshadowing. I accept that the development would be visible, and at some locations highly visible, but I do not consider that it would be visually obtrusive or that it would result in harm to visual amenity.

7.8.3. Disturbance can occur during construction, particularly with regards to noise and dust. However, I am satisfied that these temporary issues could be adequately addressed and managed by way of a Construction Environmental Management Plan which could be secured by way of a condition, should the Board be minded to grant permission. Once operational, I do not consider that the development would be likely to result in excessive noise impacts on surrounding dwellings, and appropriate conditions could be imposed regarding noise from plant if required.

7.8.4. I do not consider the level of glazing on the building to be excessive or located/orientated in such a way that it would result in solar glare to the main vehicular approaches. The façade materials are of low reflectivity and likewise would not result in significant solar glare that would compromise traffic safety. I note the concerns regarding possible anti-social behaviour resulting from the gym equipment, however, I consider the public park to be sufficiently overlooked from the upper levels of the proposed development to provide appropriate passive surveillance.

## 7.9. **Transport**

7.9.1. Although not raised as a reason for refusal, I note from the Planner's Report that the County's Transport Planning Team raised a significant number of issues that were mostly to be addressed by way of Further Information, which ultimately was not sought due to the substantive reasons for refusal. The applicant has referenced these issues in their grounds of appeal. Observations on the appeal also raise a significant number of issues and I consider that the issues raised by both the Transport Planning Team and observers can be summarised as parking, traffic and access, servicing, and public transport/infrastructure.

### *Parking*

7.9.2. The Planning Authority generally consider that there is excess car parking in the area and that a relaxation of the required parking quantum can be implemented although no surveys have been provided to evidence this. Observations on the appeal raise concerns that insufficient parking is being proposed, both for residents and the shopping centre, and that the shopping centre has a requirement for sufficient parking

to be retained in order that its functionality is not compromised. Further concerns raised are that an insufficient assessment has been undertaken of car parking at peak times, and that construction workers parking at the site as well as the construction process itself, including deliveries, is likely to have an impact on parking, access, traffic and disturbance. The main concern relates to parking levels and the risk that overflow parking would impact on surrounding streets.

- 7.9.3. In terms of residential parking, the development would provide 53 spaces, 50 within the first floor of the development and three external accessible spaces. This equates to a parking ratio of 0.58% against a CDP requirement of 120 spaces (111 residential and nine visitor spaces).
- 7.9.4. Section 12.4.5.2(i) of the CDP sets out the assessment criteria for deviating from car parking standards. Criteria include (but are not limited to) proximity to public transport (level of service and interchange), walking and cycling accessibility, availability of car sharing, existing availability of car parking, and the range of services available within the area.
- 7.9.5. Subsequent to the adoption of the CDP, the Compact Settlements Guidelines (2024) now support a move away from full parking provision, and state at Section 4.4(i)(d) that the quantum of car parking in new developments should be minimised in order to manage travel demand, and to ensure that vehicular movement does not impede active modes of travel or have undue prominence within the public realm. SPPR3 states that in intermediate and peripheral locations, defined in Chapter 3 (Table 3.8), the maximum rate of car parking provision for residential development, where such provision is justified to the satisfaction of the planning authority, shall be two spaces per dwelling.
- 7.9.6. I note that the Guidelines state a maximum level of parking provision as opposed to a minimum, and that the general thrust of the Guidelines is that parking should be reduced at all urban locations, particularly in locations that have good access to public transport and urban services. I have previously addressed the issue of public transport availability at this site. Taking into account the context of the Guidelines and the aim to reduce parking, the Planning Authority's view that there is excess parking in the area, and the site's location within the District Centre and the extensive range of services provided, I am satisfied that the reduced level of residential car parking is

acceptable and that conditions could be applied regarding car sharing schemes, should the Board be minded to grant permission.

- 7.9.7. The applicant has argued that there is a requirement to retain a certain level of car parking for the shopping centre due to lease agreements. As covered previously, no details of this required level of provision have been provided and lease agreements are not a planning matter. Furthermore, no parking surveys demonstrating excess parking within the shopping centre car park have been submitted. This is a concern of observers who argue that the failure to continue to provide sufficient shopping centre parking could harm the functioning of the shopping centre and result in overflow parking on surrounding streets.
- 7.9.8. Whilst the Board could request this information should it be minded to grant permission, in the absence of a parking survey for the shopping centre car park, I consider it relevant and reasonable to apply the parking standards set out in the CDP to understand if the retained levels would be sufficient. Table 12.5 of the CDP sets out the maximum parking standards for various retail uses. The highest level of provision relates to supermarkets (1 space per 20sqm) and convenience retail (1 space per 30sqm). Based on a scenario whereby half of the floorspace in the shopping centre is in use by supermarkets and half is in use by convenience retail, the maximum parking level would equate to 887 spaces. The CDP levels are maximum standards and given the level of car parking provided in the wider car park, in addition to the retained parking, I am satisfied that sufficient retail parking would be provided.
- 7.9.9. The observers note that the Planning Authority have stated there are viable alternatives to the proposed parking, but I note that the Planning Authority have not indicated what these alternatives might be. The applicant is resolute that parking has to be retained for the shopping centre and although I agree that this should not be taken as a given, I consider it reasonable that parking would need to be retained at an adequate (albeit undefined) level for the ongoing functioning of the shopping centre.
- 7.9.10. Observers have indicated that basement parking could be provided. Although I accept that basement car parking could potentially be provided, it does not form part of the current proposal and assessing the principle of basement parking is outside the scope of the appeal. Basement construction requires in depth assessment with regards to embodied carbon and potential impacts on the water table, which can in some

instances result in localised flooding due to the displacement of ground water. On the basis of the information before me, I am satisfied that the proposed level of car parking would be sufficient to service the development.

7.9.11. The issue of the management of the car park has been raised by both the Planning Authority and observers on the appeal, and that details are required as to how residents would be prevented from parking in shopping centre spaces and vice versa. Access to the residential parking could be controlled by a barrier and given that the applicant retains overall control of the shopping centre car park and would be able to implement a car parking management scheme, such as limited parking duration, I am satisfied that this could be dealt with by a Car Park Management Plan which could be secured by condition, should the Board be minded to grant permission. Other issues raised by the Planning Authority regarding visitor vehicular and cycle parking, electric vehicle parking, car sharing, detailed design of parking spaces and car park layout, and clarity on headroom heights are also issues that I consider could be adequately dealt with by way of condition in the event that the Board are minded to approve.

7.9.12. I note concerns raised by observers that the construction process could increase parking issues, such as construction workers parking their cars. Any Construction Environmental Management Plan approved as part of the development or required by condition would need to address this issue. In any event, I do not consider it to be insurmountable and the overall impact would be temporary and of low intensity such that it could be appropriately dealt with by condition.

#### Access

7.9.13. The Planning Authority consider that the proposed vehicular access is unacceptable, unclear, and that a separate access and service road is needed for the development. Additionally, it is considered that the service area is insufficient and that a parallel service bay should be provided instead.

7.9.14. Observations on the appeal also consider that the access arrangements are insufficient, and that the development would add to existing access problems at peak times, leading to traffic and congestion. It is also a concern that the development would present obstacles to emergency services.

7.9.15. The proposed development would be accessed from within the existing Nutgrove Shopping Centre car park. The car park itself is accessed from Nutgrove Way where

there is a two lane access and a two lane exit separated by the existing petrol station (north junction - access, south junction - exit). Traffic is then circulated around the car park following the two lane, one way access, with spurs to each of the parking lanes which are all two lane/two way.

- 7.9.16. The Planning Authority have expressed their view that a dedicated access to the development is required through the car park from Nutgrove Avenue and have given an indicative drawing in the Planner's Report of how this would function. This would involve amending the two lane access and two lane egress on Nutgrove Avenue into a dedicated two way in/out for the residential use and a two way in/out for the shopping centre, with the northern junction becoming solely residential and the southern junction becoming retail only.
- 7.9.17. I would agree with the applicant that this proposal would have serious implications for the wider car park. It would effectively prevent access to the car parking spaces in the northwest and northern edge of the car park and would also have implications for the operation of the McDonalds and its drive through. Again, a masterplan that tested different scenarios would help to determine the optimal layout, but based on the information available I am satisfied that the access arrangements, as proposed, are acceptable and I do not consider the preferred option put forward by the Planning Authority to be beneficial
- 7.9.18. Whilst I note concerns by both the Planning Authority and observers that the access could be confusing, and that this would impede the emergency services, I consider these concerns to be unfounded and that legibility through the car park to the development could be appropriately secured by way of signage and road markings, not to mention the visibility of the building itself. In terms of the access being suitable for the construction of the development, I consider the two lane form of entry and the potential for a suitably sized construction compound within the Main Development Site to be sufficient to enable development to take place without compromising the operation of the wider car park. Construction would be subject to a Construction Management Plan, and I am therefore satisfied that, in combination with the access and site characteristics, issues regarding construction could be appropriately managed and mitigated.

*Traffic*

- 7.9.19. Observations on the appeal consider that the development would add to existing access problems at peak times, leading to traffic and congestion. The applicant has submitted a Transport Assessment that considers the traffic impact in terms of junction capacity and trip generation (using the TRICS database). The junction capacity modelling demonstrates that all junctions are operating within capacity and allowing for a 5% increase for 2024, the small increase in traffic above the 2021 scenarios modelled would result in a similar performance to the present situation.
- 7.9.20. Trip generation from the development would result in a relatively low increase. Overall trip generation for the development would result in 56 two way person trips in the morning peak (10 arrivals and 48 departures) and 58 two way person trips in the evening peak (41 arrivals and 17 departures). Broken down by mode share this would result in 27 vehicle trips in the morning peak (5 arrivals and 22 departures), and 28 two way vehicle trips in the evening peak (20 arrivals and 8 departures). I therefore consider the overall vehicle trip generation of the site to be modest and that the development would not have a significant traffic impact.
- 7.9.21. I am aware of the further concerns raised by the observers that the new park is next to a heavily trafficked four way junction and that there could be safety issues, such as young children straying from the park, or drivers being distracted by the new building. I note that the public park is already in existence, and I do not consider that the upgrades to the space would result in additional risk to park users in terms of traffic collisions or accidents, nor do I consider the presence of a building in a built up area to be of specific concern regarding driver distraction.

#### *Servicing*

- 7.9.22. The Planning Authority have raised specific concerns regarding servicing arrangements. The applicant has indicated that it would be possible to increase the level of loading bay provision and alter the refuse collection point to improve servicing and address the Planning Authority's concerns. I generally agree that the loading bay for refuse collection would be better located in a parallel bay on the west side of the building, as the current arrangements would require a vehicle to reverse down the eastern edge of the building, due to its nature as a cul-de-sac with no appropriate turning space to enable access and egress in a forward gear. This could lead to conflict with parking and pedestrians accessing the upgraded public space, as well as further

compromising the quality of the communal open space at the base of the building. I am satisfied that this could be dealt with by condition and as such would not warrant refusal on that basis.

#### *Public Transport and Infrastructure*

- 7.9.23. Concerns raised by observers relate to the bus capacity surveys being undertaken during the summer, that public transport is not sufficient to support the development and that transport infrastructure for cyclists has to be put in place prior to building more developments.
- 7.9.24. In my opinion the site is well served by public transport, based on the bus services within a 500m boundary which include BusConnects S6 (15min), and the planned BusConnects A4 (12 min). Bus route 14 operates on a 10-12 minute frequency at peak times and is only marginally beyond the 500m zone given in the guidelines. These services would offer onwards connections to the Luas at Dundrum. Overall, I am satisfied that public transport is of a scale and level of provision/frequency that could adequately support the resultant future population as a result of this development.
- 7.9.25. The Public Transport Capacity Report submitted by the applicant illustrates that there was sufficient capacity on the previous bus services that were in operation. I would note that the capacity of services is intrinsically linked to frequency. Whilst I therefore do not consider the report to be fully representative of the current public transport provision due to service changes since the report was drafted, I do consider that it indicates the level of public transport usage in the area and the report could be updated by Further Information, should the Board minded to grant permission.
- 7.9.26. In terms of infrastructure the Planning Authority have indicated that a 15m set-back should be provided on the northern elevation to facilitate the provision of a wider pavement and potential two way cycle route and ensuring the upgraded park is fully usable by cyclists. The Planning Authority have also indicated that the development would need to ensure that it didn't conflict with proposed new bus stops as part of BusConnects improvements.
- 7.9.27. It is unclear why the Planning Authority did not consult either the National Transport Agency or Transport Infrastructure Ireland. However, I consider the building's set back from the site boundary with the pavement on Nutgrove Avenue of between 4m and 4.5m to be sufficient, both in terms of potential replacement bus stops and the possible

provision of improved cycling facilities. I note that cycle lanes are provided on either side of the carriageway, however, it can be inferred from the Council's response that the proposal is to upgrade the cycleway to a two way cycleway which would equate to a set-back of between 1.5m – 2m. In the absence of any definitive information from the Planning Authority, I am satisfied that this can be accommodated with the current set back.

#### **7.10. Other Matters**

- 7.10.1. Observations on the appeal argue that the application reports are subjective and not independent. I consider this to be unfounded and I am of the opinion that the reports are appropriate in terms of scope and detail, with the exception of my comments previously made on the Public Transport Capacity Report which is now out of date.
- 7.10.2. I acknowledge the comments made with regards to the lack of three bedroom homes proposed for social housing. The proposed social housing offer has been reviewed and accepted by the Council's Housing Department, subject to a standard Part V condition.

#### **7.11. Appropriate Assessment**

- 7.11.1. Article 6(3) of the Habitats Directive requires that any plan or project not directly connected with or necessary to the management of a European site, but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to Appropriate Assessment of its implications for the sites in view of the sites' Conservation Objectives. The Board is the competent authority in this regard and must be satisfied that the development in question would not adversely affect the integrity of the European sites having regard to their conservation objectives.
- 7.11.2. The applicant has submitted an Appropriate Assessment Screening Report (Enviroguide Consulting 12th September 2022). This report considers the closest European sites to the appeal site within the Zone of Influence and evaluates and screens the proposed development to assess if full Appropriate Assessment is required. This assessment examines the implications of proceeding with the project in view of the conservation objectives for the protected habitats.
- 7.11.3. The applicant's AA Screening Report concludes that the project would have no direct or measurable indirect impacts on any European sites in close proximity to the appeal



site and that no significant impacts of the qualifying interests of any SPA or SAC is likely. Having reviewed the AA Screening Report, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European Sites. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects.

7.11.4. The proposed development is not located within or immediately adjacent to any European site. The nearest European sites are the South Dublin Bay and River Tolka Estuary SPA (004024), South Dublin Bay SAC (000210), North Dublin Bay SAC (000206), and the North Bull Island SPA (004006). Whilst there are other European sites within a 15km radius of the appeal site, I do not consider that they fall within the zone of influence of the project, having regard to the nature and scale of the development, the distance from the development site, and the lack of an obvious pathway from the development site.

7.11.5. There are no watercourses running through the site although it is noted that the Little Dargle and Owendoher Rivers are located to the west, and the River Dodder is located to the north but not within the immediate proximity of the site. It is noted that the development would connect to public services and therefore, there is an indirect pathway to a number of European sites via the Ringsend Waste Water Treatment Plant. I therefore acknowledge that there are potential indirect connections to the European sites within Dublin Bay via the wider drainage network and the Ringsend WWTP. However, the existence of these potential pathways does not necessarily mean that potential significant effects will arise.

7.11.6. In terms of potential effects, habitat loss and fragmentation would not arise given the location and nature of the site. Given the site characteristics in terms of location and scale of development, I consider that surface water drainage and wastewater generation should be considered for examination in terms of implications for likely significant effects on European sites.

7.11.7. The car park on the site currently drains into the existing surface water drainage network which discharges into the Little Dargle River and onwards to the River Dodder, this would continue to the case for the external car park part of the development. I

therefore acknowledge that there is a weak hydrological link between the development and the European sites of Dublin Bay. However, the potential for surface water generated at the site to reach the European sites of Dublin Bay is negligible, having regard to the distance and potential for dilution in the River Dodder, River Liffey, and Dublin Bay itself, and the potential for dilution in the surface water network during heavy rainfall events. Other parts of the site, including the proposed building, would discharge surface water and foul water to the combined sewer for onward treatment at the Ringsend WWTP, although the increased loading would be minor in context. The proposal would not generate significant demands on the existing municipal sewers for foul water. Whilst this project would marginally add to the loadings to the sewer, evidence shows that negative effects to European sites are not arising. Phased upgrade works to the Ringsend WWTP extension have commenced and the facility is currently operating under the EPA licencing regime that is subject to separate AA Screening.

7.11.8. Therefore, having regard to the location, nature and scale of the development, the dilution capacity of the River Dodder, River Liffey, and Dublin Bay, and the insignificant additional loading on the Ringsend WWTP, I am satisfied that there is no potential for the development to result in significant effects on the Dublin Bay European sites, either on its own or in combination with other developments.

7.11.9. The proposed development was considered in light of the requirements of section 177U of the Act of 2000. Having carried out screening for AA of the project, it has been concluded that the project individually or in combination with other plans or projects, would not have a significant effect on European sites, including (but not limited to) European Site No. 004024 (South Dublin Bay and River Tolka Estuary SPA), European Site No. 004006 (North Bull Island SPA), European Site No. 000206 (North Dublin Bay SAC) and European Site No. 000210 (South Dublin Bay SAC) in view of the sites' Conservation Objectives, and Appropriate Assessment is not, therefore, required.

## 8.0 Recommendation

- 8.1. From my assessment above, I consider that the Board should uphold the decision of Dún Laoghaire-Rathdown County Council and refuse planning permission for the proposed development based on the reasons set out below.

## 9.0 Reasons and Considerations

1. The proposed development has not been presented or considered within the context of or informed by a development framework or masterplan. Having regards to its relationship with adjacent lands, land use and in the absence of an overall framework or masterplan for this District Centre, the proposed development would, if granted, lead to piecemeal and fragmented development that could impede the future development potential of the wider lands and hinder the County Development Plan policies and objectives for the Nutgrove District Centre. The proposed development would therefore be contrary to Policies MFC1, MFC3, and RET6 of the Dún Laoghaire-Rathdown County Development Plan and would be contrary to the proper planning and orderly sustainable development of the area.
2. The proposed development, by reason of the poor standard of design at the base of the building, which is lacking in active use, animation, and visual interest, would present a poor interface to the surrounding lands and would fail to contribute to the provision of a high quality placemaking. Furthermore, the failure of a number of apartments to meet the required daylight/sunlight standards as well as the provision of single aspect north facing units, in the absence of robust compensatory measures, would result in poor residential amenity for future occupiers. The development would therefore be contrary to the Design Standards for New Apartments Guidelines, the Urban Development and Building Heights Guidelines and the Building Height Strategy of the Dún Laoghaire-Rathdown County Development Plan and would be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Terence McLellan  
Senior Planning Inspector

14<sup>th</sup> February 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

**[EIAR not submitted]**

<b>An Bord Pleanála Case Reference</b>	ABP-315627-23		
<b>Proposed Development Summary</b>	Mixed use building comprising 91 apartments and all other site works.		
<b>Development Address</b>	1.045 Ha site towards north-eastern corner of the car park, Nutgrove Shopping Centre, Rathfarnham, Dublin 14.		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> <small>(that is involving construction works, demolition, or interventions in the natural surroundings)</small>	<b>Yes</b>	X	
	<b>No</b>	No further action required	
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>	X		Proceed to Q.3
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>			
	<b>Threshold</b>	<b>Comment (if relevant)</b>	<b>Conclusion</b>
<b>No</b>			No EIAR or Preliminary Examination required
<b>Yes</b>	Class 10(b)(i)(iv) >500 dwellings >2 hectares		Proceed to Q.4

**4. Has Schedule 7A information been submitted?**

<b>No</b>		<b>Preliminary Examination required</b>
<b>Yes</b>	X	<b>Screening Determination required</b>

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

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



## A. CASE DETAILS

<b>An Bord Pleanála Case Reference</b>	ABP-315627-23	
<b>Development Summary</b>	Mixed use building comprising 91 apartments and all other site works.	
	Yes / No / N/A	
<b>1. Was a Screening Determination carried out by the PA?</b>	No.	The Planning Authority concluded that there would be no real likelihood of significant effects on the environment as a result of the proposed development.
<b>2. Is an IED/ IPC or Waste Licence (or review of licence) required from the EPA? If YES has the EPA commented on the need for an EIAR?</b>	No	
<b>3. Has Schedule 7A information been submitted?</b>	Yes	The applicant has submitted Schedule 7A information in the Environmental Impact Assessment Screening Report (Enviroguide Report September 2022).
<b>4. Has an AA screening report or NIS been submitted?</b>	Yes	An Appropriate Assessment Screening Report was submitted with the application (Enviroguide September 2022)
<b>5. Have any other relevant assessments of the effects on the environment which have a significant bearing on the project been carried out pursuant to other relevant Directives – for example SEA</b>	Yes	SEA and AA were undertaken in respect of the DLRCC CDP 2022-2028.



<b>B. EXAMINATION</b>	<p>Where relevant, briefly describe the characteristics of impacts ( ie the nature and extent) and any Mitigation Measures proposed to avoid or prevent a significant effect</p> <p>(having regard to the probability, magnitude (including population size affected), complexity, duration, frequency, intensity, and reversibility of impact)</p>	<p>Is this likely to result in significant effects on the environment?</p> <p>Yes/ No/ Uncertain</p>
<p><b>1. Characteristics of proposed development (including demolition, construction, operation, or decommissioning)</b></p>		
<p><b>1.1</b> Is the project significantly different in character or scale to the existing surrounding or environment?</p>	<p>The site is surrounded by retail/commercial use ranging in height from two storey (equivalent) to four storey. The nearest dwellings are located in excess of 60m to the east. The proposal is for an eight storey building which would be a clear change from the prevailing scale and character. However, the development would not have any significant residential amenity impacts, nor are any views significantly affected. The proposed development would provide residential development in a built up urban area, but the increased height and scale are not considered to result in significant environmental effects.</p>	<p><b>No</b></p>
<p><b>1.2</b> Will construction, operation, decommissioning or demolition works causing physical changes to the locality (topography, land use, waterbodies)?</p>	<p>The proposed development would introduce residential use to a District Centre, which is permissible in terms of CDP policy. The development site is brownfield in nature, being zoned as objective DC and the open space site, which will not be built on is zoned F. As such the development would result in minimal change in the locality, with standard measures to address potential impacts on surface water and groundwaters in the</p>	<p><b>No</b></p>

	locality. Level changes are minimal with a slight increase in levels moving southward and no significant topographical issues are evident.	
<b>1.3</b> Will construction or operation of the project use natural resources such as land, soil, water, materials/minerals or energy, especially resources which are non-renewable or in short supply?	Construction materials will be typical for an urban residential development of this nature and scale.	<b>No</b>
<b>1.4</b> Will the project involve the use, storage, transport, handling or production of substance which would be harmful to human health or the environment?	Construction activities will require the use of potentially harmful materials, such as fuels and other such substances which are typical for construction sites. Any impacts would be local and temporary in nature and the implementation of the standard construction practice measures outlined in a Construction Environmental Management Plan would satisfactorily mitigate potential impacts. No operational impacts in this regard are anticipated.	<b>No</b>
<b>1.5</b> Will the project produce solid waste, release pollutants or any hazardous / toxic / noxious substances?	Construction activities will require the use of potentially harmful materials, such as fuels and other similar substances and give rise to waste for disposal. The use of these materials would be typical for construction sites. Noise and dust emissions during construction are likely. Such construction impacts would be local and temporary in nature, and with the implementation of the standard measures outlined in a Construction Environmental Management Plan would satisfactorily mitigate the potential impacts.	<b>No</b>
<b>1.6</b> Will the project lead to risks of contamination of land or water from releases of pollutants onto the ground or into surface waters, groundwater, coastal waters or the sea?	Implementation of measures secured in a Construction Environmental Management Plan would satisfactorily mitigate emissions from potential spillages during construction and operation. The operational development will connect to mains services and	<b>No</b>

	discharge surface waters. Surface water drainage of the car park will be maintained under existing conditions whilst surface water from the development would be separate to foul services as required by DLR County Council.	
<b>1.7</b> Will the project cause noise and vibration or release of light, heat, energy or electromagnetic radiation?	There is potential for construction activity to give rise to noise and vibration emissions. Such emissions will be localised and short term in nature, and their impacts would be suitably mitigated by the operation of standard measures listed in a Construction Environmental Management Plan.	<b>No</b>
<b>1.8</b> Will there be any risks to human health, for example due to water contamination or air pollution?	Construction activity is likely to give rise to dust emissions. Such construction impacts would be temporary and localised in nature and the application of standard measures within a Construction Environmental Management Plan would satisfactorily address potential risks on human health, including dust monitoring, suppression, and abatement. No significant operational impacts are anticipated for the piped water supplies in the area.	<b>No</b>
<b>1.9</b> Will there be any risk of major accidents that could affect human health or the environment?	No significant risk is predicted having regard to the nature and scale of the development. Any risk arising from demolition and construction will be localised and temporary in nature. The site is not at risk of flooding.	<b>No</b>
<b>1.10</b> Will the project affect the social environment (population, employment)	Development of this site would result in an increase in the population in this area. The overall population increase would be modest in the context of impacts on the social environment.	<b>No</b>

<p><b>1.11</b> Is the project part of a wider large scale change that could result in cumulative effects on the environment?</p>	<p><b>No.</b> The proposal is a standalone development that is not reliant on other development taking place, the proposal would not result in project splitting, and should further development come up on the rest of the site at some point in the future then the proposed development, if approved, would factor into the cumulative screening process.</p>	<p><b>No</b></p>
<p><b>2. Location of proposed development</b></p>		
<p><b>2.1</b> Is the proposed development located on, in, adjoining or have the potential to impact on any of the following:</p> <ul style="list-style-type: none"> <li>a) European site (SAC/ SPA/ pSAC/ pSPA)</li> <li>b) NHA/ pNHA</li> <li>c) Designated Nature Reserve</li> <li>d) Designated refuge for flora or fauna</li> <li>e) Place, site or feature of ecological interest, the preservation/conservation/ protection of which is an objective of a development plan/ LAP/ draft plan or variation of a plan</li> </ul>	<p>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 proposed development would not result in significant impacts to any protected sites.</p>	<p><b>No</b></p>
<p><b>2.2</b> Could any protected, important or sensitive species of flora or fauna which use areas on or around the site, for example: for breeding, nesting, foraging, resting, over-wintering, or migration, be significantly affected by the project?</p>	<p>The proposed development would not result in significant impacts to protected, important or sensitive species.</p>	<p><b>No</b></p>
<p><b>2.3</b> Are there any other features of landscape, historic, archaeological, or cultural importance that could be affected?</p>	<p><b>No.</b></p>	<p><b>No</b></p>
<p><b>2.4</b> Are there any areas on/around the location which contain important, high quality or scarce resources which could be affected by the project, for example: forestry, agriculture, water/coastal, fisheries, minerals?</p>	<p>No such features are in this inner urban location, with the site separated from agricultural areas by intervening urban lands and road infrastructure.</p>	<p><b>No</b></p>

<p><b>2.5</b> Are there any water resources including surface waters, for example: rivers, lakes/ponds, coastal or groundwaters which could be affected by the project, particularly in terms of their volume and flood risk?</p>	<p>The development will implement SUDS measures to control surface water run-off. The development would not increase risk of flooding to downstream areas with surface water to discharge at greenfield runoff rates.</p>	<p><b>No</b></p>	
<p><b>2.6</b> Is the location susceptible to subsidence, landslides or erosion?</p>	<p><b>No</b></p>	<p><b>No</b></p>	
<p><b>2.7</b> Are there any key transport routes(eg National primary Roads) on or around the location which are susceptible to congestion or which cause environmental problems, which could be affected by the project?</p>	<p>The site is served by a local road network. There are sustainable transport options available for future residents. No significant contribution to traffic congestion is anticipated to arise from the proposed development.</p>	<p><b>No</b></p>	
<p><b>2.8</b> Are there existing sensitive land uses or community facilities (such as hospitals, schools etc) which could be significantly affected by the project?</p>	<p>No. All development has the potential for some impacts/disturbance during the construction phase however these impacts can be appropriately managed and mitigated by way of conditions and the implementation of a Construction Environmental Management Plan.</p>	<p><b>No</b></p>	
<p><b>3. Any other factors that should be considered which could lead to environmental impacts</b></p>			
<p><b>3.1 Cumulative Effects:</b> Could this project together with existing and/or approved development result in cumulative effects during the construction/ operation phase?</p>	<p>No existing or permitted developments have been identified in the immediate vicinity that would give rise to significant cumulative environmental effects with the subject project.</p>	<p><b>No</b></p>	
<p><b>3.2 Transboundary Effects:</b> Is the project likely to lead to transboundary effects?</p>	<p><b>No</b></p>	<p><b>No</b></p>	
<p><b>3.3</b> Are there any other relevant considerations?</p>	<p><b>No</b></p>	<p><b>No</b></p>	
<p><b>C. CONCLUSION</b></p>			
<p><b>No real likelihood of significant effects on the environment.</b></p>	<p><b>Agreed</b></p>	<p>Yes</p>	<p><b>EIAR Not Required</b></p>

Real likelihood of significant effects on the environment.



## D. MAIN REASONS AND CONSIDERATIONS

Having regard to

- The nature and scale of the proposed development, which is below the threshold in respect of classes 10(b)(i)(iv) and 14 of Part 2 to Schedule 5 of the Planning and Development Regulations 2001 (as amended).
- The location of the proposed development on lands zoned objective DC and F as well as the results of the Strategic Environmental Assessment of the Development Plan.
- The nature of the existing site and the pattern of development in the surrounding area.
- The availability of mains water and wastewater services to serve the proposed development.
- The location of the development outside of any sensitive location specified in Article 109(4)(a)(v)(I-VII) of the Planning and Development Regulations 2001, as revised.
- The guidance set out in the 'Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development', issued by the Department of the Environment, Heritage and Local Government (2003).
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as revised, and
- The features and measures proposed by the applicant that are envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified to be provided as part of the Arboricultural Report, Climate Change Impact Assessment, Energy and Sustainability Statement, Engineering Services Report, Flood Risk Assessment, Noise Impact Assessment, Operational Waste Management Plan, Resource and Waste Management Plan, and Transport Assessment.

Inspector \_\_\_\_\_

Date \_\_\_\_\_

Approved (DP/ADP) \_\_\_\_\_

Date \_\_\_\_\_