



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316304-23

#### Development

Demolition of existing building and construction of 19 no. apartments over 3 storeys, including 9 no. 1 beds, and 10 no. 3 beds duplex units. All with associated landscaping, boundary treatments, drainage, and ancillary works.

#### Location

Saint Anne's Convent, Kilmacud Road Upper, Kilmacud, Stillorgan, Co. Dublin.

#### Planning Authority

Dun Laoghaire Rathdown County Council

#### Planning Authority Reg. Ref.

D22A/0475

#### Applicant

St. Anne's Property Limited.

#### Type of Application

Permission.

#### Planning Authority Decision

Grant, subject to conditions.

#### Type of Appeal

Third Party.

#### Appellant

Ray O'Meara.

#### Observers

Alison Fergusson.

Linda Byrne.

**Date of Site Inspection**

7<sup>th</sup> March 2024.

**Inspector**

Terence McLellan

## 1.0 Site Location and Description

- 1.1. The appeal site refers to the rectangular 0.25 hectare plot located to the rear of the Whately Place residential development, which is located off Kilmacud Road Upper, Stillorgan, Co. Dublin. The site is currently occupied by the remaining building of the former St Anne's Convent and appears to be in residential use. Mature trees and planting line the western and southern edges of the site. The existing convent building is part single, and part raised two storey in height. Site levels rise from north to south.
- 1.2. The site is located within an established residential area, approximately 800m southeast of Goatstown and 400m southwest of Stillorgan Village Shopping Centre. Whately Place forms the north, east and southern boundaries of the site where housing is generally characterised by two storey semi-detached and three storey duplexes with a central courtyard amenity space. The western boundary is marked by the rear garden ground of the two storey semi-detached dwellings on Marsham Court, which in turn encircles Whately Place. Dublin Bus routes 11, 47, 116, and L25 are available from Kilmacud Road Upper and Stillorgan Luas station lies approximately 900 metres to the south.

## 2.0 Proposed Development

- 2.1. Planning permission is sought for the demolition of the existing building and redevelopment of the site to provide 19 new homes in two buildings rising to three storeys. The accommodation would include 9 no. one bedroom flats and 10 no. 3 bedroom duplex units. The development would include a single basement spanning both buildings which would accommodate 34 car parking spaces (including two accessible bays), six motorcycle spaces, 56 bicycle spaces, bin storage, and bulk storage facilities.
- 2.2. The blocks would be positioned adjacent to the northern and eastern site boundaries, enclosing a 743sqm area of communal open space within the central part of the site. Balconies/terraces would be provided on the inward facing facades, overlooking the communal open space. In design terms the buildings would be flat roofed, and materials would include metal cladding, painted render, buff brick, and PVCu windows and doors. A detached elevator enclosure would be provided in the south-west corner of the site, providing step free access from ground level to the basement.

2.3. Further Information was received during the course of the application. This did not result in any changes to the overall number of units or the schedule of accommodation. Further details are provided in section 3.2 below.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

3.1.1. Notification of the Decision to Grant Permission was issued on the 30<sup>th</sup> March 2023, subject to 39 conditions as follows:

1. Compliance with plans and particulars.
2. Restricting use as single dwellings.
3. Restrictions on roof development.
4. Street naming and numbering.
5. Part V.
6. Management Company.
7. Section 47 Restrictions.
8. Drainage – Outfall discharge rate.
9. Drainage – Attenuation volume.
10. Drainage - Green roofs.
11. Drainage - Parking and hardstanding (SUDS).
12. Drainage - Penstock and flow control.
13. Drainage – Inspection/approval of drainage works.
14. Transport - Visitor Short Stay bicycle parking.
15. Transport – Residential cycle parking.
16. Transport - Visitor car parking.
17. Transport – EV charging.
18. Transport – Construction Management Plan.

19. Transport – Road Opening Licence.
20. Transport – Conflict measures.
21. Transport – Orderly development.
22. Hours of work.
23. Dust monitoring.
24. Noise Assessment.
25. Noise, vibration, and dust monitoring.
26. Noise monitoring and noise vibration.
27. Noise Management Plan.
28. Construction and Operational Noise Management Plan
29. Rodent/Pest Control Plan.
30. Operational Waste Management Plan.
31. Construction waste.
32. Public liaison.
33. Retained Ecologist.
34. Landscape works.
35. Development contributions (surface water and public infrastructure).
36. Development contributions (roads and public infrastructure).
37. Development contributions (parks and public infrastructure).
38. Agreement on payment of contributions.
39. Payment of a bond.

## **3.2. Planning Authority Reports**

- 3.2.1. The final Planner's Report was issued on the 30<sup>th</sup> March 2023. The report noted that the proposed development would be in accordance with the zoning objective of the site in terms of land use and confirmed that the development would be acceptable in

terms of unit mix, density, height, and housing quality standards. The report notes that communal open space provision would be in excess of the minimum requirements.

3.2.2. No public open space would be provided. The Planning Authority accept this based on the site constraints and do not consider a contribution to be appropriate as no public open space works/projects have been identified in the local area.

3.2.3. Some initial planning related concerns identified by the Planning Authority include:

- Justification for the loss of the convent building/demolition of existing home.
- Need for the provision of bulk storage facilities.
- Clarity on Taking in Charge.
- Need for a Daylight and Sunlight Assessment, Tree Survey, Noise Report, 3D Views from surrounding streets and communal spaces, and an Ecological Assessment/Bat Survey to assess the impact on habitats.
- Amenity concerns relating to the proximity of Block A and B to one another and to the site boundaries, potential overlooking concerns, location of basement car park stairs in the communal open space, treatment of the boundaries of the ground floor terraces, access to terraces from bedrooms as opposed to main living spaces at ground floor in Block B, and the need for additional PV panels on the roofs.
- Design concerns relate to the detailed design of the development and materials and are a result of some blank facades and large expanses of brick. Further concerns included a lack of detail regarding the internal staircases to the duplex units.

3.2.4. The matters identified above were resolved to the Planning Authority's satisfaction by way of Further Information, which included the additional assessments requested and relevant plan/elevational amendments. Substantive plan and elevational changes included:

- Introduction of clerestory windows, the addition of balconies along the first floor level of the western aspect of Block B, setbacks at upper levels, the increased separation distance between Block A and Block B to 4.6m, amended treatment of the ground-floor terrace from metal grated railing to bow top fence railing in

addition to planting, and access to all terraces/balconies in Block B now being from main living spaces.

- Provision of obscure glazing, angled facades/windows, and screening provided to address potential overlooking.
- Bulk storage provided in the basement.

3.2.5. Despite the revisions outlined above, the Planning Authority consider that a lighter brick would be more appropriate and that this should be dealt with by condition.

3.2.6. The development is considered to have the potential to comply with Part V requirements, including the 20% provision which would be satisfied by the transfer of two units, subject to agreement being reached on land values, development costs, and funding. A Part V condition has been imposed.

3.2.7. The development is considered acceptable in transport terms and is not anticipated to have a meaningful impact on the local road/regional road network. Further information was requested on transport related matters which resolved issues relating to vehicular and pedestrian access, basement layout, cycle parking/cycle audit, provision of EV charging facilities, and a Construction Management Plan. This is set out in more detail in section 3.2.15 below.

3.2.8. Other matters identified in relation to drainage and Environmental Health concerns (construction management, noise, waste) were largely resolved by Further Information and are set out in more detail in sections 3.2.9 and 3.2.10 below.

### 3.2.9. **Other Technical Reports**

3.2.10. **Drainage Planning (09.08.2022 and 13.03.2023):** Further Information requested regarding surface water outfall discharge rates and green roofs (coverage, maintenance, and access). Further Information was submitted by the applicant on 3<sup>rd</sup> March 2023 and the matters identified above were resolved to the satisfaction of Drainage Planning. No further objections were raised, subject to conditions as set out in section 3.1.1 above.

3.2.11. **Environmental Health (05.08.2023 and 16.03.2023):** Further Information required regarding a Construction Environmental Management Plan, Construction and Demolition Waste Management Plan, Noise Survey, and an Operational Waste Management Plan. Further Information was submitted on the 3<sup>rd</sup> March 2023.

Environmental Health note that they are unable to make a decision on the application as the baseline noise survey could not be completed due to forecast conditions. The Planning Authority consider that this can be addressed by condition.

- 3.2.12. **Environmental Section (14.07.2022):** No objections, subject to conditions relating to monitoring (noise, vibration, and dust), construction waste, public liaison, noise management, pest control, operational waste, and a Construction Environmental Management Plan.
- 3.2.13. **Housing Department (05.08.2022):** The development is capable of complying with Part V requirements subject to agreement being reached on land values, development costs, and funding. A Part V condition is recommended.
- 3.2.14. **Parks and Open Spaces (05.08.2022 and 27.03.2023):** Further Information was requested regarding an Arboricultural Report. This was submitted by the applicant on the 3<sup>rd</sup> March 2023 and confirmed that there were no trees of particular merit on the site, although concerns remain regarding the wholesale removal of boundary cover on the western edge of the site. The relocation of the lift/stair core in the open space is noted and this will enable a layout that has the potential to create a usable space for residents. Concerns remain regarding the lack of planting along the western boundary and conditions are recommended regarding the retention of a qualified arborist and landscape architect.
- 3.2.15. **Transport Planning (04.07.2022 and 24.03.2023):** Transport Planning consider that the scale of traffic generated by the proposed development will not have a meaningful impact on the road network in the vicinity of the proposed development. The development is also acceptable in terms of motorcycle parking and accessible parking.
- 3.2.16. Further Information was requested to provide a separate vehicular/pedestrian access, dedicated cycle facilities, amendments to the basement layout to provide appropriate separation between lines of parking, provision of long stay cycle storage in the basement, provision of EV charging facilities, submission of a cycle audit, cycle parking for different bike options, visitor cycle parking to be provided as covered surface parking, and the provision of a Construction Management Plan.
- 3.2.17. This information was provided on the 3<sup>rd</sup> March 2023 and was accepted by Transport Planning who raised no objections to the development subject to the conditions set out at section 3.1.1 above.



### 3.3. Prescribed Bodies

- 3.3.1. **Uisce Éireann (10.08.2022):** No objections. Observations made on the development include the requirement for a connection agreement, infrastructure capacity and connections being subject to the constraints of the capital investment programme, and compliance with standards, codes, and practices.

### 3.4. Third Party Observations

- 3.4.1. A total of nine observations were received in response to the application. Substantive points made, in addition to those of the grounds of appeal and observations on the appeal (set out at sections 6.1 and 6.4), include:

- Residents of the convent would be evicted and made homeless.
- The convent is structurally sound, visually appealing, and blends in well. It should be retained.
- The convent should be redeveloped in the interests of conservation.
- Excavation works into solid granite would cause significant disruption.
- Excavations could affect neighbouring properties in terms of vibrations, foundations, and subsidence.
- A survey of all surrounding properties should be completed prior to any development taking place.
- Construction works would result in noise, dust, dirt, and damage to the roadway surface and underground utilities, as well as impacting safety due to the creation of a traffic hazard.
- A detailed construction plan has not been provided and issues could arise that may lead to serious health and safety problems for residents.
- There would be an increase in traffic associated with the development.
- Illicit and haphazard parking by contractors and others associated with the development.
- Waste water and surface pipes are privately owned and there is no permission for the applicant to use them.

- Communal open space is insufficient and play areas are not provided. This impacts on the sustainability and quality of the housing. Green areas in Whately Place are private to residents and are not common areas.
- The amount of development being proposed is excessive.
- Insufficient access for emergency vehicles.
- No impacts of overshadowing have been assessed.
- Substantial tree removal would be required which would result in a poor visual appearance.
- There would be amenity impacts in terms of overlooking, overshadowing and visual obtrusion.
- Site notices were insufficient.
- The application contradicts itself and it isn't clear what is being applied.
- The basement and level of parking is excessive.
- The west boundary wall is likely to be damaged and a quality replacement should be part of the planning application, subject to the consent of Marsham Court residents.
- There are many apartments being constructed in Kilmacud/Stillorgan, and the area will become overpopulated without facilities to support the increased population.
- Existing infrastructure is already overloaded.

## 4.0 Planning History

### *Subject Site*

- 4.1.1. **ABP reference - 301872/Planning Authority Reference - D18A/0265:** Permission was refused by the Board in April 2019 for the demolition of the existing two storey buildings on the site and the construction of 30 no. apartments in a building rising to five storeys with associated surface car parking provision and all associated landscaping, boundary treatments, foul and surface water services, site works, and development works. Permission was refused for the following reasons:

1. Notwithstanding the residential zoning designation of the site, which is located on a major transport corridor within 200 metres of a bus stop along a Quality Bus Corridor and within one kilometre of a Luas station, it is considered that the proposed density of the scheme would be excessive in the context of adjoining established development at Whately Place and Marsham Court, and would, therefore, represent overdevelopment of a restricted infill site. Furthermore, by reason of its design, scale, bulk, height, and proximity to the site boundaries, it is considered that the proposed apartment block would result in an abrupt transition in scale relative to the receiving environment, would be out of character with the existing urban landscape in the vicinity, and would seriously injure the residential amenities of adjoining properties through undue levels of overlooking, overshadowing and overbearing impact. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. It is the policy of the planning authority, as set out in the Dún Laoghaire Rathdown County Development Plan 2016 – 2022 that residential development is provided with adequate open space in the interest of residential amenity. This policy is considered to be reasonable. The proposed development is deficient in the quantum, location and quality of communal open space, and would, therefore, conflict with the provisions of the Development Plan, and would offer a poor standard of residential amenity in terms of quality open space provision for the future residents of the proposed apartments. The proposed development would, therefore, would be contrary to the proper planning and sustainable development of the area.

4.1.2. **ABP Reference – 246756/Planning Authority Reference - D16A/0214:** The Board refused planning permission in September 2016 for the demolition of the existing buildings on site, including St. Anne's Convent, and the construction of eight new dwellings with all associated site works including hard and soft landscaping, boundary treatment, foul and surface water services, and associated parking provision. The development included a revised entrance onto Whately Place to provide for pedestrian and vehicular access. Permission was refused for the following reasons:

1. Notwithstanding the residential zoning designation of the site and the small size of the site, it is considered that the proposed development, which is located on a major transport corridor within 200 metres of a bus stop along a Quality Bus Corridor and within one kilometre of a Luas station, is at a density which represents an unsustainable use of urban land and would materially contravene policy RES3 of the Dún Laoghaire Rathdown County Development Plan 2016-2022 and be contrary to the density requirements in the Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in May, 2009. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
2. The proposed development, by reason of its inadequate provision of communal open space, would conflict with the provisions of the current Development Plan for the area and with the minimum standards recommended in the Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in May 2009 and would be contrary to the said Guidelines. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

4.1.3. **Planning Authority Reference - D15A/0706:** Permission was refused by Dun Laoghaire-Rathdown County Council in January 2016 for the demolition of the existing buildings on site, including St. Annes Convent (585sqm), and the construction of eight homes with all associated site works including hard and soft landscaping, boundary treatment, foul and surface water services, and associated parking provision. The development included a revised entrance onto Whately Place to provide for pedestrian and vehicular access. Permission was refused for the following reasons:

1. It is considered that the proposed development would result in an inefficient and unsustainable pattern of development on serviced zoned land in a location close to public transport links, employment and neighbourhood and district centres. The proposed development, at a density of thirty two (31.68) units per hectare, is not considered to be of a sufficiently high density as

envisaged by the County Development Plan and Ministerial Guidelines at this location. The proposed development, therefore, contravenes Policy RES3 'Residential Density' of the Dún Laoghaire Rathdown County Development Plan, 2010-2016 and Section 5.8 of the Sustainable Residential Development in Urban Areas Guidelines (DoEHLG 2009). The proposed development is, therefore, contrary to the proper planning and sustainable development of the area.

2. It is the Policy of the Planning Authority as set out in the County Development Plan 2010 – 2016 that residential development is provided with adequate public and private open space in the interest of residential amenity. The proposed development is deficient in the quantum, location and quality of public open space. The proposed development would therefore not be in accordance with the Development Plan Policy DM2 and Policy DM3 and would seriously injure the residential amenity of future residents and the amenities of property in the vicinity, and would be contrary to the proper planning and sustainable development of the area.
3. It is considered that the proposed development does not meet the Quantitative Standards set out in Section 16.3.2 of the County Development Plan with regard to minimum rear garden depth. It is considered that the proposed development would seriously injure the residential amenities of the neighbouring properties and depreciate the value of property in the vicinity and would, therefore, be contrary to the proper planning and sustainable development of the area.

#### *Adjoining Sites*

#### The Orchard, Whately Place, Upper Kilmacud Road, Dublin.

- 4.1.4. **ABP Reference – 207230/Planning Authority Reference - D04A/0203:** Permission was refused by the Board in September 2004 for the construction of a dormer style dwelling house and all associated site works. Permission was refused on the basis that the development would be located on land intended as communal open space for another development and as such would contravene a condition of an existing permission, thereby injuring amenity and depreciating property values.

#### Whately Place residential development, Upper Kilmacud Road, Co. Dublin

4.1.5. **ABP Reference – 200272/Planning Authority Reference D02A/0438:** Permission was granted by the Board in December 2002 for the demolition of the existing residential block and construction of 4 no. two-storey houses and a three-storey block containing 8 no. duplex units, including the relocation of the refuse/bicycle store.

Rear of St Anne's Convent, Whately Place, Upper Kilmacud Road, Co. Dublin.

4.1.6. **Planning Authority Reference - D00A/0409:** Permission was granted by Dun Laoghaire-Rathdown County Council in June 2000 for 6 no. two storey houses to the rear of St. Anne's Convent with access from Whately Place.

Lands at Saint Michael's House, Saint Anne's Convent, Kilmacud, Co. Dublin.

4.1.7. **ABP Reference – 105367/Planning Authority Reference - D97A/0786:** Permission was granted by the Board in July 1998 for the demolition of the existing convent building and the erection of 44 no. duplex apartments and 26 no. houses, with access from Upper Kilmacud Road.

## 5.0 Policy Context

### 5.1. Development Plan

#### **Dún Laoghaire-Rathdown County Development Plan 2022-2028**

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

5.1.2. Chapter 2 of the CDP 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.

- CA10: Renewable Energy

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:

- PHP4: Villages and Neighbourhoods – aims to implement a strategy for residential development based on a concept of sustainable urban villages as well as to promote and facilitate the provision of ‘10-minute’ neighbourhoods.
- 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.
- PHP27: Housing Mix - to encourage the establishment of sustainable residential communities by ensuring that a wide variety of housing and apartment types, sizes and tenures is provided throughout the County.
- 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 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.
- 5.1.7. 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
- 5.1.8. 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.
- 5.1.9. 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
  - 12.3.4.5: Management Companies and Taking in Charge
  - 12.3.5: Apartment Development
  - 12.3.7.7: Infill
  - 12.3.9: Demolition and Replacement Dwellings
  - 12.4.5.6: Residential Parking
  - 12.4.6: Cycle Parking
  - 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

## 5.2. 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:

- 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. None relevant.

## **5.7. EIA Screening**

5.7.1. See completed Form 2 on file. Having regard to the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

## **6.0 The Appeal**

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

6.1.1. A Third Party appeal has been submitted by Ray O'Meara of 60 Whately Place, Kilmacud Road Upper, Stillorgan, Co. Dublin. The grounds of appeal are summarised as follows:

- The sale of the land in 1997 included a covenant that development would be restricted to three storeys generally and two storeys in specific areas, notably those areas surrounding the Marsham Court Estate. This prohibited the purchaser from applying for planning permission for any development that would contravene this restriction. The applicant is attempting to secure permission for three storeys after specifically restricting, by contract, the rights of the other residents in Whately Place.
- The contract also specifies who will have the benefit of the Whately Place right of way, this does not include any builders, contractors or other construction traffic. There has already been damage to the right of way.
- The site notice was only visible by six properties.

- There are inconsistencies between the description on the site notice and the description on the County Council's website as well as correspondence from the Council. The application is therefore flawed and should have been discontinued, with costs paid to participants.

## **6.2. Applicant Response**

6.2.1. A response has been submitted by CDP Architecture of 4 The Mall, Main Street, Lucan Village, Co. Dublin, for and on behalf of the applicant, St Anne's Kilmacud SPV Limited. The response can be summarised as follows:

- Issues regarding contract restrictions (heights) and the use of the right of way are civil matters.
- The intentions of the proposed development have been made clear from the outset of the application. The application has also been duly evaluated by the County Council, including at Further Information Stage.
- As noted by the County Council, the development does not detract from the amenities of the area and is consistent with the provisions of the CDP and the proper planning and sustainable development of the area.
- The Planner's Report notes that the development does not significantly detract from the character of the surrounding area. The Planner's Report also considered the unit mix to be acceptable and in accordance with the CDP.

## **6.3. Planning Authority Response**

6.3.1. The Planning Authority do not consider that the grounds of appeal raise any new matter which would justify a change in attitude to the proposed development and the Board are referred to the previous Planner's Report.

## **6.4. Observations**

6.4.1. Two observations have been received in response to the appeal as follows:

6.4.2. **Alison Fergusson of 6 Whately Place, Kilmacud Road Upper, Stillorgan, Co. Dublin.**

- The convent has been continually inhabited by several residents and as such involves the demolition of a habitable house, contrary to the application form.
- A more sustainable option would be to retain and refurbish the convent into apartments.
- The site notice was not erected in a viewable position from the main road and the application should have been deemed inadmissible.
- There are fundamental difficulties in accessing the convent site for construction activities.
- Prohibitions exist on parking, turning, manoeuvring, and reversing on the route from the convent to the entrance of Whately Place. Additionally, this route is not wide enough to accommodate large trucks and machinery.
- Whately Place leads directly to a busy bus lane which must be kept clear at all times.

**6.4.3. Linda Byrne of 64 Whately Place, Kilmacud Road Upper, Stillorgan, Co. Dublin, for and on behalf of Whately Place Management CLG Company. (Statement prepared by NJBA Architects and Urban Designers).**

- Developments of this type have a wholesale destructive tendency on the immediate environment of the site and neighbouring properties and will have impacts on fox dens and ecological habitats above ground, including the loss of trees and vegetation.
- Condition 33, which relates to biodiversity, is unlikely to be fulfilled due to the impacts on the site, trees and habitats.
- The development prioritises density over appropriateness.
- It is unclear how the development would meet Part B (Fire) of the Building Regulations, therefore impacting on the safety of occupants and neighbouring properties/lands. This relates primarily to unprotected areas on the elevations and fire tender access. This will have an impact on the final form and appearance of the building.
- The development has a predominantly horizontal composition as opposed to the more vertical composition of neighbouring developments.

- The height, massing, and proximity of the development would have an impact on Whately Place.
- There would be a 117% increase above the minimum 35uph density set out in the CDP.
- The costs of the development are likely to make it unviable, and considerable expense is required to provide a large basement, which will also expend considerable embodied carbon and energy, contrary to national policy to reduce carbon and the Local Authority's own agenda.
- The mature ecosystem around the site would be irreparably damaged and cannot be easily replaced.
- The increased intensification of the site is an abuse of the right of way and would result in increased vehicular traffic.
- The development does not address the immediate context, does not provide new connections other than the existing, is not inclusive and the mix of units is not varied.
- The development is an inefficient use of the site with significant expenditure required to provide infrastructure to deliver the quantum of development.
- The development does not create a sense of place and the public spaces are dominated by vehicular access.
- It is not clear how adaptable the structures would be in the future.
- Gardens over a car park have limited planting options.
- Parking may be secure, but it dominates the social and residential experience of the site.
- Alternative design solutions are possible (drawings provided) with surface parking and access. This would be set back further from Whately Place, would help retain existing ecology on the site, would remove the need for a basement, would provide the necessary access/hardstanding for fire tenders and would fit in better with the area.

- No permission exists or will be granted by owners of Whately Place for access to existing services that support Whately Place, such as drainage and water connections.

## 6.5. Further Responses

6.5.1. A further response was received from Ray O'Meara on 6<sup>th</sup> June 2023. The response largely reiterates the issues raised in the grounds of appeal with some additional clarifications/comments as follows:

- The applicant's 'summary points to uphold' are wrong based on the documentation received.
- Parking of construction workers and issues regarding the right of way have not been addressed.
- The Noise survey was requested in August 2022 and took until May 2023 to produce.
- The development, if approved, is expected to last for 2-3 years.
- Congestion concerns would increase traffic hazards. No consideration is given to the damage to the Whately place right of way.
- The increase in the number of parking spaces accessed from the right of way would impact on traffic.
- The demolition of the existing building has not been justified.
- The noise report is not considered an authoritative document and does not satisfy the request of the County Council.
- The map submitted shows a breach in the Whately Place party wall to provide a pedestrian access. There is no permission for this and any passage through this area would be trespass.
- The drainage system is separate and there is no permission to connect.

## 7.0 **Assessment**

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

- Procedural Matters
- Demolition of the Existing Convent Building
- Height and Design
- Quantum of Development and Unit Mix
- Amenity
- Transport
- Ecology and Trees
- Other Matters
- Appropriate Assessment

### 7.2. **Procedural Matters**

7.2.1. The grounds of appeal and observations made on the appeal raise several procedural matters related to the position of the site notice as well as discrepancies between the development description on the site notice and the Dun Laoghaire-Rathdown planning register, including initial correspondence from the Council.

7.2.2. It is argued that the site notice was not erected in a viewable position from the main road, that it was only observable from six properties and that as a result, the application should have been deemed inadmissible. The notice was erected at the entrance to the site from Whately Place and I note that no objections to the position of the site notice were raised by the Planning Authority. I am satisfied that the location of the site notice was acceptable and that it did not prevent the relevant parties from making representations on the proposed development.



- 7.2.3. The discrepancies in the development description relate to the fact that the site notice refers to demolition of the existing building and the description on the planning register does not. I acknowledge the error in the description on the planning register, however, the development description on the site notice and the newspaper advertisement were correct and reference the full terms of the development, including demolition of the existing buildings. Additionally, all documentation available on the planning register is clear that the existing buildings are proposed for demolition.
- 7.2.4. The main method of publicising the proposed development is via the site notice and newspaper notice, which were both accurate and correct, and the documentation uploaded to the planning register also clarifies that the development includes demolition of the existing buildings. I am therefore satisfied that the error in the development description on the planning register, albeit unfortunate, has not prevented any interested party from making representations, nor do I consider that this has prejudiced the outcome of the application process.

### **7.3. Demolition of the Existing Convent Building**

- 7.3.1. Observations made on the appeal consider that the demolition of the convent has not been fully justified and that a more sustainable option would be to retain and refurbish the building and convert it into apartments. Concerns are raised that the application form is incorrect as the convent has been continually inhabited by several residents and as such the development involves the demolition of a habitable house.
- 7.3.2. On the basis that the convent is in residential use, the proposed demolition needs to be assessed against CDP Section 12.3.9: Demolition and Replacement Dwellings which requires robust justification for demolition and states that replacement with multiple units will not be the only factor considered. The applicant was requested to submit Further Information providing justification for the demolition of the convent and this was undertaken to the satisfaction of the Planning Authority.
- 7.3.3. The additional information submitted by the applicant sets out the clear impediments to retaining and refurbishing the building, noting that it was originally designed as a reformatory school and that the building has a BER rating of E1. In order to refurbish the building, significant structural alterations would be required. I also note that there are various changes in levels within the property, as well as the ground floor being

raised significantly above ground level which would make compliance with Part M particularly challenging.

- 7.3.4. In my opinion the convent building is not of any particular architectural merit and its retention on design, conservation, and heritage grounds is not warranted. I consider that the level of intervention required to bring the convent into residential use would be disproportionate when balanced against the sustainability benefits of retaining the building. I am therefore satisfied that the demolition of the building and its replacement with more energy efficient, modern homes, is acceptable and would be a more efficient use of the site.

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

- 7.4.1. The grounds of appeal raise objections to the height of the proposed development on the basis that the sale of the land in 1997 included a covenant that development would be restricted to three storeys generally and two storeys in specific areas, notably those areas surrounding the Marsham Court Estate, and that this prohibited the purchaser from applying for planning permission for any development that would contravene this restriction. Restrictive covenants are not a material consideration in planning matters and are instead civil matters that will need to be resolved between the relevant parties.
- 7.4.2. In considering the height of the proposed development, I have given consideration to prevailing heights in the area and the immediate townscape character surrounding the site. I note that the dwellings on Whately Place are taller than the proposed development, which rises to the eaves level of the nearest dwellings to the east. Whilst the proposed development is slightly taller than the dwellings on Marsham Court to the west, the separation distances involved appropriately mitigate this slight increase in height. Overall, I am satisfied that the height of the development is entirely acceptable given the surrounding context and built form and that it appropriately responds to the surrounding area in design terms. I accept the Planning Authorities view regarding the materials (brickwork colour) and agree that it would be appropriate to impose a condition requiring materials to be agreed prior to the commencement of development.
- 7.4.3. I note concerns that the development has a predominantly horizontal composition, as opposed to the more vertical composition of neighbouring developments and whilst I accept this is the case, I do not consider the design to be inappropriate or harmful in

townscape terms. Additional concerns relating to the future adaptability of the development are, in my opinion, largely unfounded.

- 7.4.4. In terms of landscaping, concerns have been raised that the communal garden, being located above a car park would limit planting options. In my opinion this would only impact on the planting of large trees that require deeper root zones and I consider that there is sufficient room for tree planting along the site boundaries where it would appropriately replace the trees lost in order to enable development. I do not consider that the presence of the underground car park would impede the ability to provide additional planting and shrubbery within the communal space itself and the landscaping plans submitted with the application are acceptable and demonstrate that an acceptable scheme can be brought forward. I note the Planning Authority have recommended that a condition be imposed requiring a landscape architect be retained during the construction works. In my opinion this is not necessary for a scheme of this size and the landscaping proposals set out on the submitted plans are, in my view, acceptable.
- 7.4.5. Additional concerns are raised that the car park and vehicular access dominate the space, however, I do not consider this to be the case given the location of the car park below ground which beneficially releases the ground level of the site to maximise communal amenity space.
- 7.4.6. Observations made on the appeal provide potential alternative design in terms of the form, scale, and positioning of the buildings. Whilst I accept that there are various ways the site could be developed, the proposed alternatives are significant departures from the scheme before the Board and beyond the scope of the appeal.
- 7.4.7. It is stated in the observations that the costs of the development are likely to make it unviable, and that considerable expense would be required to provide a large basement, which will also expend considerable embodied carbon and energy. No information has been provided to substantiate the observer's point regarding viability which in any event is not a matter for the Board, given the nature of the development being proposed. I accept that carbon and energy would be expended in construction of the basement and the wider development, however, the developer has maximised the use of PV panels on the roof, the development would incorporate air source heat pumps, and conditions have been imposed by the Planning Authority regarding EV

charging. The Planning Authority therefore considered the development to be acceptable on this point, having regard to policy CA10: Renewable Energy of the CDP and I concur with this conclusion.

## **7.5. Quantum of Development and Unit Mix**

- 7.5.1. It is stated in observations made on the appeal that the development prioritises density over appropriateness and that there would be a 117% increase above the minimum 35uph density set out in the CDP. Additional issues raised are that the development is an inefficient use of the site and that the mix of units is not varied.
- 7.5.2. The Planning Authority and the Board have previously refused permission to develop the site for eight houses on the basis that this would be an inefficient use of the site. Conversely, both the Planning Authority and the Board have previously refused permission for 30 apartments on site by virtue of the fact that this would represent an excessive density of development. The current proposal for 19 new homes therefore seeks to strike a balance between optimising the development potential of the site and achieving an appropriate density.
- 7.5.3. The CDP assigns a default minimum density of 35uph for all new residential development in the County. On sites with good access to public transport, such as the appeal site, this minimum density is raised to 50uph. The Compact Settlement Guidelines recommends densities in the range of 40-80uph in suburban areas, with densities up to 150uph considered appropriate on accessible sites.
- 7.5.4. The general thrust of the CDP and national guidance is to promote sustainable, compact growth on well serviced and accessible sites. The proposed development would achieve a density of 76uph which in my opinion would be compliant with the requirements of the CDP given the location of the site close to frequent, high-capacity public transport. I am therefore satisfied that the development represents an efficient use of the site whilst balancing the need to protect the amenity of neighbouring occupiers and the character of the surrounding area.
- 7.5.5. I have considered the unit mix against the requirements of the CDP and SPPR1 of the Apartment Guidelines and consider the proposal to be fully compliant, with 50% one bedroom units and 50% three bedroom units being provided.

## **7.6. Amenity**

- 7.6.1. Concerns are raised that the development would impact on the amenity of Whately Place due to the height, massing and proximity of the development. As mentioned previously, the proposed development is lower in height than the surrounding dwellings and I consider that the positioning of the buildings relative to the site boundaries and the adjacent dwellings is such that it would not be overbearing. Block B would be positioned along the eastern boundary and would largely reflect the layout of the Whately Place development around the communal courtyard, completing and the square, but at a sufficient scale and siting to ensure it would not dominate the space. I accept that it would sit proud of the building line to the south, partially enclosing the cul-de-sac, however I do not consider that this would be harmful in either townscape or amenity terms. In my opinion the height, massing and positioning of the two proposed blocks is entirely acceptable.
- 7.6.2. The Daylight and Sunlight Report submitted as Further Information demonstrates that there would be no significant impacts. All windows tested for Annual Probable Sunlight Hours would remain compliant with the BRE whilst 188 of the 190 windows tested for VSC would remain compliant. The two windows that would fall below BRE requirements for VSC are on the flank elevation of no. 1 The Orchard (Whately Place), directly to the south of Block B and appear to be non-habitable rooms, based on information available on the planning register. In any event, these windows would retain VSC levels of 20.4 and 16.8 which I consider to be acceptable on balance given the nature of the spaces the windows serve and the overall level of compliance.
- 7.6.3. The development has been designed in such a way to avoid detrimental overlooking of adjacent dwellings and garden ground. Whilst there would be some overlooking of the communal courtyard at Whately Place, this would largely reflect the current domestic relationship between the courtyard and the surrounding dwellings, and I do not consider this to be harmful in amenity terms. The small inset terrace at the first floor level of duplex 10 is directly opposite and in close proximity to the western boundary with Marsham Court, approximately 4.5m to the boundary line and 18.5m to the rear façade of the nearest dwelling. This terrace has a 1.8m high obscure glazed screen to protect the amenity of the adjacent dwelling and garden ground at Marsham Court. However, I do not consider that this would overcome the perception of being overlooked from within the private rear gardens, particularly given the removal of tree cover, and the 1.8m high screen would compromise the amenity quality of the terrace

itself. In my opinion, this could easily be overcome by way of a condition requiring this inset terrace to be reorientated lengthways so that it fully opens onto the southern façade, thereby removing the opening on the western façade. This would both prevent the perception of overlooking and result in a terrace with improved outlook. Should the Board be minded to grant permission, I recommend that this condition should be applied.

- 7.6.4. Further concerns raised in the observations are that there would be disturbance due to noise, vibration and dust from construction and the operational development. It is also stated that the noise survey is insufficient. The Planning Authority requested a baseline noise survey as Further Information, but this was not submitted due to forecast conditions. The Planning Authority concluded that this could be dealt with by way of a pre-commencement condition in addition to conditions related to a Construction Environmental Management Plan. I am satisfied that this is an acceptable and appropriate solution to manage and mitigate noise disturbance, as well as dust and vibration during the construction period. In terms of the operational development, I do not consider that noise levels would be beyond those typical of domestic properties. In any event, noise from plant could also be managed by way of conditions.

## **7.7. Transport**

- 7.7.1. Various transport concerns have been raised. Several of these relate to the right of way on Whately Place, which the appellant and observers consider does not extend to builders, contractors or construction traffic. Issues are also raised that the plans show a breach in the Whately Place party wall to provide a pedestrian access, that there is no permission for this, and that any passage through this area would be trespass. I am satisfied that these are civil matters to be addressed between the relevant parties, having regard to the provisions of s.34(13) of the 2000 Planning and Development Act.
- 7.7.2. Other transport issues raised are that the development would result in increased traffic and congestion, resulting in a traffic hazard that would compromise both traffic and pedestrian safety. It is stated that Whately Place is not wide enough for construction traffic and that there are fundamental difficulties in accessing the site for construction

activities. Further concerns raised are that construction workers would create parking problems.

- 7.7.3. In my opinion, considering the highly accessible nature of the site in terms of public transport, the full provision of onsite parking, and the modest trip generation that would be associated with this scale of development, the proposal would not have a significant detrimental impact on the roadway of Whately Place or the surrounding road network, either in terms of traffic generation, congestion, parking, or the creation of a traffic/pedestrian safety hazard.
- 7.7.4. I acknowledge the concerns raised regarding construction traffic and accept that this temporary phase can have some short term impacts on the local road network. However, I consider that this can be appropriately managed by way of a Construction Management Plan, and I am satisfied that the width of Whately Place from Kilmacud Road Upper would not present a significant impediment to construction vehicle access.
- 7.7.5. The Outline Construction Management Plan submitted as part of the Further Information request details that the development would be completed in four phases, thereby allowing site/construction facilities, plant and equipment to be relocated within the site at the completion of each phase and in my opinion, this would allow the site to be constructed from within its boundaries, with minimal impact on surrounding streets.
- 7.7.6. The Outline Construction Management Plan clarifies that a limited amount of parking will be available on-site for construction workers. And I am satisfied that this, together with the highly accessible nature of the site by public transport are sufficient to ensure that construction workers would not have a significant impact on parking in the area.

## 7.8. Ecology and Trees

- 7.8.1. I acknowledge that in order to enable development, a significant number of trees would need to be removed, including the majority of the mature planting along the western and southern boundary and I accept that this would present a much altered outlook for the neighbouring properties. However, the Arboricultural Report submitted as part of the Further Information request confirms that the trees to be removed would be Category U (26 trees – mostly Leylandi), Category C (20 trees) and one Category B tree. I therefore have no objections to these trees being removed in order to enable

development and the landscaping scheme would provide for replanting of trees with native species.

- 7.8.2. Observations on the appeal raise concerns that that development would have an environmental impact, particularly in terms of ecology. It is also considered that the ecosystem around the site would be irreparably damaged, and that Condition 33 is unlikely to be fulfilled due to the impacts on the site, trees and habitats.
- 7.8.3. The Planning Authority requested a Bat Survey and Ecological Impact Assessment by way of Further Information. The Bat Suitability Survey Submitted on the 3<sup>rd</sup> March 2023 undertook a visual roost survey and notes that foraging habitat on the site and immediate area is suboptimal due to street lighting and busy roads, which act as a deterrent to bats and restricts their movements given that they prefer linear landscape features such as tree lines, low arterial light and low noise pollution.
- 7.8.4. A daytime visual inspection was undertaken of all accessible internal areas of the building and external areas of the façade, occupied bedrooms were excluded. A thermal camera was used to investigate cracks, crevices and areas not easily visible, such as the attic. Bats were not confirmed to be roosting at the site, but the report acknowledges that some crevices in the attic had the potential for current or historic roosting. It is noted in the report that residents have confirmed bat sightings in the garden during the summer months.
- 7.8.5. The report states that due to the moderate connectivity in the area among the fragmented habitats for foraging and commuting bats, such as treelines, scrub woodland and hedgerows, there is a moderate chance that bats are present, foraging, and roosting in the area and in the structures. On that basis, the report concludes that further inspection of the building is warranted. Whilst the bat suitability assessment identified that the area has a low bat suitability and the building is also considered to be low suitability, it recommends that further surveys incorporating dawn and dusk surveys, walking transects, and static detector surveys be undertaken prior to commencement of significant structural work on the site.
- 7.8.6. I am satisfied that this can be dealt with by a condition that requires a bat survey to be completed by a competent qualified person to confirm the presence of any bat activity on the site in terms of roosting and foraging. This would be required to be undertaken in the appropriate season, in advance of any development taking place and, should



the presence of bats be established on the site, then no development shall occur until the necessary permission/ derogation licence has been obtained from the appropriate statutory body.

7.8.7. The Ecological Impact Assessment was also submitted on the 3<sup>rd</sup> of March 2023 and echoes the Bat Suitability Survey findings for that species. In terms of the wider ecological impacts, the assessment recognises the presence of the fox den as well as the type and species of planting on the site. Foxes are common in urban areas and are not a protected species. The report proposes mitigation measures including the presence of an experienced ecologist on site during construction, as well as enhancement measures such as the provision of bird/bat boxes and the introduction of native tree species that will provide pollen and fruit for insects and mammals. Overall, the Ecological impact Assessment concludes that the proposed works are predicted to have non-significant effects on the ecology of the area with the main impacts being limited to temporary disturbance and displacement of bats and mammals that use the site.

7.8.8. Clearly the removal of the trees has the potential to impact on foraging temporarily until the new landscaping scheme is implemented. I am satisfied that, on balance, the impacts are acceptable subject to implementation of the measures outlined in the Ecological impact Assessment and compliance with the condition recommended by the Council regarding the retention of an Ecologist. I note the concern that this condition would be unlikely to be fulfilled. However, notwithstanding the removal of the trees, I consider this condition to be reasonable and, in my opinion, it would help mitigate any potential impacts during the construction period by ensuring compliance with the Ecological Impact Assessment, including the mitigation and enhancement measures contained therein.

## 7.9. **Other Matters**

7.9.1. Observations on the appeal raise the fact that no permission exists or will be granted by the owners of Whately Place for access to existing services such as drainage and water connections. Further concerns are raised that it is unclear how the development would meet Part B (Fire) of the Building Regulations, therefore impacting on the safety of occupants and neighbouring properties/lands. This relates primarily to unprotected areas on the elevations and fire tender access.

- 7.9.2. Matters in relation to compliance with Part B would be dealt with under the Building Regulations and as such are not a matter for the Board. In the event that the scheme would need to be amended at a future date in order to comply with Part B of the Building Regulations, then a further planning application would need to be made to the County Council. I am satisfied that issues regarding permission to access services that may be privately owned are civil matters to be addressed between the relevant parties, having regard to the provisions of s.34(13) of the 2000 Planning and Development Act. In any event, a swept path analysis has been submitted that demonstrates access for fire tenders from the site entrance to the communal courtyard, via the western edge of Block A. The development would also be required to comply with the building regulations.
- 7.9.3. Regulation of Commercial Institutional Investment in Housing, Guidelines for Planning Authorities (2021), should apply to developments comprising five or more houses or duplex units. The purpose of these guidelines is to ensure that own-door housing units and duplex units in lower density housing developments are not bulk purchased for market rental purposes by commercial institutional investors in a manner that causes the displacement of individual purchasers and/or social and affordable housing including cost rental housing. Should the Board be minded to grant permission for the proposed development, I recommend that 'Condition RCIIH1', as per the wording provided in the Guidelines, is used as it enables the developer to carry out any enabling or preparatory site works whilst providing the necessary safeguards required by the guidance.

#### 7.10. **Appropriate Assessment**

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

## 8.0 Recommendation

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

## 9.0 Reasons and Considerations

- 9.1. Having regard to the zoning objective relating to the site and the nature and extent of the proposed development, it is considered that the proposal, subject to the conditions set out below, would not seriously injure the amenities of the area or property in the vicinity. The scale, form, and design of the proposed development would be suitable given the surrounding townscape and context. The transport impacts associated with the development can be appropriately mitigated by conditions as can issues regarding disturbance and orderly development during the course of construction. Ecological impacts are quantified and mitigated through an Ecological Impact Assessment which I consider to be acceptable, and the development would not be prejudicial to public health or the environment and would generally be acceptable in terms of design, traffic safety, ecology, and amenity.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application [as amended by the further plans and particulars submitted on the 3rd day of March 2023], except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars. **Reason:** In the interest of clarity.
2. The proposed development shall be amended as follows:

- a) The west facing inset terrace on duplex 10 (Block A) shall be reorientated lengthways onto the southern façade and the opening on the western faced shall be closed

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

3. Details of the materials, colours and textures of all the external finishes shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

4. Prior to the commencement of development, the developer shall enter into water and/or wastewater connection agreement(s) with Uisce Éireann.

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

5. Prior to the commencement of development, the developer or any agent acting on its behalf, shall prepare a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) including demonstration of proposals to adhere to best practice and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness; these details shall be placed on the file and retained as part of the public record. The RWMP must be submitted to the Planning Authority for written agreement prior to the commencement of development. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

**Response:** In the interests of sustainable waste management.

6. Water supply and drainage arrangements, including attenuation volumes, disposal of surface water, outfall discharge rates, and the provision of a penstock shall comply with the requirements of the planning authority for such works and services, with details submitted and approved in writing prior to commencement of development.

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

7. Prior to the surface water connection to the public system, the Applicant shall make a submission to the Planning Authority, showing that the attenuation system, including the flow control device, has been installed according to the planning application plans and conditions, and set to the maximum permitted discharge limit. This shall include photo documentation of the installation process, and certification from who installed the system. The applicant shall then facilitate an inspection from the Planning Authority and will proceed to connection if the inspection is deemed satisfactory.

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

8. The developer shall comply with the transport requirements of the Planning Authority in terms of cycle parking (including the provision of 8 no. visitor parking spaces, the provision of non-standard spaces for cargo bikes, and electric bike charging facilities), car parking (including electric vehicle charging facilities and the allocation of 5 no. basement car parking spaces as visitor parking), licencing, code of practice, and orderly development.

**Reason:** In the interest of sustainable development.

9. Prior to the commencement of the proposed development, a baseline noise survey should be conducted by an independent qualified technician during a representative time-period and approved in writing by the Planning Authority.

**Reason:** In the interest of residential amenity and public health.

10. A Construction and Operational Noise Management Plan shall be developed and implemented, demonstrating selection of construction methodology and implementation of mitigation measures to minimise nuisance affecting adjoining properties and design of building services, such as heat pumps, to avoid creation of nuisance affecting adjoining land uses.

**Reason:** In the interest of residential amenity, and public health.

11. The construction of the development shall be managed in accordance with a Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of the intended construction practice for the development; noise, dust and vibration monitoring and management measures; waste management and recycling of materials; environmental protection measures; welfare facilities; site deliveries; complaints procedure and public liaison; pest control measures; and traffic management arrangements.

**Reason:** In the interest of public safety, environmental protection, and residential amenity.

12. The site development and construction works shall be carried out such a manner as to ensure that the adjoining streets are kept clear of debris, soil and other material and cleaning works shall be carried on the adjoining public roads by the developer and at the developer's expense on a daily basis.

**Reason:** To protect the residential amenities of property in the vicinity.

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

**Reason:** In the interests of residential amenity and proper waste management.

14. Prior to the commencement of any development works on the site, the applicant shall undertake a bat survey by a competent qualified person or consultancy to ascertain the presence of any bat activity on the site in relation to roosting and foraging and an assessment of any potential impact on the species arising from the proposed development. The nature and methodology of this survey shall be

agreed with the planning authority prior to the commencement of the survey. No building, feature or vegetation shall be altered or removed prior to this survey and assessment. Full details of the survey and assessment shall be submitted to the planning authority in advance of any development works on the site. Such the presence of bats be established on the site no development shall occur until the necessary permission/ derogation licence has been obtained from the appropriate statutory body.

**Reason:** In the interest of bat protection and to provide for the preservation and conservation of this species

15. Prior to the commencement of development, the Applicant shall engage the services of a qualified and experienced ecologist for the entire period of construction activity. The applicant shall inform the planning authority in writing of the appointment and name of the consultant. The consultant shall visit the site to ensure the development proceeds in accordance with the submitted Ecological Impact Assessment, including the mitigation measures outlines at pre-construction and operation phases, and enhancement measures outlined at construction phase.

**Reason:** To ensure and give practical effect to the retention, protection and sustainability of flora and fauna during and after construction of the permitted development.

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

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

17. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of public open spaces, roads and communal areas shall be

submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

18. Proposals for an estate/street name, house numbering scheme and associated signage (in Irish and English) shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements/marketing signage relating to the name of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.

**Reason:** In the interests of urban legibility and to ensure the use of locally appropriate placenames for new residential areas.

19. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of social and affordable housing in accordance with the requirements of section 96 of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 97(7) applies) may be referred by the planning authority or any other prospective party to the agreement to the Board for determination.

**Reason:** To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan for the area.

20. Prior to the commencement of any house or duplex unit in the development as permitted, the applicant or any person with an interest in the land shall:



- a) Enter into an agreement with the planning authority (such agreement must specify the number and location of each house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all houses and duplex units permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.
- b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each specified house or duplex unit for use by individual purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.
- c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified housing units, in which case the planning authority shall confirm in writing to the applicant or any person with an interest in the land that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.

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

- 21. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed

between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion of the development.

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

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

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

28th March 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

**[EIAR not submitted]**

<b>An Bord Pleanála Case Reference</b>	ABP-316304-23		
<b>Proposed Development Summary</b>	Demolition of existing building and construction of 19 no. apartments over 3 storeys, including 9 no. 1 beds, and 10 no. 3 beds duplex units. All with associated landscaping, boundary treatments, drainage, and ancillary works.		
<b>Development Address</b>	Saint Anne's Convent, Kilmacud Road Upper, Kilmacud, Stillorgan, Co. Dublin.		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	
		<b>No</b>	No further action required
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>			Proceed to Q.3
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
			<b>Conclusion</b>
<b>No</b>		N/A	No EIAR or Preliminary Examination required
<b>Yes</b>	X	Class 10 (b) (i), threshold >500 dwellings.	Proceed to Q.4

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

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

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

## Appendix 2

### Form 2

#### EIA Preliminary Examination

<b>An Bord Pleanála Case Reference</b>	ABP-316304-23	
<b>Proposed Development Summary</b>	Demolition of existing building and construction of 19 no. apartments over 3 storeys, including 9 no. 1 beds, and 10 no. 3 beds duplex units. All with associated landscaping, boundary treatments, drainage, and ancillary works.	
<b>Development Address</b>	Saint Anne's Convent, Kilmacud Road Upper, Kilmacud, Stillorgan, Co. Dublin.	
<p><b>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</b></p>		
	<b>Examination</b>	<b>Yes/No/ Uncertain</b>
<p><b>Nature of the Development</b> Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>The proposed development is for residential, in an area that is largely characterised by residential use. The proposed development would therefore not be exceptional in the context of the existing environment in terms of its nature.</p> <p>The development would not result in the production of any significant waste, emissions or pollutants.</p>	No.
<p><b>Size of the Development</b> Is the size of the proposed development</p>	<p>The development would generally be consistent with the scale of surrounding developments and would not be exceptional in the context of the existing environment.</p>	No.

<p>exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having regard to other existing and/or permitted projects?</p>	<p>There would be no significant cumulative considerations with regards to existing and permitted projects/developments.</p>	
<p><b>Location of the Development</b></p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>The development would be located in a serviced residential area and would not have the potential to significantly impact on an ecologically sensitive site or location. There is no hydrological connection present such as would give rise to significant impacts on any nearby water courses (whether linked to any European site or other sensitive receptors). The proposed development would not give rise to waste, pollution or nuisances that differ significantly from that arising from other urban developments.</p> <p>Given the nature of the development and the site/surroundings, it would not have the potential to significantly affect other significant environmental sensitivities in the area. It is noted that the site is not designated for the protection of the landscape or natural heritage and is not within an Architectural Conservation Area.</p>	<p>No.</p>
<p><b>Conclusion</b></p>		
<p><b>There is no real likelihood of significant effects on the environment.</b></p> <p>EIA not required.</p>		

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

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