



An
Bord
Pleanála

Inspector's Report

ABP-316593-23

Development	Demolition of the existing building and the construction of 2 apartment buildings with 42 residential units.
Location	80 Philipsburgh Avenue, Fairview, Dublin 3, D03 H3F1.
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	5176/22
Applicant(s)	Cabhrú Housing Association
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	First Party vs. Conditions Third Parties vs. Grant
Appellant(s)	<ol style="list-style-type: none">1. Cabhrú Housing Association2. Carol Moloney3. Eoin O'Reilly & others
Observer(s)	None
Date of Site Inspection	20 th October 2023
Inspector	Irené McCormack

1.0 Site Location and Description

- 1.1. The appeal site is located on the east side Philipsburgh Avenue which runs from Fairview to the south to Griffith Avenue to the north. The site is occupied by a two-storey flat roof brick building set back from the street line. It is currently in use as a sports hall and creche with surface car parking to the front and rear.
- 1.2. The site has a stated site area of 0.2681 ha. The site is bound to the north by single storey residential properties and to the south by two storey residential properties with a lane that provides access to the car park and pitch & putt located to the rear of the site running along the southern site boundary. The front boundary consists of painted steel railing on an upstand wall. There is a fall of approx. 1m across the site from north to south.
- 1.3. The site is part of a block bounded by Philipsburgh Avenue to the west, Brian Road to the south, Shelmartin Avenue to the east and Shelmartin Terrace to the north. The centre of the block is occupied by 'Fairview CY Pitch & Putt Club' a private members club, to the immediate rear of the site.
- 1.4. The general area is residential in character and predominately two storeys in scale. Philipsburgh Avenue marks the western edge of Marino, and this part to the west of the site is characterised by a series of two-storey red brick Victorian terraced houses. The east of the site reflects a mixture of single storey and two storey nineteenth and twentieth century homes.

2.0 Proposed Development

- 2.1. In summary, planning permission was sought for the following:
 - Demolition of all existing structures on site.
 - Construction of 48 no. 1 bed units in 2 no. apartment building, consisting of 1 no. 2-4 storey building (Building A fronting Philipsburgh Avenue) and 1 no. 2-4 storey (Building B rear block). Building A provides 22 no. 1 bed apartment units and Building B provides 26 no. 1 bed apartment units. All units are intended to provide housing for independent living for older residents (60 years plus).
 - 4 no. car parking space and 50 no. residential cycle spaces and 24 no. spaces for visitors.

- All associated site and infrastructural works, including foul and surface water drainage; attenuation tanks; landscaping; plant areas and ESB substations; necessary to facilitate the development.
- 2.2. Surface water run-off would be minimised by way of Sustainable Urban Drainage Systems including green roofs and permeable paving. Foul wastewater would be treated at Ringsend Wastewater Treatment Plant.
- 2.3. The planning application was accompanied by a Design Statement, Natura Impact Statement, Outline Residential Travel Plan, Sunlight Daylight and Shadow Assessment, Landscape Architecture Design Rationale and accompanying documentation, Visual Impact Photomontages, Drainage Report.
- 2.4. The proposed development was amended by a further information response to provide a reduced total of 42 no. apartments as outlined in section 3 of this report.

3.0 Planning Authority Decision

3.1. Decision

Dublin City Council issued a decision to grant permission subject to 21 no. conditions.

3.1.1. Planning Reports

The Planner's Report is the basis for the Planning Authority's decision. In summary, it includes:

- Further information issued on 10th January 2022 requested the first party to address 1) the partial inclusion of the Z9 zoned land as part of the development, 2) details of external finishes, 3) Section 47 agreements re. nature of occupancy and 4) matters of drainage.
- Noting the further information response received, the PA considered the revised proposals whereby the scheme was reduced to 42 no. units and the residential elements were located primarily on Z1 zoned lands to be consistent with the Development Plan.
- The alternative design which omits the cranked wing would result in a reduced building footprint reducing impact on the Z9 zoned lands. The minor incursion on the Z9 lands was deemed to be marginal and would not unduly affect the functioning of the Pitch & Putt. Ancillary works to be carried out on to the adjoining Pitch & Putt

course were noted including private legal agreement to provide upgrade of the course.

- Quantum of communal open space noted.
- Compliance with residential standards noted. 90% of units exceed minimum floor area requirements for 1-bed units.
- Density deemed acceptable.
- The provision of specialist 1-bedroom apartments will add to the tenure and unit mix profile of the area which is still predominantly own door housing.
- Building height and design acceptable, the articulation of the block's elevations will avoid the formation of any monolithic or incongruous form of development.
- No concerns regarding sunlight and daylight.
- Additional balcony/terrace screening measures recommended for apartments addressing the southern and northern site boundaries.
- No public open space proposed. Contribution in lieu deemed acceptable.
- Contents of NIS noted.
- The planning authority concluded that permission be granted for the alternative 42 no. units scheme which they consider will provide high quality independent living accommodation for older people. The extent of Z9 lands used to provide communal open space deemed acceptable by reference to the commitment to provide compensatory measures. The proposal is in accordance with the proper planning and sustainable development of the area.

The planning authority decision to grant of permission subject to 23 no. conditions. These are broadly standard in nature. Conditions of note include:

Condition no. 2 relates to contribution in lieu of public open space.

Condition no. 3 relates to cash deposit or bond for the satisfactory completion of the development.

Condition no. 4 sets out that only the development submitted on 14/03/2023 for the alternative 42 no. units is permitted.

Condition no. 6 stipulates the use of the accommodation for the elderly.

Condition no. 7 relates to management company.

Condition no. 9 relates to amendments including 1.8m high screening to units on southern, northern and rear (eastern) elevation, additional opaque balcony glazing on the western elevation, public realm and no access to green roof.

Condition no. 12 relates to open space landscaping requirements for the 'Alternative 42 no. unit' scheme.

3.1.2. Other Technical Reports

Drainage Division (Report dated 31st March 2023): No objections subject to conditions.

Park, Biodiversity & Landscape Services (Report dated 31st March 2023): Concerns that the communal open space will occupy a substantial area of Z9 zoned lands and as this relates to residential development it does not meet permissible or open for consideration uses. Access is also via the Z9 lands. It was concluded that the development does not adequately demonstrate the retention and enhancement of the sporting facility. 10% Public Open Space has not been provided.

Transport Planning Division (Report dated 30th March 2023): No objections subject to conditions.

Environmental Health (Report dated 2nd December 2022): No objections subject to conditions.

3.2. **Prescribed Bodies**

None

3.3. **Third Party Observations**

The PA in their assessment state that a number of valid observations were made. These include submission from local residents, local Cllrs and local resident groups. Issues raised in the submissions included inter alia the following:

- Design and layout
- Building Height and Visual Impact
- Loss of creche facility
- Traffic concerns

- Only 10% of people 60+ use bicycles
- Lack of Public Transport
- Impact on residential amenities
- Contrary to zoning objectives of the Development Plan
- Construction Impacts
- Flood Risk Assessment inaccurate
- Impact on Pitch & Putt Course
- Inappropriate precedent

4.0 Planning History

Appeal Site

DCC Reg. Ref. 3251/16 – Permission granted on 26th August 2016 for the retention of existing sessional preschool at part of ground floor level and retention of change of use of the existing established beauty clinic at the first floor to use as a preschool and afterschool at the former Fairview CYMC/LC, 80/82, Philipsburgh Avenue, Dublin 3.

DCC Reg. Ref. 4207/15 – Permission refused on 15th April 2016 for the retention of change of use of the existing established beauty clinic at the first floor to use as a crèche as an extension to the existing established crèche at the ground floor level at the former CYMS/LCS sports club premises, Philipsburgh Avenue, Dublin 3.

To the west of the Site

DCC Reg. Ref LRD6009/23-S3 / ABP Reg. Ref. 317438/23 – Permission granted on 11th October 2023 for 9 no. residential buildings providing 811 apartments (494 no. standard designed apartments and 317 no. Build to Rent apartments), new hospital building, refurbishment and repurposing of existing buildings on site including Brooklawn (RPS Ref.: 8789), Richmond House, including chapel and outbuildings (RPS Ref.: 8788) and ancillary works at St. Vincent's Hospital, Richmond Road and Convent Avenue, Fairview, Dublin 3

5.0 Policy Context

5.1. National & Regional Policy / Guidance

5.1.1. This document sets out the Government's strategic national plan for shaping the future growth and development of Ireland for the period up to 2040.

Of note National Strategic Outcome 1 (Compact Growth), sets out the focus on pursuing a compact growth policy at national, regional, and local level. From an urban perspective the aim is to deliver a greater proportion of residential development within existing built-up areas of cities, towns, and villages; to facilitate infill development and enable greater densities to be achieved, whilst achieving high quality and design standards.

5.1.2. **Housing for All – A New Housing Plan for Ireland to 2030, 2021.**

The government's housing plan to 2030. It is a multi-annual, multi-billion-euro plan which aims to improve Ireland's housing system and deliver more homes of all types for people with different housing needs.

5.1.3. **Climate Action Plan, 2023** implements carbon budgets and sectoral emissions ceilings and sets a roadmap for taking decisive action to halve our emissions by 2030 and reach net zero no later than 2050. By 2030, the plan calls for a 40% reduction in emissions from residential buildings and a 50% reduction in transport emissions. The reduction in transport emissions includes a 20% reduction in total vehicle kilometres, a reduction in fuel usage, significant increases in sustainable transport trips, and improved modal share.

5.1.4. **The Regional Spatial and Economic Strategy (RSES)** for the Eastern and Midlands area (adopted June 2019) provides a framework for development at regional level. The appeal site has been included within the Dublin Metropolitan Area (MASP) and is therefore part of the area identified for 'consolidation of Dublin City and suburbs'

5.1.5. **Section 28 Ministerial Guidelines**

Having considered the nature of the proposed development sought under this application, its location, the receiving environment, the documentation contained on file, including the submission from the Planning Authority, I consider that the following guidelines are relevant:

- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, including the associated Urban Design Manual (2009) (the 'Sustainable Residential Development Guidelines').

- The Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (December 2020, updated December 2022 and July 2023), hereafter referred to as the ‘Apartment Guidelines’ sets out the design parameters for apartments including locational consideration; apartment mix; internal dimensions and space; aspect; circulation; external amenity space; and car parking.
- Urban Development and Building Height, Guidelines for Planning Authorities (2018) (the ‘Building Height Guidelines’).
- Architectural Heritage Protection Guidelines for Planning Authorities Department of Arts, Heritage, Gaeltacht 2011
- Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities’, 2007.
- Urban Development and Building Heights – Guidelines for Planning Authorities, 2018.

5.2. Dublin City Development Plan 2022-2028

5.2.1. The DCC decision was made under the Dublin City Development Plan 2016-2022. However, the Dublin City Development Plan 2022-2028 was adopted on the 2nd of November 2022, and it came into operation for this area as of the 14th of December 2022.

Zoning

Z1 – Sustainable Residential Neighbourhoods with a stated objective ‘*to protect, provide and improve residential amenities*’.

Assisted Living/retirement home is a permissible use under the Z1 zoning objective.

Z9 - Amenity/Open Space Lands/Green Network with a stated objective “*to preserve, provide and improve recreational amenity, open space and ecosystem services*”.

Open Space is a permissible use under the Z9 zoning objective.

Section 14.7.9 states that – “*Generally, the only new development allowed in these areas, other than the amenity/recreational uses, are those associated with the open space use. These uses will be considered on the basis that they would not be detrimental to Z9 zoned lands.*”

In certain specific and exceptional circumstances, where it has been demonstrated to the satisfaction of the planning authority, some limited degree of residential or commercial development may be permitted on Z9 land subject to compliance with the criteria below:

- Where it is demonstrated that such a development would be essential in order to ensure the long term retention, enhancement and consolidation of a sporting facility on the site.*
- Any such residential/commercial development must be subordinate in scale and demonstrate that the primary sporting land-use on the site is not materially eroded, reduced or fragmented.*
- In all cases, the applicant shall submit a statement, as part of a legal agreement under the Planning Acts, demonstrating how the sports facility will be retained and enhanced on site.*
- In proposals for any residential/commercial development, the applicant must demonstrate that the future anticipated needs of the existing use, including extensions or additional facilities, would not be compromised.*
- In all cases the applicant shall be the sports club owner or have a letter of consent from the owner”.*

Lands to the south of the site are zoned Z2 - Residential Neighbourhoods (Conservation Areas) with a stated objective – *“to protect and/or improve the amenities of residential conservation areas”*

Relevant policies and standards of the Dublin City Development Plan 2022-2028 include:

Section 2.3 Settlement Strategy

Section 2.7.2 Active Land Management –

- CS07 *Promote Delivery of Residential Development and Compact Growth* - To promote the delivery of residential development and compact growth through active land management measures and a co-ordinated approach to developing appropriately zoned lands aligned with key public transport infrastructure, including the SDRAs, vacant sites and underutilised areas.**

Chapter 4 - Shape and Structure of the City.

This chapter includes SC10 (urban density), SC23 (Design Statements)

Section 4.5.4 of the Development Plan, set out the Planning Authority's strategy and criteria when considering appropriate **building heights**, including reference to the performance-based criteria contained in the **appendix 3 to the Development Plan**.

Chapter 5 - Quality Housing and Sustainable Neighbourhoods

Section 5.4 The Strategic Approach - The delivery of quality homes and sustainable communities in the compact city is a key issue for our citizens and ensuring that Dublin remains competitive as a place to live and invest in. The approach is to build on the policies of the last development plan and implement the Core Strategy including:

- Delivering good quality housing to cater for diverse housing needs - mix of tenures and typologies to meet people's full lifecycle and avoidance of large areas of mono use developments.

Section 5.5.5 Housing for All

- *Housing for Older People states - The provision of specific accommodation for older people is supported as this provides alternative residential choices for older people not wishing to enter a nursing home and who wish to remain within their communities. As a general rule, all new developments for step down housing for the older people should be located in close proximity to existing village centres and amenities and services.*

QHSN17 Sustainable Neighbourhoods - *To promote sustainable neighbourhoods which cater to the needs of persons in all stages of their lifecycle, e.g. children, people of working age, older people, people living with dementia and people with disabilities.*

QHSN18 Needs of an Ageing Population - *To support the needs of an ageing population in the community with reference to housing...*

QHSN23 Independent Living - *To support the concept of independent living and assisted living for older people, to support and promote the provision of specific purpose-built accommodation, including retirement villages, and to promote the opportunity for older people to avail of the option of 'rightsizing', that is the process of adjusting their housing to meet their current needs within their community.*

QHSN35 -Housing and Apartment Mix - *To encourage and foster the creation of*

attractive, mixed use, sustainable residential communities which contain a wide variety of housing and apartment types, sizes and tenures, in accordance with the Housing Strategy and HNDA, with supporting community facilities and residential amenities.

Further detail in regard to unit mix is set out in Chapter 15: Development Standards. Unit mix requirements for the Liberties and the North Inner City are set out in Section 15.9.1 and Table 37 of the Housing Strategy in Appendix 1.

QHSN3 (Housing Strategy & HNDA), QHSN10 (urban density), QHSNO11 (universal design), QHSN26 (High Quality Apartment Development), QHSN47(High Quality Neighbourhood and Community Facilities).

Under housing policy QHSN2 of the Development Plan, the Planning Authority will have regard to various Ministerial Guidelines, a number of which are listed in Section 6.1 above. Policy QHSN10 of the Development Plan promotes sustainable densities with due consideration for design standards and the surrounding character.

In addition, Chapter 5 outlines a range of policies and objectives aimed at promoting regeneration, urban consolidation, densification, and healthy placemaking.

Chapter 11 Built Heritage and Archaeology

- BHA2 – To conserve and enhance Protected Structures and their curtilage.

Other relevant sections of the Development Plan include:

- Section 4.5.3 – Urban Density (policies SC10, SC11, SC12 and SC13).
- Section 15.5.2 Infill Development states - infill development should complement the existing streetscape, providing for a new urban design quality to the area. It is particularly important that proposed infill development respects and enhances its context and is well integrated with its surroundings, ensuring a more coherent cityscape.

Section 15.8 - Residential Development.

- Table 15-4: Public Open Space Requirements for Residential Development

Section 15.9 – Apartment Standards.

- 15.9.1 Unit Mix Specific states:

Standards may be relaxed for other social housing needs and/or where there is a verified need for a particular form of housing, for example for older people, subject to the adjudication of the Housing & Community Services Department

- 15.9.8 Communal Amenity Space
- 15.9.17 Separation Distances (Apartments) - In certain instances, depending on orientation and location in built-up areas, reduced separation distances may be acceptable. Separation distances between buildings will be assessed on a case-by-case basis.

Appendices

Appendix 1. contains the Housing Strategy.

Section 2.0 states “*It is important that the type and mix of housing provided in the city responds to the needs of all sectors of society as well as those with special needs, including persons with a disability, elderly households...*”

Appendix 3. Achieving Sustainable Compact Growth Policy for Density and Building Height in the City.

There are considered to be **three general categories of height** in the Dublin Context. Of relevance to the subject site is:

- **Prevailing Height:** This is the most commonly occurring height in any given area. It relates the scale, character and existing pattern of development in an area. Within such areas, there may be amplified height. This is where existing buildings within the streetscape deviate from the prevailing height context, albeit not to a significant extent, such as local pop-up features. Such amplified height can provide visual interest, allow for architectural innovation and contribute to a schemes legibility.

Section 4.0 *The Compact City – How to Achieve Sustainable Height and Density establish* stipulates that the is recognised scope for **height intensification and the provision of higher densities** at designated public transport stations and within the catchment areas of major public transport corridors including:

- Bus connects/Core Bus Corridors (CBC’s)
- Luas
- Metrolink
- DART

Development proposals will primarily be determined by reference to the proximity of new public transport infrastructure and to the area character. Locations for intensification must have reasonable access to the nearest public transport stop. In line with national guidance, higher densities will be promoted within 500 metres walking distance of a bus stop, or within 1km of a light rail stop or a rail station in the plan. Highest densities will be promoted at key public transport interchanges or nodes.

Table 3 of Appendix 3 sets out 10 *performance-based criteria in Assessing Proposals for Enhanced Height, Density*

Section 3.2 Density -As a general rule, the following density ranges and Plot Ratio standards will be supported in the city.

Table 1: Density Ranges

Location	Net Density Range (units per ha)
City Centre and Canal Belt	100-250
SDRA	100-250
SDZ/LAP	As per SDZ Planning Scheme/LAP
Key Urban Village	60-150
Former Z6	100-150
Outer Suburbs	60-120

Table 2: Indicative Plot Ratio and Site Coverage

Area	Indicative Plot Ratio	Indicative Site Coverage
Central Area	2.5-3.0	60-90%
Regeneration Area	1.5-3.0	50-60%
Conservation Area	1.5-2.0	45-50%
Outer Employment and Residential Area	1.0-2.5	45-60%

Appendix 5 Transport and Mobility: Technical Requirements

The site is located in **Parking Zone 2**. Parking Zone 2 occurs alongside key public transport corridors. Appendix 5 Table 2: *Maximum Car Parking Standards for Various Land Uses* establishes 1 bed per dwellings in Zone 2 for Houses/Apartment/Duplexes

Section 4.0 states that a **relaxation of maximum car parking standards** will be considered in Zone 1 and Zone 2 for any site located within a highly accessible

location. Applicants must set out a clear case satisfactorily demonstrating a reduction of parking need for the development based on the following criteria:

- Locational suitability and advantages of the site.
- Proximity to High Frequency Public Transport services (10 minutes' walk).
- Walking and cycling accessibility/permeability and any improvement to same.
- The range of services and sources of employment available within walking distance of the development.
- Availability of shared mobility.
- Impact on the amenities of surrounding properties or areas including overspill parking.
 - Impact on traffic safety including obstruction of other road users.
 - Robustness of Mobility Management Plan to support the development.

Appendix 16 Sunlight and Day Light.

5.3. Dublin City Council - Development Contribution Scheme 2023-2026 (Under Section 48, Planning & Development Act, 2000 as amended)

Contribution In Lieu Of Public Open Space:

10. The Dublin City Development Plan provides discretion to the Council to determine a financial contribution in lieu of all or part of the public open space requirement for a particular development in the event of the planning authority considering a site to be too small or inappropriate to fulfill Dublin City Development Plan requirements for public open space provision.

A financial contribution of €5,000 per unit towards provision of or improvements to a park and/or enhancement of amenities in the area in line with the City's Park Strategy shall be required.

Circumstances Where No Contribution Or A Reduced Contribution Apply:

11. The following development will not be required to pay development contributions under the Scheme:

- Social & Affordable (Purchase & Cost Rental) housing units provided,

- in accordance with an agreement made under Part V of the Planning and Development Act (as amended)
- by a voluntary or co-operative housing body, which is recognised as such by the Council.

5.4. Natural Heritage Designations

The appeal site is not located within or adjacent to any European Designed sites or pNHA.

5.5. Preliminary Examination Screening for Environmental Impact Assessment

- 5.5.1. An Environmental Impact Assessment (EIA) Screening Report was not submitted with the application. Concerns were raised by third parties regarding the environmental impact of the scheme.
- 5.5.2. With regard to EIA thresholds, Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:
- Construction of more than 500 dwelling units,
 - Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. (In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)
- 5.5.3. Class 14 of Schedule 5 relates to works of demolition carried out in order to facilitate a project listed in Part 1 or Part 2 of this Schedule where such works would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7.
- 5.5.4. Class 15 of Schedule 5 relates to any project listed in Part 2 of Schedule 5 which does not exceed a quantity, area or other limit specified in Part 2 in respect of the relevant class of development, but which would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7.
- 5.5.5. A detailed description of the development is outlined in section 2 of this report. In summary, it is proposed to demolish all existing structures on site (1020.5m²) and to construct a residential development containing 48 apartments (reduced to 42 no.

apartments as per further information response). Therefore, the maximum number of dwellings proposed is significantly below the threshold of 500 dwelling units.

- 5.5.6. The site has an overall area of c. 0.2681ha and a detailed description is outlined in section 1 of this report. The site is primarily zoned Z1 – Sustainable Residential Neighbourhoods with a stated objective '*to protect, provide and improve residential amenities*'. A portion of the rear of the site is zoned Z9 - Amenity/Open Space Lands/Green Network with a stated objective "*to preserve, provide and improve recreational amenity, open space and ecosystem services*".
- 5.5.7. The predominant use in the area is residential. Based on the zoning and predominant land uses the site cannot be considered to fall within a business district. In any case, the site size is significantly below the applicable threshold of 2 ha for a 'business district'.
- 5.5.8. As outlined above, the criteria at Schedule 7 to the Planning and Development Regulations 2001 (as amended) are relevant to the question as to whether the proposed sub-threshold development would be likely to have significant effects on the environment that should be the subject of environmental impact assessment. I would note that the requirement for EIA has not been suggested by any of the submissions or reports connected to the application and appeal.
- 5.5.9. The site is comprised of existing buildings (to be demolished) and artificial surfaces and is largely surrounded by residential developments. Residential use is already established in this area and is supported under the zoning objective. The introduction of additional residential development will not have an adverse impact in environmental terms on surrounding land uses.
- 5.5.10. The proposed development will not increase the risk of flooding within the site. The development would not give rise to significant use of natural resources, production of waste, pollution, nuisance, or a risk of accidents. The development is served by municipal drainage and water supply. The site is not subject to a nature conservation designation and does not contain habitats or species of conservation significance. The AA Screening set out in Section 8 of this report concludes that the potential for adverse impacts on Natura 2000 site can be excluded at the screening stage.
- 5.5.11. Having regard to the nature, scale, and location of the proposed development, and the environmental sensitivity of the geographical area, I do not consider that the proposed

development would be likely to have significant effects on the environment. The proposed development does not have the potential to have effects the impact of which would be rendered significant by its extent, magnitude, complexity, probability, duration, frequency or reversibility. In these circumstances and having regard to the criteria in Schedule 7 of the Regulations, I conclude that the proposed sub-threshold development would not be likely to have significant effects on the environment and that, on preliminary examination, an Environmental Impact Assessment Report (EIAR) or a determination in relation to the requirement for an EIAR was not necessary in this case.

6.0 The Appeals

6.1. Third Party Appeals

Two no. third party appeals have been received in respect of Dublin City Council's recommended decision to grant permission from:

1. Eoin O'Reilly & Others C/o BPS Planning Consultants Ltd. Wicklow.
2. Carol Moloney, 33 The Green, Beaumont Woods, Dublin 9.

There is overlap between the grounds of appeal raised by appellants, for clarity I have combined the submissions. The grounds of appeal are summarised as follows:

Demolition

- Demolition works contrary to national Climate Plan 2023.

Zoning

- The proposal does not comply with the Z9 zoning objectives which require the applicant to demonstrate 'exceptional circumstances'.

Unit Mix /Density

- The development represents overdevelopment of the site.
- The density represents a material contravention of density requirements as set out in the Development Plan (Table 3). It is argued that the site is not inner suburban as set out in the DCC planner's assessment as it is not within the Canal Ring.
- Unit mix unacceptable and contrary to SPPR 1 of the Apartment Guidelines, and it is likely the scheme will be returned as a new application for standard apartments.

Height /Visual Impact

- The development is excessive in scale and density and represents overdevelopment of the site.
- The development would be 'Monolithic'.
- The height is contrary to the prevailing building height in the area and will 'loom large' when viewed within close proximity.
- Negative impact on visual amenities and character and setting of adjoining Z2 zoned conservation areas.
- The Assessment of visual impacts considered incomplete and not accepted. No Townscape and Visual Impact Assessment submitted.

Residential Amenity

- The development represents a negative impact in residential amenities in terms of overshadowing and overlooking.
- Removal of the top floor would improve the average VSC (Vertical Sky Component).
- DCC's overlooking/perception of being overlooked concerns are not fully addressed. The scheme is contrary to S. 15.9.17 of the CDP – separation distance.
- The development represents a negative impact in terms of proximity to No 84 Philipsburgh Ave.
- Within the scheme the ground, first and second floor units will have no privacy and will be overlooked.

Traffic Concerns

- Traffic and transport concerns – insufficient of car parking, lack of public transport. Potential to increase overflow car parking on to adjoining streets.
- Questions if older persons use bikes as a form of transport.

Open Space

- No public open space is provided, and the quality of communal open space is poor and incorporates Z9 zoned lands.

Construction Impacts

- Construction impact concerns including impact of works in close proximity to no. 84, traffic management, noise, dust, light spill and working hours.

Environmental

Environmental impact concerns – no ecology report and the screening is silent as regards bats. AA and NIS refer to Birds, but no bird survey was carried out.

Childcare

- Loss of a childcare facility to the area significant with no alternative location secured in addition to the loss of the Club House.

Other

- Query re. – what is an over 60's development and why no over 70's?
- Contrary to the NPF, RSES and Section 28 Guidelines as they relate to appropriate density and scale of development.
- The site includes lands in DCC ownership. The letter of consent from DCC was issued without consultation with third parties.
- The development will result in the depreciation of property values.
- The development will set a poor precedent.

6.2. First Party Appeal

The applicant has appealed Condition No. 1, no. 2, no. 4, no. 7, and no. 12 of the DCC decision to grant permission.

The appeal has been lodged on the basis that the first party considers that the application for a 48-no. unit scheme originally submitted represents an appropriate form of development on the subject site. On this basis this appeal relates to conditions attached to the notification of DCC to grant planning permission limiting the permitted developed to the 42-no. unit 'Alternative Design Option' (condition no.1, 4, and 12), the contribution in lieu of public open space (condition no. 2) and formation of a management company (condition no. 7).

Appeal Context

It is set out that while the 42 no. units 'Alternative Design Option' scheme was prepared to satisfy the FI request 1 (d)(i), the 48-no. unit scheme was defended in the first party response to the FI requested and included minor changes centre around drainage

layout and additional screening. It is this scheme the first party considers represents an appropriate form of development for the site.

In summary the submission sets out:

- The scheme has been designed to respond to the site including minimising impact on residential amenities.
- The design and layout included upgrades to the access road to the pitch and putt which will be taken in charge by DCC following completion.
- A small portion pitch & putt lands including hole 1 are within the development red line. The scheme has been designed to appropriately mitigate any loss of Z9 lands through the reinstatement of an area of the existing car park zoned Z9 as part of the pitch & putt lands. A legal agreement was submitted as part of the further information response between the landholder/leaseholder and representatives of the Pitch & Putt Club regarding how the scheme can protect and enhance the long-term viability of the Pitch & Putt Club.
- Regarding unit mix the units were designed to address the specific needs of Cabhrú Housing Association and as such are solely one-bedroom.
- A Transport Statement has been prepared for the 48 no. units.

The grounds of appeal can be summarised under the following headings:

Condition No. 1

Condition no. 1 should be modified to allow for the development of the 48-no. unit scheme and not the 42-no. unit scheme 'Alternative Design Option' submitted at further information stage.

Condition no. 2

It is the view of the first Party that the development should be exempt from the development contributions as this scheme is for affordable housing for older people owned and operated by an approved housing body and in accordance with the Section 10 of the DCC Development Contribution Scheme 2023-2026.

Condition no. 4

Condition no. 4 should be removed to allow for the development of the 48-no. unit scheme and not the 42-no. unit scheme 'Alternative Design Option' submitted at further information stage.

Condition no. 7

It is set out that the first party is an Approved Housing Body and will be responsible for the management and operation of the development acting as the management company.

Condition no. 12

Condition no. 12 should be removed to allow for the development of the 48-no. unit scheme and not the 42-no. unit scheme 'Alternative Design Option' submitted at further information stage.

6.3. First Party Response to Third Party Appeals

None.

6.4. Third Party Response to First Party Submission

Response from BPS Planning Consultants Ltd. on behalf of Eoin O'Reilly and others (12th May 2023).

The response can be summarised as follows:

- The third parties object to both the 48-no. unit scheme and the 42-no. unit scheme.
- It is set out that by appealing 5 no. material conditions the first party is in fact seeking to appeal the decision.
- The submission reiterates concerns raised in the original submission inter alia: design and layout, density, unit mix, height, demolition, traffic and transport, bicycle parking sited on Z9 lands, Communal Open Space cited on Z9 lands, impact on residential amenity including that the scheme would exacerbate the loss of sunlight and daylight to No 84 and other adjoining properties, and visual impacts.
- The development of the Z9 lands is contrary section 14.7.9 of the CDP.
- The submission refers to the report from the Parks Department of DCC setting out that development will erode the provisions of Z9 lands at this location.

- The development would give rise to a number of residual environmental effects such that their adverse impacts that they cannot be reconciled with the need for the proposed development.
- The scheme does not represent compliance with ‘performance based ‘standards. The scheme should be refused (recommended reasons included) or substantially revised (recommended modifications included).

6.5. Planning Authority Response

A response was received on 23rd May 2023 requested the Board uphold a condition requiring the payment of a bond and a contribution in lieu of open space.

A further response was received dated 15th June 2023 setting out that the contribution in lieu of public open space as set out in Condition No. 2 of the DCC notification is not a Section 48 development contribution, all monies received go directly to the Parks Department and is only included as a note in the Section 48 scheme document for guidance for developers in relation to contributions that may be applicable to their development.

6.6. Observations

None.

7.0 Assessment

7.1. Introduction

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

- The Principle of Development
- Design Options – 48 no. unit scheme V 42 no. unit scheme
- Residential Mix and Density
- Building Height and Visual Amenity
- Open Space
- Residential Amenity

- Traffic and Transportation
- Other Matters

Note: The attention of the Board is drawn to the fact that The Apartment Guidelines were updated in July 2023, subsequent to the planning application being lodged with Dublin City Council on 4th November 2022. The most recent update in July 2023 Guidelines do not include Specific Planning Policy Requirements (SPPRs) 7 and 8, which relate to BTR development. However, of relevance to this application are the transitional arrangements set out in Section 5.10 of the Apartment Guidelines 2023 which states: *“All current appeals, or planning applications (including any outstanding SHD applications and appeals consequent to a current planning application), that are subject to consideration within the planning system on or before 21st December 2022, will be considered and decided in accordance with the current version of the Apartment Guidelines, that include SPPRs 7 and 8”*. The following assessment is therefore based on the 2020 Apartment Guidelines.

7.2. The Principle of Development.

- 7.2.1. This appeal relates to the demolition of an existing two-storey flat roof red brick building currently in use as a sports hall and creche and the construction of a 42-no. one-bed four storey apartment complex to provide housing for independent living for older residents (60 years plus).

Zoning

- 7.2.2. The appeal site is split into two zonings. The majority of the site is zoned Z1 - *Sustainable Residential Neighbourhoods* in the Dublin City Development Plan 2022-2028 which seeks to *“protect, provide and improve residential amenities”*. The Development Plan confirms that residential is a permissible use under the Z1 zoning objective. A portion of the site to the rear and northeast is zoned Z9 - *Amenity/Open Space Lands/Green Network* with a stated objective *“to preserve, provide and improve recreational amenity, open space and ecosystem services”*.
- 7.2.3. The third parties and the Parks Department of DCC have raised concerns about the inclusion of the Z9 zoned lands within the site as outlined in red. The PA in their assessment refer to the revised proposals (submitted in response to RFI) whereby the residential elements are located primarily on Z1 zoned lands to be consistent with the

Development Plan and the minor incursion on the Z9 lands will be marginal and will not unduly affect the functioning of the Pitch & Putt course.

7.2.4. As regards the Z9 zoning, Section 14.7.9 of the Development Plan allows for development other than those associated with the open space use in 'exceptional circumstances' subject to certain criteria and where they would not be detrimental to Z9 zoned lands. As regards addressing criteria set out in Section 14.7.9, the first party has engaged with the Fairview CY Pitch and Putt Club and agreed upgrade works to the Pitch and Putt to be carried out at the expense of the first party. A Legal Agreement has been submitted, dated 7th December 2022 in response to RFI. The first party has set out that a golf course designer will be employed at their expense to address relocation and replacement works necessary as a result of the proposed development (i.e., two no. tee boxes and one green), in addition to an extended sprinkler system and replacement portacabin. A new roadway, footpath and gate entrance will also be provided ensuring appropriate access to the course. Furthermore, a portion of the rear of the site will be surrendered back to the DCC for use as part of the Pitch and Putt Club. On balance I consider the cumulation of all of these measures will improve and enhance the Pitch and Putt Club.

7.2.5. Regarding the criteria set out in Section 14.7.9, I am satisfied that the first party has demonstrated that the works agreed between the first party and the Putt and Putt Club will enhance the facility and ensure the long-term viability and consolidation of the course on the site. I am further satisfied that the development will be subordinate to the Pitch and Putt use owing in most part to the extensive green area occupied by the course, the development will therefore not erode the primary use which will be retained and enhanced. The development is therefore acceptable accordance with the Z9 zoning objective, in my opinion.

Demolition

7.2.6. The existing structure to be demolished is ca. 1020.5sqm. The building is a red brick relatively modern insertion which is of no heritage value. The structure is not included within the RPS, an ACA, or the NIAH.

7.2.7. The third party contends that the demolition is contrary to the National Climate Plan 2023. From a climate action/energy perspective, I note Development Plan provisions (including 15.7.1 and CA6) and acknowledge the 'embodied carbon' implications

associated with the demolition and reconstruction of a new development. However, this must also be balanced with the wider sustainability issues associated with the proposed development and the wider policy objectives for the area.

- 7.2.8. I am satisfied that the existing buildings are not of significant scale, heritage or local character value, and I do not consider that their retention could be reasonably required as part of a comprehensive redevelopment of the site. I consider that demolition is justified in this case in light of the overarching needs to achieve higher-density, compact, sustainable development on brownfield sites in accordance with the overarching aims of the National Planning Framework. Accordingly, I have no objection in principle to the demolition of the existing building.

Compliance with NPF, RSES and Ministerial Guidelines

- 7.2.9. The third parties argue that the development is not in accordance with the National Planning Framework (NPF), the Regional Spatial and Economic Strategy (RSES) for the Eastern and Midlands and Section 42 Ministerial Guidelines as they relate inter alia to density, height and design strategy.
- 7.2.10. The Dublin City Development Plan 2022-2028 was prepared in accordance with the requirements of the Planning and Development Act, 2000 (as amended). The Act requires that the Development Plan be consistent with national and regional planning and development policy including the National Planning Framework and the Regional Spatial and Economic Strategy for the Eastern and Midland Region. Section 1.4 of *Statutory Context* of the Development Plan states that the “*development plan and in particular, the core strategy (see Chapter 2) sets out the spatial framework for the city within the context of the National Development Plan (NDP), National Planning Framework (NPF), the National Climate Action Plan (CAP) 2021, the Regional Spatial and Economic Strategy for the Eastern and Midland Regional Assembly (RSES) 2019, the NTA’s Greater Dublin Area Transport Strategy 2022-2042 and with the Specific Planning Policy Requirements (SPPRs) set out in the relevant Section 28 Ministerial Guidelines.* The key provisions of the national and regional development frameworks, and also the relationship between these higher-level policy frameworks are set out in Section 1.9 *Strategic Policy Context* of the Development Plan. Appendix 14 sets out a summary of how the plan complies with relevant Section 28 guidance.

7.2.11. Therefore, I am satisfied that the policies and objectives in the Development Plan reflect those of the NPF and RSES and it is not necessary to reiterate and address the contents of same. Of relevance, compact growth is the first NSO and it has particular significance for spatial planning policy, requiring at least half of all future housing and employment growth in Dublin to be located within and close to the existing 'built-up' area of the city – specifically within the canals and the M50 ring which will require the progressive relocation of less-intensive land uses outside of this built-up area, NPO 3 (b) aims to deliver at least 50% of all new homes targeted for the five cities within their existing built-up footprints, the RSES reinforces the 'consolidation of Dublin City and suburbs'. Under housing policy QHSN2 of the Development Plan, the Planning Authority will have regard to various Ministerial Guidelines. Therefore, I am satisfied that the policies and objectives of the Dublin City Development Plan 2022-2028 have due regard to the hierarchy of National, Regional and Ministerial Guidelines. I will address matters relating to specific Ministerial Guidelines as they arise in the assessment below.

Conclusion

7.2.12. I am satisfied that the principle of residential development including demolition of the existing building on site, which is not of architectural merit acceptable in line with the land use zoning objectives for the site subject to detailed considerations below. In addition, the development would contribute to the achievement of Development Plan housing targets and to national and regional policies to provide housing at sustainable locations and to encourage densification and compact urban growth.

7.3. Design Options - 48-no. unit scheme V. 42-no. unit scheme

Condition no. 1, no.4, and no.12

7.3.1. The case involves several versions of the proposed scheme, namely, the original application for 48 no. units (as defended at further information stage), the revised design submitted at further information for 42 no. units, the permitted scheme as per the DCC decision (i.e., including condition no. 9 relating to balcony screens).

7.3.2. I draw the Boards attention to the first party appeal relating to condition no. 1, no.4, and no.12 attached to the notification of DCC to grant planning permission limiting the permitted development to the 42-no. unit 'Alternative Design Option' and associated conditions relating to the implementation of same submitted in response to the request

for further information received by the PA on 14th March 2023. The first party is appealing these conditions on the basis that the first party considers that the application for the 48-no. unit scheme originally submitted represents an appropriate form of development on the subject site. I have reviewed the 48-no unit scheme and have had regard to the issues and concerns raised by the PA in their RFI. I am satisfied that the revised design option for 42-no. units by reason design, reduced footprint including the reduction on the incursion of built form on the Z9 lands, the articulation of Block B and the external finishes represents a more appropriate scheme in the context of the site.

- 7.3.3. Unless otherwise stated, my assessment and any references hereafter to the 'proposed development/scheme' are based on the revised scheme submitted as further information, that being the scheme on which the DCC decision is based.

7.4. Residential Mix and Density

Unit Mix

- 7.4.1. The third parties argue that the unit mix is unacceptable. The development provides for 42 no. one-bedroom over 60's apartments.
- 7.4.2. Chapter 5 *Quality Housing and Sustainable Neighbourhoods* sets out Development Plan policies as regards housing. Section 5.4 *The Strategic Approach* establishes the need to deliver good quality housing to cater for diverse housing needs including mix of tenures and typologies to meet people's full lifecycle and avoidance of large areas of mono use developments. Regarding unit mix, I note, policy QHSN38 - *Housing and Apartment Mix* seeks to encourage a wide variety of housing and apartment types, sizes and tenures, in accordance with the Housing Strategy and HNDA, with supporting community facilities and residential amenities.
- 7.4.3. While the policies in the Development Plan seek to provide for residential mix, the Housing Strategy does not prescribe any specific housing mix for this part of the city. However, Appendix 1 Section 2.0 of the Housing Strategy does states "*It is important that the type and mix of housing provided in the city responds to the needs of all sectors of society as well as those with special needs, including persons with a disability, elderly households...*" In addition, Section 5.5.5 Housing for All, *Housing for Older People* of the Development Plan states "*the provision of specific accommodation for older people is supported as this provides alternative residential choices for older*

people not wishing to enter a nursing home and who wish to remain within their communities. As a general rule, all new developments for step down housing for the older people should be located in close proximity to existing village centres and amenities and services". Therefore, there is policy support within the Plan to independent living nits for older people.

- 7.4.4. The fact that the units are all one bedroom reflects the nature of the intended use, in my opinion and such schemes are supported in the Development Plan (policy QHSN18 *Needs of an Ageing Population* and policy QHSN23 *Independent Living*). SPPR1 (Housing developments may include up to 50% one-bedroom or studio type units with no more than 20-25% of the total proposed development as studios) of the Apartment Guidelines does not apply in this instance as per paragraph 2.21 which sets out that the mix parameters set out in SPPR1 do not apply to purpose-built student accommodation or to certain social housing schemes, such as sheltered housing. The applicant is an Approved Housing Body and the provision of housing for the elderly is considered to be 'sheltered Housing'.
- 7.4.5. Furthermore, I agree with the PA that the predominant house type in the immediate area is own-door semi-detached housing. I consider the proposed development will offer an alternative housing typology and unit mix in the area in line with the policies of the Development Plan as set out above, in addition to offering an alternative for those looking to downsize while remaining within their community. In this regard, the proposed 42 no. one bedroom over 60's apartments are acceptable.
- 7.4.6. Regarding third party reference as to why over 60's and not over 70's, this is a matter for the first party as an Approved Housing Body. Regarding concerns that this scheme is a precursor to a standard apartment application, I am satisfied that the matter of occupancy can be controlled by way of condition and any modification of same would require a separate grant of planning permission.

Density

- 7.4.7. A primary concern raised by the third-party appellants is that the density of the development is excessive, materially contravenes the Development Plan and constitutes over development of the site.

- 7.4.8. The proposed development provides a net density of 157 units per hectare (as per FI response). Table 1: *Density Ranges* of the Development Plan establishes a density of 60-120 (net density) unit per hectare for Outer Suburban locations.
- 7.4.9. Table 1 of Appendix 3 of the Development does not include a density range for Inner Suburban area like the subject site. Section 4 of Appendix 3 sets out that there is recognised scope for height intensification and the provision of higher densities at designated public transport stations and within the catchment areas of major public transport corridors. The Development Plan also establishes that development proposals will primarily be determined by reference to the proximity of new public transport infrastructure and to the area character. Locations for intensification must have reasonable access to the nearest public transport stop. In line with national guidance, higher densities will be promoted within 500 metres walking distance of a bus stop, or within 1km of a light rail stop or a rail station in the plan. As such highest densities will be promoted at key public transport interchanges or nodes.
- 7.4.10. The Design Statement submitted establishes that the development is within a 5-minute walk of four bus stops, the site is also c.1km from the Clongriffin to City Centre Core Bus Route Corridor and 1.2km from Clontarf Dart Station. I am satisfied that the site is adequately served by a public transport corridor and can therefore support high density development in line with the Development Plan policies as set out above. In addition, I consider that the site is within a 'Central and/or Accessible Urban Location' in accordance with Section 2 of the Apartment Guidelines which can sustainably support higher density apartment development based on the criteria set out in the Apartment Guidelines. I note the PA raised no concerns around the density proposed.
- 7.4.11. As regards concerns raised about overdevelopment, I note the plot ratio at 1.06 and site coverage at 39.94% are in accordance with indicative standards as set out in Table 2 *Indicative Plot Ratio and Site Coverage* of the Development Plan which establishes an indicative plot ratio of 1.0-2.5 and site coverage of 45-60/5 for residential areas. I am satisfied that the development is in accordance with Development Plan parameters.
- 7.4.12. I am satisfied that the density is acceptable and appropriate for the suburban location of the development. The Development Plan states that "*Appropriate densities are essential to ensure the efficient and effective use of land. It is important to make the*

best use of the city's limited land supply in order to meet the need for new homes, jobs and infrastructure required by the city's growing population. More compact forms of development, ensuring, the containment of 'urban sprawl' and achieving social and economic diversity and vitality are critical for the future of the city and addressing climate change", this is supported by Policy SC10 Urban Density and Policy SC11 Compact Growth of the CDP.

- 7.4.13. I am satisfied that the proposed development in this location is in accordance with the Development Plan 2022-2028 which advocates an approach of consolidation and densification in the city and the proposed density complies with Government policy to increase densities on underutilised lands within core urban areas in order to promote consolidation and compact growth, prevent further sprawl and address the challenges of climate change.

Conclusion

- 7.4.14. Having regard to the considerations above, I consider that the provision of 42 no. one bedroom over 60's residential accommodation and the associated density at this location is acceptable and in accordance with Section 5.4 *The Strategic Approach* of Chapter 5 Quality Housing and Sustainable Neighbourhood of the Development Plan which sets out that the delivery of quality homes and sustainable communities in the compact city is a key issue ensuring that Dublin remains competitive as a place to live and invest in and Objective CS07 of the Development Plan to *Promote Delivery of Residential Development and Compact Growth* through active land management.

It is a requirement under the NPF that at least half of all future housing and employment growth in Dublin be located within and close to the existing 'built up' area of the city, specifically within the canals and the M50 ring. Having regard to local, regional and national policy, the proximity to public transport and in line with s.28 guidance on residential density, I am satisfied that the proposed quantum and density of development is appropriate in this instance.

7.5. Building Height and Visual Amenity

Building Height

- 7.5.1. The third-party appellants argue that the proposed height and scale is excessive, 'Monolithic' and out of context with the surrounding area.

- 7.5.2. The immediate area is characterised by two-storey own-door residential units, and I accept that the development will present a new form and height of development as regards its immediate context. However, I consider that on an urban scale the building responds to the grain of existing development, and I further note that the existing urban grain is evolving, in this regard I draw the Boards attention to a recent grant of planning permission ABP 317438-23 on the grounds of St. Vincent's Hospital for 811 residential units over 9 blocks ranging in height from 4 – 11 storeys, located c. 200m to the immediate west of the site.
- 7.5.3. The proposed building (both 42 no. unit scheme and 48 no. unit scheme) is four storeys in height, at its tallest is c. 13.875m. The ground floor units are c. 0.75m below the footpath level and set back ca. 3.5m. The scheme reflects two blocks, Block A fronting Philipsburgh Avenue and Block B addressing the Pitch and Putt course to the rear of the site, the blocks are linked via a central glazed atrium. The height of the building has been modulated to reflect the immediate context, at street level the building is two storeys with a recessed step back before stepping up to the third and fourth floor levels. The design also provides for a tiered approach at the edges both to the south and north of the site as the building relates to the adjoining two storey and single storey dwellings either side of the site fronting Philipsburgh Avenue. Of relevance the design provides for the building line and ridge line of Block A to the north to reflect that of the immediately adjoining single storey No. 84 Philipsburgh Avenue.
- 7.5.4. Section 4.5.4 *Increased Height as Part of the Urban Form and Spatial Structure of Dublin* of the Development Plan establishes policy context. The Development Plan does not provide prescriptive height limits but reflects national guidance.
- 7.5.5. In terms of national policy, the '*Urban Development and Building Heights Guidelines*' promotes Development Plan policy which supports increased building height and density in locations with good transport accessibility and prohibits blanket numerical limitations on building height. Section 3 of the Guidelines deals with the assessment of individual applications and appeals and states that there is a presumption in favour of buildings of increased height in city cores and urban locations with good public transport accessibility. It sets out broad principles and criteria for the assessment of proposals for buildings taller than prevailing heights.
- 7.5.6. In this case, I am satisfied that the proposal is generally in line with Development Plan

policy and does not materially contravene any specific building height objectives. Therefore, the proposal does not rely upon SPPR 3.

- 7.5.7. Section 4 of Appendix 3 establishes that there is recognised scope for height intensification within the catchment areas of major public transport corridors. Regarding Outer City (suburbs) the Development Plan sets out that outside of the canal ring, in the suburban areas of the city, in accordance with the guidelines, heights of 3 to 4 storeys will be promoted as the minimum. Greater heights will be considered on a case by case basis, having regard in particular to the prevailing site context and character, physical and social infrastructure capacity, public transport capacity and compliance with all of the performance criteria set out in Table 3 of Appendix 3.
- 7.5.8. Appendix 3 sets out that there are considered to be three general categories of height in the Dublin Context, of relevance to the subject site is category - Prevailing Height. The Development Plan states that this is the most commonly occurring height in any given area and *“Within such areas, there may be amplified height. This is where existing buildings within the streetscape deviate from the prevailing height context, albeit not to a significant extent, such as local pop up features. Such amplified height can provide visual interest, allow for architectural innovation and contribute to a schemes legibility”*. Therefore, there is policy support for increased height and architectural invocation at this location.
- 7.5.9. Table 3 of Appendix 3 includes 10 objectives and performance criteria in assessing proposals for enhanced height, density and scale. I have reviewed the scheme relative to Table 3 and I am satisfied that the urban scale and building height proposed reflects a high standard of urban design, architectural quality and placemaking principles and the site has the capacity to accommodate increased building height in line with the provisions of the Development Plan which sets out that 3 to 4 storeys will be promoted as the minimum.
- 7.5.10. Having regard to the considerations above, I consider that the proposal in principle for a four-storey building at this location is acceptable. I am of the view that having regard to national guidance, the context of the site in an accessible location the proposed height is acceptable.

Visual Amenity

- 7.5.11. The third parties consider the development will represent a negative impact on visual amenities of the area and the character and setting of adjoining Z2 zoned conservation areas located to the south of the site and east on the opposite site of the Pitch and Putt course.
- 7.5.12. Third party concerns were raised about the CGIs submitted and the lack of a Townscape and Visual Impact Assessment. I am satisfied that the photomontages submitted provide sufficient information to understand the potential visual impacts on the receiving environment including the neighbouring residential communities. The photomontages identify that the proposal seeks to limit and compensate for the loss of visual amenity through responsive design (the positioning of the buildings away from the southern boundary, the stepping down in height towards the boundaries, and the façade design and materials). The visual impact of the development will be experienced mainly on the Philipsburgh Avenue, Lomond Avenue, the rear southwestern gardens of properties on Brian Road, and the Pitch and Putt course.
- 7.5.13. Regarding views from Philipsburgh Avenue, I note that the development reflects the streetscape alignment with the principal views from the development (from front and rear windows, and private amenity areas) addressing Philipsburgh Avenue and the Pitch and Putt course to the rear. I am further satisfied that views from Lomond Avenue will be improved as a result of the development and the introduction of a contemporary architectural form terminating the vista from the western approach along Lomond Avenue. It is inevitable that the site's development will cause impacts on the landscape character and views from southwestern gardens of properties on Brian Road, and the Pitch and Putt course and neighbouring residential development. However, I am satisfied that the impact was recognised, and the proposal sought to mitigate the impact by setting the buildings back from the boundary, stepping down in height towards the boundary, and planting trees inside the boundary to soften the impact.
- 7.5.14. I accept that the development will present a new form and height of development for this area and whilst the proposal would change the outlook, from neighbouring properties and areas, it is not considered that the extent of the visual change would represent a detrimental negative visual impact particularly in the context of ongoing and proposed development within the surrounding area. The city skyline is evolving, and the Development Plan notes that although low rise in nature, certain areas of the city have the capacity to accommodate buildings of greater height. I further note that

the proposal will not negatively impact on protected views within the city and the modest height of the development and enhanced screening will ensure a relatively limited townscape and visual impacts on the Residential Conservation Area zoned to the south and east.

7.5.15. In response to the appeal that argue that the proposed development is out of keeping with the predominantly 2 storey houses in the locality, whilst the proposal diverts from the established townscape character by providing a high-density development in an historically low-density urban environment, this is an unavoidable and not undesirable outcome to comply with compact growth policies of national, regional and local planning policy.

7.5.16. I am satisfied that the site has capacity to absorb the development proposed and that the visual impact is acceptable in the context of the site and the evolving character of the area.

7.5.17. *Conclusion*

I am of the view that the site has sufficient capacity to accommodate the increased height and density proposed. I consider the scheme adheres to the requirements of the Development Plan which establishes that in proposing urban scale and building height, the highest standard of urban design, architectural quality and placemaking should be achieved. I am satisfied that the proposed development by reason design and layout including proposed density, building height, orientation, articulation of building form and set back from adjoining boundaries, the development will not represent a negative visual intrusion in the area and that on balance that the scheme adheres to the criteria set in the Development Plan and would represent a positive contribution to the changing character of the area.

7.6. **Open Space**

Communal Open Space

7.6.1. The layout provides for 632sqm of communal open space in the form of landscaped gardens to the rear of the site, this exceeds the Apartment Guidelines requirement of 210sqm. A landscaping plan has been submitted reflecting a sequence of individual landscaped spaces of varying functions. The BRE document indicates that for an amenity area to have good quality sunlight throughout the year, 50% should receive

in excess of 2 hours sunlight on the 21st of March. The proposed development meets the recommendations of the BRE guidelines. I am satisfied that the communal open space is acceptable.

7.6.2. The third parties have raised concerns about the location of the communal open space on Z9 zoned lands. I have set out in section 7.3 above the policy provision in relation to Z9 lands and I am satisfied the development is in accordance with the Z9 zoning objectives in this instance.

7.6.3. As regards concerns raised about the removal of two trees on site and the environmental implications of the development, I do not consider the loss of two trees and modified landscaped putting greens to be significant in terms of habitat loss. On balance the scheme will provide for additional planting over and above that existing on site.

Public Open Space & Condition No. 2

7.6.4. No public open space has been provided for in the development. The third parties contend that the development is contrary to Development Plan requirements.

7.6.5. Regarding Public Open Space provision, table 15-4 of the Development Plan outlines that 10% public open space is required on Z1 zoned lands. Due to the infill nature of the site and tight urban grain the provision of public open space is more challenging. Section 15.8.7 states that where it is not feasible to provide public open space or where it may be considered having regard to the existing provision in the area, it may be more appropriate to seek a financial contribution.

7.6.6. The site is well serviced by public amenity spaces including the Pitch and Putt Corse to the immediate rear of the site, Marino Park ca, 500m from the site and Fairview Park ca. 1km from the site. I note the PA are agreeable to accepting a contribution in lieu of same in accordance with section 15.8.7 of the Development Plan and the provisions of Dublin City Development Contribution Scheme having regard to the extensive communal area proposed on the site.

7.6.7. However, the first party are appealing **condition No.2** - the imposition of a contribution in lieu of public open space provision. The first party argue that as an Approved Housing Body the development should be exempt from the development contributions as this scheme is for affordable housing for older people owned and operated by an

Approved Housing Body and in accordance with the Section 10 of the DCC Development Contribution Scheme 2023-2026 contributions do not apply.

7.6.8. In their response to the appeal the PA state that the contribution in lieu of public open space as set out in Condition No. 2 is not a Section 48 development contribution as all monies received go directly to the Parks Department and the text is only included as a note in the Section 48 scheme document for guidance for developers in relation to contributions that may be applicable to their development. In this regard however, I note the reason attached to condition No. 2 of the DCC notification clearly stipulates “*It is a requirement of the Planning and Development Act 2000 (as amended) that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission*”. I further note that the Dublin City Council - Development Contribution Scheme 2023-2026 (Under Section 48, Planning & Development Act, 2000 as amended) stipulates the following development will not be required to pay development contributions under the Scheme:

- “*Social & Affordable (Purchase & Cost Rental) housing units provided,*
 - *in accordance with an agreement made under Part V of the Planning and Development Act (as amended)*
 - *by a voluntary or co-operative housing body, which is recognised as such by the Council*”.

7.6.9. Therefore, I am satisfied that Cabhrú as an Approved Housing Body is exempt from a development contribution on lieu of public open space in accordance with Dublin City Council - Development Contribution Scheme 2023-2026. As regard, third party concerns around the failure to provide public open space, I am satisfied that the lack of a public open space is acceptable in this instance having regard to the scale of the development, the location relative to adjoining public amenity spaces and the provisions of the Development Plan.

Conclusion

7.6.10. In conclusion, I consider the layout provides for a ‘meaningful communal’ open space in accordance with Section 15.9.8 of the Development Plan. The site benefits from proximity to useable green spaces near the site and Fairview Park within a 1km of the site. It is also noted that the submitted Daylight and Sunlight Assessment indicates that all areas of communal open space would be well lit.

7.7. Residential Amenity

- 7.7.1. Concerns were raised in the third-party submissions regarding the negative impact on established residential amenity and the future amenity of ground floor residents of the development fronting Philipsburgh Avenue. It is also argued that the development is contrary to Section 15.9.17 of the CDP in relation to separation distance.
- 7.7.2. Section 15.9.17 sets out that in certain instances, depending on orientation and location in built-up areas, reduced separation distances may be acceptable and separation distances between buildings will be assessed on a case by case basis. In addition, the 'Sustainable Residential Development in Urban Areas - Guidelines for Planning Authorities' and its accompanying 'Urban Design Manual' does not set rigid minimum separation distances but does require that habitable rooms and private amenity space should not be directly excessively overlooked by neighbouring residents.
- 7.7.3. The proposed development is an infill site, and, in my opinion, there is adequate separation distance between the site and the residential development to the south (ca. 20m), similarly the 'Alternative Design Option' for 42 no. units provides that the building footprint of Block A transitions to reflect that of the adjoining no. 84 Philipsburgh such that the front and rear building lines align, and the revised Block B has been recessed from the northern boundary (c.9.8m).
- 7.7.4. An Overlooking Study was submitted as part of the FI response. To reduce overlooking potential, it is proposed to wrap the landing and staircase of the central atrium in perforated metal panels to prevent passive overlooking. Opaque glazing will be provided to all gable elevation windows in order to prevent overlooking while allowing light to penetrate. Regarding overlooking of development to the north and south of the site condition no. 9 of the DCC notification includes further screening recommendations with respect to 1.8m high opaque screens to balconies. I am satisfied having regard to the tight urban grain of the site that separation distances are acceptable and subject to compliance with the above the development will not result in undue overlooking of adjoining development. As regards the ground floor units of the proposed development fronting Philipsburgy Avenue, I am satisfied having regard to the fact that the amenity area is below the level of the public footpath and recessed that an adequate level of privacy will be afforded to these units. A degree of

overlooking is acceptable in an urban context.

7.7.5. As regards overshadowing and overbearing impact, the site and adjoining properties to the north are aligned south-north with adjoining properties to south aligned in an east-west axis. Therefore, the potential for overshadowing as a result of the development is minimal.

7.7.6. The grounds of appeal assert that the proposed development would have an overbearing impact. It is noted that the primary views of the development will be from the northern and southern approach along Philipsburgh Avenue. Views of the proposed development from elsewhere will be largely screened by existing buildings. The building street frontage is consistent with the established built form on site and the increased building height will align with the established building line set back and will be intermittently visible only. It is considered that the proposals will not have a significant visually overbearing impact given the urban context.

7.7.7. Reference is also made in the third-party appeal to VSC. The Daylight/sunlight Assessment establishes that daylight and sunlight provision for the proposed development exceed the recommended guidance, target illuminance 99% pass rate with sunlight to rooms at 100%. With regards the impact on existing neighbouring properties, the report states that the guidelines for maintaining sunlight received by existing buildings with the proposed development in place have been achieved. I am satisfied that the development will not result in any undue adverse impacts on sunlight and daylight access to neighbouring lands having regard to the site configuration. Daylight and Sunlight provision for the proposed development is consistent the Daylight and Sunlight: A Guide to Good Practice – BR 209. This is acceptable.

Conclusion

7.7.8. Having regard to the location and zoning designation of the site, it is reasonable to conclude that the proposed development will not have significant adverse impact on established amenity as a result of overlooking, overshadowing or overbearing impact.

7.8. Traffic and Transportation

Car Parking

7.8.1. The third-party appeals raise concerns in respect of insufficient of car parking and lack of public transport and the associated potential to increase overflow car parking onto

adjoining streets. The third parties also query the extent of bicycle parking and if older persons use bikes as a form of transport.

7.8.2. Appendix 5 Transport and Mobility: Technical Requirements of the Development Plan establishes that the site is located in Parking Zone 2. Appendix 5 Table 2: *Maximum Car Parking Standards for Various Land Uses* establishes a requirement of 1 car parking space per dwellings in Zone 2 for Houses/Apartment/Duplexes.

7.8.3. Section 4.0 of Appendix 5 goes on the states that a relaxation of maximum car parking standards will be considered in Zone 1 and Zone 2 for any site located within a highly accessible location. Applicants must set out a clear case satisfactorily demonstrating a reduction of parking need for the development based on a number of criteria including:

- Locational suitability and advantages of the site.
- Proximity to High Frequency Public Transport services (10 minutes' walk).
- Walking and cycling accessibility/permeability and any improvement to same.
- The range of services and sources of employment available within walking distance of the development.
- Availability of shared mobility.
- Impact on the amenities of surrounding properties or areas including overspill parking.
 - Impact on traffic safety including obstruction of other road users.
- Robustness of Mobility Management Plan to support the development.

7.8.4. The scheme provides for 4 no. car parking space and 50 no. residential cycle spaces and 24 no. cycle spaces for visitors. The Residential Travel plan submitted with the application set outs that in addition to the spaces provided on site there is a Go Car base 200m from the site on Philipsburgh Avenue and Yuko Toyota Car Cub – click and drive by the hour service available close by and within walking distance of the site, and in addition to the proximity of the site to public transport (as outlined in 7.4 above) will result in a significant offset in the need for onsite car parking provisions. I would agree and consider there is sufficient suitable alternatives available to future residents.

- 7.8.5. As regards increased traffic generation, it is anticipated, and I would agree that due to the car parking provision on site that the development will generate less traffic than the existing uses; as a community centre including dance school and crèche. Regarding visitor parking, I am satisfied that this can be accommodated by on-street pay and display parking in the vicinity the site.
- 7.8.6. In the context of the site location relative to public transport provision and the promotion of sustainable transport modes and in accordance with Section 4.0 of Appendix 5 of the Development Plan, I am satisfied that the combination of car parking and bicycle parking proposed acceptable. In any case having regard to the proximity to public transport provision, I do not consider the development will generate significant traffic.
- 7.8.7. Regarding concerns raised about over 60's using cycling as a means of travel, the NTA Walking and Cycling Index (Dublin Metropolitan Area) 2021 sets out the 15% of 56–65-year-olds and 10% of 66+ year olds cycle. A Travel Plan Coordinator will assist residents as regards travel plans and means of travel including promoting the health and mental wellbeing benefits of cycling. Therefore, the provision of 50 residential bike spaces is welcome and will provide a suitable and sustainable alternative means of travel for future residents.

Conclusion

- 7.8.8. On balance, the proposed development is located at a well-served urban location close to a variety of amenities and facilities. The site is within walking distance of high frequency Dublin Bus services. The Development Plan contains policies and objectives which promote measures that have the potential to reduce the climate impact of transport by encouraging a shift from private motorised transport to walking, cycling and public transport. There are good pedestrian facilities in the area. I am satisfied that the components are in place to encourage existing and future residents to increase modal shift away from car use to more sustainable modes of transport and this can be achieved by the implementation of the Residential Travel Plan submitted by the applicant. Accordingly, I am satisfied that sufficient car parking has been provided on the site having particular regard to the location relative to public transport and the provisions of the Development Plan and is acceptable in terms of traffic safety.

7.9. Other Matters

Condition No. 7

- 7.9.1. Condition no. 7 requires that the management and maintenance of the proposed development, following completion, shall be the responsibility of a legally constituted management company, which shall be established by the developer. The first party is seeking condition no. 7 be removed from any decision to grant planning permission on the basis that the first party is an Approved Housing Body and will be responsible for the management and operation of the development acting as the management company. I have no objection to removal condition no. 7 as the management of shared facilities, amenities and services is covered by the Multi-Unit Development Act 2021 which regulates the ownership and management of the common areas of a multi-unit development, that being developments over 5 residential units.

Construction Impacts

- 7.9.2. A number of concerns have been raised about the impact of construction traffic; dust, noise, hours of operation etc including the impact on No 84. Philipsburgh Avenue which immediately abuts the northern boundary of Block A. There is nothing unusual or challenging about this site and I am satisfied that these concerns can be appropriately addressed by means of a Construction Management Plan (CMP) and Construction and Environmental Management Plan (CEMP).

Childcare

- 7.9.3. The development will result in the loss of the existing childcare facility on the site. The third parties have expressed concern in this regard and that the occupant has been unable to find an alternative location. I accept that the loss of the facility is regrettable. However, I refer the Board again to the recent grant of planning permission ABP 317438-23 which includes provision of a childcare facility with 77 spaces located ca. 200m west of the proposed site.

Third Party Consent regarding DCC lands.

- 7.9.4. The third parties set out that the development site includes lands in DCC ownership (access road to the south of the site) and that the letter of consent from DCC regarding the incorporation of said lands into the site area was issued without consultation with

third parties. There is no requirements on DCC as the landowner to consult with third parties in this regard.

Devaluation of properties

- 7.9.5. Third party concerns were raised that the development would significantly devalue residential property in the vicinity. In this regard, I am satisfied that the scheme has sought to achieve a balance of respecting amenity whilst also facilitating higher density residential development at this location in accordance with national planning policy.

8.0 Appropriate Assessment

8.1. Introduction

The applicant has prepared an AA Screening and a Natura Impact Statement (NIS) as part of the application. The AA screening report concluded that in the absence of mitigation measures there is potential for sediments/pollutants to enter the South Dublin Bay SAC, North Dublin Bay, South Dublin Bay and River Tolka Estuary SPA, and North Bull Island SPA via surface water run-off during the construction and operational phases of the development and via foul wastewater drainage. Acting on a strictly precautionary basis, an NIS has been prepared in respect of the effects of the project on South Dublin Bay SAC, North Dublin Bay SAC, South Dublin Bay and River Tolka Estuary SPA, and North Bull Island SPA. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U and section 177V of the Planning and Development Act 2000 (as amended) are considered fully in this section.

8.2. Compliance with Article 6(3) of the Habitats Directive

The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the 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 site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given. The proposed development is not directly

connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).

The applicant has submitted a Screening Report for Appropriate Assessment and a Natura Impact Assessment. The Report provides a description of the proposed development, identifies and provides a brief description of European Sites within a possible zone of influence of the development, an assessment of the potential impacts arising from the development and an assessment of potential in-combination effects. Section 3.5.2 of the AA Screening Report notes that in the absence of mitigation measures, it is considered that significant effects on the qualifying interests on European Site in Dublin Bay are likely via the indirect hydrological pathway through the public surface water sewer which has connectivity to Dublin Bay. In line with Departmental Guidance and having regard to ECJ case law and the 'precautionary principle' Stage 2 Appropriate Assessment is required in respect of South Dublin Bay SAC, North Dublin Bay SAC, South Dublin Bay and River Tolka Estuary SPA, North Bull Island SPA.

Having reviewed the documents and submissions, I am satisfied that the submitted information allows for a complete examination and identification of all the aspects of the project that could have an effect, alone, or in combination with other plans and projects on European sites.

8.3. Stage 1 AA Screening

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 on a European site(s). The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites.

8.3.1. Description of Development

The applicant provides a description of the project in the Appropriate Assessment Screening Report. The development is summarised in Section 3 of this report. In summary, the proposed development at 80 Philipsburgh Avenue, Fairview, Dublin 3, demolition of the existing building and the construction of 2 apartment buildings with

42 no. residential units and ancillary works is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).

8.3.2. Description of the Site Characteristics

The applicant provides a description of the project in page in the Appropriate Assessment Screening Report. The site has a stated area is 0.2681ha. The site comprises a two-story community building with surfaced car park and a portion of an adjoining Pitch and Putt course. The nearest waterbody to the subject site is the river Tolka, located approximately 0.5km to the south of the site boundary. According to the EPA, the water quality of the Dublin Bay coastal waterbody is classified as 'good' and is 'not at risk' based on categorisation for the purposes of the Water Framework Directive.

8.4. Relevant Prescribed Bodies Consulted

The submitted AA Screening report does not identify specific consultations with prescribed bodies but does refer to a desktop review of published documents and information.

At application stage the application was referred to the relevant prescribed bodies by DCC. In response to the referrals, no submissions in relation to appropriate assessment were received from the prescribed bodies. The appeal has not been referred to prescribed bodies.

8.5. Zone of Influence

8.5.1. The proposed development is not located within or immediately adjacent to any European Site.

8.5.2. Appropriate Assessment Guidance (2009) recommends an assessment of European sites within a Zone of Influence of 15km. However, this distance is a guidance only and a potential Zone of Influence of a proposed development is the geographical area over which it could affect the receiving environment in a way that could have significant effects on the Qualifying Interests of a European site. In accordance with the OPR Practice Note, PN01, the Zone of Interest should be established on a case-by-case basis using the Source- Pathway-Receptor framework and not by arbitrary distances (such as 15km). The Zone of Influence may be determined by connectivity to the

proposed development in terms of:

- Nature, scale, timing and duration of works and possible impacts, nature and size of excavations, storage of materials, flat/sloping sites.
- Distance and nature of pathways (dilution and dispersion; intervening ‘buffer’ lands, roads etc.); and
- Sensitivity and location of ecological features.

8.5.3. The AA Screening Report Section 3.4 notes relevant European sites and the potential zone of influence. Following the precautionary principle, screening of all Natura 2000 sites within 15km and those with a direct/indirect pathway beyond 15km is carried out.

8.5.4. The following 18 no. Natura 2000 sites that are within 15km of the site and their distance from the application site are identified:

Special Areas of Conservation	Special Protection Areas
<ul style="list-style-type: none"> • IE000210 South Dublin Bay SAC • IE000206 North Dublin Bay SAC • IE000199 Baldoyle Bay SAC • IE000202 Howth Head SAC • IE003000 Rockabill to Dalkey Island SAC • IE000205 Malahide Estuary SAC • IE002193 Ireland’s Eye SAC • IE002122 Wicklow Mountains SAC • IE001209 Glenasmole Valley SAC • IE000208 Rogerstown Estuary SAC 	<ul style="list-style-type: none"> • IE 004024 South Dublin Bay and River Tolka SPA • IE 004006 North Bull Island SPA • IE004016 Baldoyle Bay SPA • IE004025 Malahide Estuary SPA • IE004117 Ireland’s Eye SPA • IE0004113 Howth Head Coast SPA • IE004172 Dalkey Islands SPA • IE004040 Wicklow Mountains SPA

8.5.5. The application site is not located within or adjacent to any European site. As set out above the nearest waterbody to the subject site is the river Tolka, located approximately 0.5kms to the south of the site boundary. There is an indirect hydrological connection to this waterbody via surface water drainage (during construction and operation) to European Sites located within Dublin Bay via the

proposed surface water drainage strategy.

- 8.5.6. There is also an indirect hydrological connection to European Sites within Dublin Bay via foul wastewater drainage. Foul wastewater will be directed to an existing public foul network, which in turn discharges to Ringsend Wastewater Treatment Plant (WwTP) for treatment.
- 8.5.7. Using the source-pathway-receptor model, foul waters from the proposed development will ultimately drain to Dublin Bay, located to the east of the proposed development site, and therefore may indirectly have an impact. Therefore, the European sites with qualifying interests, which are potentially linked to the proposed development are South Dublin Bay SAC (site code: 000210), North Dublin Bay SAC (site code: 000206), South Dublin Bay and River Tolka Estuary SPA (site code: 004024) and North Bull Island SPA (site code: 004006).
- 8.5.8. Given the scale of the proposed development, the lack of a direct hydrological connection, the dilution provided in the estuarine/marine environment and the distances involved other sites in the bay area are excluded from further consideration this screening. I do not consider that any other European sites fall within the zone of influence of the project based on a combination of factors including the nature and scale of the project, the distance from the site to European sites, and any potential pathways which may exist from the development site to a European site, aided in part by the applicant's Appropriate Assessment Screening Report, the conservation objectives of Natura 2000 sites, the lack of suitable habitat for qualifying interests, as well as by the information on file and I have also visited the site.

8.6. Screening Assessment

- 8.6.1. The Conservation Objectives and Qualifying Interests of sites in South Dublin Bay SAC, North Dublin Bay SAC, South Dublin Bay and River Tolka Estuary SPA, North Bull Island SPA are outlined in the table below.

European Site Name [Code] and its Qualifying interest(s) / Special Conservation Interest(s) (*Priority Annex I Habitats)	Location Relative to the Proposed Site
SAC:	

<p>South Dublin Bay SAC (site code: 000210).</p> <p>Mudflats and sandflats not covered by seawater at low tide [1140] Annual vegetation of drift lines [1210] Salicornia and other annuals colonising mud and sand [1310] Embryonic shifting dunes [2110] The NPWS has identified a site specific conservation objective to maintain the favourable conservation condition of the Annex I Habitat Mudflats and sandflats not covered by seawater at low tide [1140], as defined by a list of attributes and targets</p> <p>Conservation Objective: To maintain or restore the favourable conservation condition of the Annex 1 habitat(s) and / or the Annex II species for which the SAC has been selected.</p>	c.3.7km
<p>North Dublin Bay SAC (site code: 000206)</p> <p>Mudflats and sandflats not covered by seawater at low tide [1140] Annual vegetation of drift lines [1210] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows (Glaucopuccinellietalia maritimae) [1330] Mediterranean salt meadows (Juncetalia maritimi) [1410] Embryonic shifting dunes [2110] Shifting dunes along the shoreline with Ammophila arenaria (white dunes) [2120] Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130] Humid dune slacks [2190] Petalophyllum ralfsii (Petalwort) [1395]</p> <p>Conservation Objective: To maintain or restore the favourable conservation condition of the Annex 1 habitat(s) and / or the Annex II species for which the SAC has been selected.</p>	c.3.8km
<p>SPA:</p>	
<p>South Dublin Bay & River Tolka SPA (site code: 004024).</p> <p>Light-bellied Brent Goose (Branta bernicla hrota) [A046] Oystercatcher (Haematopus ostralegus) [A130] Ringed Plover (Charadrius hiaticula) [A137] Grey Plover (Pluvialis squatarola) [A141] Knot (Calidris canutus) [A143] Sanderling (Calidris alba) [A144] Dunlin (Calidris alpina) [A149] Bar-tailed Godwit (Limosa lapponica) [A157] Redshank (Tringa totanus) [A162] Black-headed Gull (Chroicocephalus ridibundus) [A179] Roseate Tern (Sterna dougallii) [A192] Common Tern (Sterna hirundo) [A193] Artic Tern (Sterna paradisea) [A194] Wetland and Waterbirds [A999]</p> <p>Conservation Objective: To maintain or restore the favourable conservation condition of the Annex 1 habitat(s) and / or the Annex II species for which the SPA has been selected.</p>	c.1.0km
<p>North Bull Island SPA (site code: 004006)</p> <p>Light-bellied Brent Goose (Branta bernicla hrota) [A046] Shelduck (Tadorna tadorna) [A048] Teal (Anas crecca) [A052] Pintail (Anas acuta) [A054] Shoveler (Anas clypeata) [A056] Oystercatcher (Haematopus ostralegus) [A130] Golden Plover (Pluvialis apricaria) [A140] Grey Plover (Pluvialis squatarola) [A141] Knot (Calidris canutus) [A143] Sanderling (Calidris alba) [A144] Dunlin (Calidris alpina) [A149] Black-tailed Godwit (Limosa limosa) [A156] Bar-tailed Godwit (Limosa lapponica) [A157] Curlew (Numenius arquata) [A160] Redshank (Tringa totanus) [A162] Turnstone (Arenaria</p>	c.3.8km

interpres) [A169] Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179] Wetland and Waterbirds [A999]	
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Conservation Objective: To maintain or restore the favourable conservation condition of the Annex 1 habitat(s) and / or the Annex II species for which the SPA has been selected.

8.7. Consideration of Impacts

8.7.1. It is considered that there is nothing unique or particularly challenging about the proposed urban development, either at construction or operational phase.

8.7.2. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on the South Dublin Bay and River Tolka Estuary SPA (Site Code 004024), North Dublin Bay SAC (Site Code 000206), South Dublin Bay SAC (Site Code 000210) and North Bull Island SPA (Site Code 004006), relate to:

- surface water drainage from the proposed development site during the construction and operational phases;
- increased disturbance as a result of construction activity;
- increased wastewater being sent to Ringsend WWTP during the operational phase of the proposed development;
- potential collision risk/obstruction for bird species during the operational phase.

8.7.3. *Assessment of Likely Significant Effects on Designated Sites*

8.7.3.1. Third parties raised concerns about the fact that no bird or bat surveys were carried out on site. I note the NIS states that “*field surveys were not deemed necessary for this NIS given the small scale and urban context of the proposed development*”.

8.7.3.2. Having regard to the separation distance from European Sites and the characteristics of the site including the urban context and on-going active uses. The proposed development will not result in any direct loss of habitat within Natura 2000 sites and no potential for habitat fragmentation is identified. Similarly, having regard to separation from European sites, construction or operational activity thereon will not result in any disturbance or displacement of qualifying interests of the identified sites. The habitats within or adjoining the site are not of value for qualifying species of these Natura 2000 sites, which are associated with estuarine shoreline areas or wetlands.

The site does not provide suitable roosting or foraging grounds for these species. No ex-situ impacts on qualifying species are therefore considered likely and It is not considered that the proposed development gives rise to a risk of significant effects due to collision of qualifying bird species with buildings.

- 8.7.3.3. Petalwort is the only species listed as a qualifying interest for the SAC's linked to the site. However, impacts of Petalwort can be rule out as there is no hydrological connections or alternative pathway between the site and Petalwort, which grows on north Bull Island.
- 8.7.3.4. The river Tolka is c.500m south of the site. I note the Drainage Report identified the site in Flood Zone C, outside the 1 in 100 and 1 in 1000-year fluvial flood extents. In terms of potential hydrological connection from the surface water runoff or storm overflows to the river during construction and operational phases. I consider given the location of the site in a built-up area, there is no potential for pollution to enter the watercourses, across the terrestrial buffer via overland flow. Given the nature of the works, all of these effects would be expected to be localised in nature restricted to the immediate vicinity of the site. Any potential pathway is via discharges to the surface water drainage network.
- 8.7.3.5. In relation to the operational phase of the development, I note surface water from the proposed development will discharge to the public surface water sewer system.
- 8.7.3.6. It is a policy of Dublin City Council (SI18) to "require the use of Sustainable Urban Drainage Systems in all new developments, where appropriate, as set out in the Greater Dublin Regional Code of Practice for Drainage Works". As such, the design entails a suite of SuDS measures that will be incorporated into the proposed development. This will reduce the flow rate of surface water run-off and largely eliminate the risk of pollution to waterbodies arising from surface water run-off during the Operational Phase. While the use of SUDS measures are not intended to avoid or reduce the harmful effects of a project on a European site, they will reduce peak flow rates and the likelihood of suspended solids or hydrocarbons entering the water system. They are clearly not included as a measure to mitigate potential impacts on European sites. Furthermore, the scale of the proposed development relative to the rest of the area served by that system means that the impact on the flows from that system would be negligible and would not have the potential to have any significant

effect on any Natura 2000 site. I am satisfied that the potential for likely significant effects on the qualifying interests of European sites in Dublin Bay can be excluded given the indirect and interrupted hydrological connection, the nature and scale of the development featuring a piped surface water network, including standard control features, and the distance and volume of water separating the subject site from European sites in the Dublin Bay area (dilution factor), including the Tolka estuary.

8.7.3.7. It is proposed to discharge foul sewerage by means of a new sewer and discharge to the public sewer. There is an indirect hydrological pathway between the application site and the coastal sites listed above via the public drainage system and the Ringsend WWTP. Permission was granted by An Bord Pleanála in April 2019 for the upgrading of the Ringsend WWTP under ABP ref. ABP-301798-18, which works are currently underway. In granting permission, the Board undertook an Appropriate Assessment of the proposed development and concluded that that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the sites' Conservation Objectives. Documentation and evidence provided in that case, including the EIAR, provide a reasonable basis to conclude that this proposed development would not be likely to give rise to significant effects on the conservation objectives of European Sites, either individually, or when taken together and in combination with other plans or projects. The increased loading on the plant arising from the development proposed herein will not be significant in the context of the wider city and the increased capacity of the plant.

8.7.4. *In Combination/Cumulative Impacts*

In assessing potential in-combination effects, the screening report identifies a number of developments which are set out in Section 3.5.3 '*Potential for In combination effects*' with larger scale developments in the local area of the proposed development' (pages 25 & 26 Appropriate Assessment Screening Report), these include:

DCC Reg. Ref.: 3483/22 Permission granted on 16th March 2023 for the construction of 28 residential units 9/9A, Richmond Avenue, Fairview, Dublin 3

DCC Reg. Ref.: 3295/21 Permission granted on 11th January 2022 for 35 no. residential units at 15, Richmond Avenue, Fairview, Dublin 3,

DCC Reg Ref: 3657/21 Permission granted on 14th April 2022 for 27 no. apartments at 17, Richmond Avenue, Fairview, Dublin 3,

In addition, I note:

DCC Reg. Ref LRD6009/23-S3 / ABP Reg. Ref. 317438/23 – Permission granted on 11th October 2023 for 9 no. residential buildings providing 811 apartments (494 no. standard designed apartments and 317 no. Build to Rent apartments), new hospital building, refurbishment and repurposing of existing buildings on site including Brooklawn (RPS Ref.: 8789), Richmond House, including chapel and outbuildings (RPS Ref.: 8788) and ancillary works at St. Vincent's Hospital, Richmond Road and Convent Avenue, Fairview, Dublin 3

Screening undertaken concluded that significant effects on European site were not likely.

- 8.7.4.1. This project is taking place within the context of greater levels of construction development and associated increases in residential density in the Dublin area. This can act in a cumulative manner through surface water run-off and increased wastewater volumes to the Ringsend WWTP. Significant effects were previously screened out in the afore mentioned development at application stage. It is considered that in combination effects with other existing and proposed developments in proximity to the application area would be unlikely, neutral, not significant and localised.
- 8.7.4.2. The development is not associated with any loss of semi-natural habitat or pollution which could act in a cumulative manner to result in significant negative effects to any SAC or SPA. There are no projects which can act in combination with the development which can give rise to significant effect to Natura areas within the zone of influence.
- 8.7.4.3. The expansion of the city is catered for through land use planning by the various Planning Authorities in the Dublin area, including the Dublin City Development Plan 2022-2028. The Development Plan has been subject to AA by the Planning Authority, who concluded that its implementation would not result in significant adverse effects on the integrity of any European sites.
- 8.7.4.4. With regard to Ringsend WWTP, I note that permission was granted by the Board in April 2019 for the upgrading of the plant under ABP ref. ABP-301798-18, which works are currently underway. The project will deliver the capacity to treat wastewater for 2.4 million pe on a phased basis. In granting permission, the Board undertook an Appropriate Assessment of the development and concluded that, by itself or in combination with other plans or projects, the proposed development would not adversely affect the integrity of any European Sites, in view of the sites' Conservation Objectives. Documentation and evidence provided in that case, including an EIAR, provide a reasonable basis to conclude that this proposed development would not be

likely to give rise to significant effects on the conservation objectives of European Sites, either individually, or when taken together and in combination with other plans or projects. The increased loading on the plant arising from the development proposed herein will not be significant in the context of the wider city and the increased capacity of the plant.

Significant effects on marine biodiversity and Natura 2000 sites within Dublin Bay from the (then) current operation of Ringsend WWTP were unlikely, and that in the absence of any upgrading works, significant effects to Natura 2000 sites were not likely to arise.

8.7.4.5. Having regard to the foregoing I am satisfied that 'in-combination' effects arising from this development and others, will not result in significant effects, directly or indirectly, on any European site arising from the level of discharge envisaged.

8.7.4.6. Therefore, having regard to the scale and nature of the proposed mix-use development and its location within the built-up area of the city which can be serviced, I conclude that the proposed development would not be likely to have any significant effects on any Natura 2000 site, either directly or indirectly or in combination with other plans and projects.

8.8. Screening Determination

8.8.1. It is evident from the information before the Board that on the basis of the nature and scale of the proposed development on serviced lands, the nature of the receiving environment which comprises a built-up urban area, the distances to the nearest European sites and the hydrological pathway considerations, submissions on file, the information submitted as part of the applicant's Appropriate Assessment Screening report that, by itself or in combination with other development, plans and projects in the vicinity, the proposed development would not be likely to have a significant effect on the South Dublin Bay SAC (000210), North Dublin Bay SAC (000206), South Dublin Bay and River Tolka Estuary SPA (004024), North Bull Island SPA (004006), or an European Site in view of the conservation objectives of such sites, and that a Stage 2 Appropriate Assessment is not, therefore, required.

8.8.2. In reaching my screening assessment conclusion, no account was taken of measures that could in any way be considered to be mitigation measures intended to avoid or reduce potentially harmful effects of the project on any European Site. In this project, no measures have been especially designed to protect any European Site and even if

they had been, which they have not, European Sites located downstream are so far removed from the subject lands and when combined with the interplay of a dilution affect such potential impacts would be insignificant. I am satisfied that no mitigation measures have been included in the development proposal specifically because of any potential impact to a Natura 2000 site.

8.8.3. I note the applicant submitted a Natura Impact Statement (NIS). In deciding to prepare and submit a NIS the applicant states that the precautionary principle was being applied. I am of the opinion that the application of the precautionary principle in this instance represents an over-abundance of precaution and is unwarranted.

8.8.4. It is reasonable to conclude that on the basis of the information on file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on North Dublin Bay SAC (000206), South Dublin Bay SAC (000210), North Bull Island SPA (004006) and South Dublin Bay and River Tolka Estuary SPA (004024) or any European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

9.0 Conclusion and Recommendation

For the reasons outlined above, I consider that the proposal is in compliance with the proper planning and sustainable development of the area, and I recommend that permission is GRANTED subject to the following conditions.

10.0 Reasons and Considerations

Having regard to:

- a. The site's location on lands primarily zoned 'Z1' where residential is a 'permissible use';
- b. The provisions of the 'Z9' zoning objectives relating to 'exceptional circumstances';
- c. The policies and objectives in the Dublin City Development Plan 2022-2028
- d. Nature, scale and design of the proposed development;
- e. Pattern of existing development in the area;
- f. Housing for All – A New Housing Plan for Ireland, 2021

g. The National Planning Framework issued by the Department of Housing, Planning and Local Government in February 2018;

h. Sustainable Urban Housing: Design Standards for New Apartments issued by the Department of the Environment, Community and Local Government in December 2020;

i The Urban Development and Building Heights Guidelines for Planning Authorities 2018; and

j Submissions received.

It is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would be acceptable in terms of urban design, height and quantum of development and would be acceptable in terms of traffic and pedestrian safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 4th November 2022 as amended by further information submitted on 14th 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, or as otherwise stipulated by conditions hereunder, and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity

2. The proposed development shall be amended as follows:
 - This permission relates to a total of 42 no. units only.
 - The site shall be landscaped in accordance with the submitted scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The landscaping proposal shall have

particular regard to the privacy screening and the future outlook of residents of the ground floor apartments. The developer shall retain the services of a suitably qualified Landscape Architect throughout the life of the site development works. The approved landscaping scheme shall be implemented fully in the first planting season following completion of the development or each phase of the development and any plant materials that die or are removed within three years of planting shall be replaced in the first planting season thereafter.

- 1.8m high side screens shall be applied to the northern and southern balconies/terraces serving Apartment units: 16, 17, 22, 28, 29, 34, 38, 39 and 42 respectively.

In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of the proper planning and sustainable development of the area and in the interest of clarity.

3. Prior to the commencement of the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority pursuant to Section 47 of the Planning and Development Act 2000 (as amended), specifying that the development is for use as accommodation for the elderly and shall be operated and managed by an approved housing trust. Any change in occupancy type or tenure shall require a separate grant of planning permission.

Reason: In the interest of the proper planning and sustainable development of the area and in the interest of clarity.

7. A schedule of all materials to be used in the external treatment of the development to include a variety of high-quality finishes, such as brick and stone, roofing materials, windows and doors shall be submitted to and agreed in writing with, the planning authority prior to commencement of development. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of visual amenity and to ensure an appropriate high standard of development.

8. Proposals for an apartment naming / numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all signs and apartment numbers, shall be provided in

accordance with the agreed scheme. The proposed names 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(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

Reason: In the interest of urban legibility and to ensure the use of locally appropriate place names for new residential areas.

9. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development/installation of lighting. Such lighting shall be provided prior to the making available for occupation of any apartments. The lighting scheme shall form an integral part of landscaping of the site.

Reason: In the interests of public safety and amenity, to prevent light pollution.

10. 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

11. The construction of the development shall be managed in accordance with a Construction Management Plan and Environmental Management Construction Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise and dust management measures, traffic management arrangements/ measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety.

12. Construction and demolition waste shall be managed in accordance with a construction and demolition waste management plan and construction environmental management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The Construction Management Plan shall specifically address the points raised within the submission by TII to The Planning Authority. This

plan shall be prepared in accordance with the 'Best Practice Guidelines for the preparation of resource & waste management plans for construction & demolition projects' published by the Environmental Protection Agency in 2021.

Reason: In the interest of sustainable waste management.

13. Drainage arrangements including attenuation and disposal of surface water, shall comply with the requirements of the planning authority.

Reason: In the interest of public health and surface water management

14. The developer shall comply with the requirements of the Transport Planning Division of the planning authority.

Reason: In the interest of proper planning and traffic and pedestrian safety.

15. Prior to the commencement of development, the developer shall enter into water and waste-water connection agreement(s) with Irish Water.

Reason: In the interest of public health

16. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity

17. 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 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: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

Irené McCormack

Senior Planning Inspector

16th November 2023