



An  
Bord  
Pleanála

## Inspector's Report ABP-318255-23

<b>Proposed Development</b>	Complete existing six to 14-storey building and construct additional two storeys over six-storey block, to accommodate 110 apartments
<b>Location</b>	The Sentinel, Block C of Former Allegro Site, Blackthorn Drive, Sandyford Business Park, Dublin 18
<b>Planning Authority</b>	Dún Laoghaire-Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	LRD23A/0505
<b>Planning Authority Decision</b>	Grant Permission
<b>Applicant</b>	Dante Property Company Limited
<b>Type of Application</b>	Large-Scale Residential Development
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Dante Property Company Limited
<b>Prescribed Bodies</b>	None
<b>Observers</b>	None

**Dates of Site Inspection**

6<sup>th</sup> December 2023

**Inspector**

Colm McLoughlin

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## **1.0 Introduction**

- 1.1. This report provides an assessment of an appeal for a proposed large-scale residential development (LRD) under the provisions of the Planning and Development Act 2000, as amended (hereinafter referred to as 'the Act of 2000'). The application was subject of a decision to grant permission by the Planning Authority and subsequently appealed to An Bord Pleanála solely by the LRD applicant.

## **2.0 Site Location and Description**

- 2.1. Situated within the Sandyford business park in the southern suburbs of Dublin city, approximately 7.3km from the city centre, the appeal site gross area is stated to measure approximately 1.2 hectares. It primarily comprises the unfinished shell structure of a previously permitted office block with heights ranging from six to 14-storeys. The taller element of the structure generally forms a triangular footprint narrowing to the south onto a plaza at the corner of Blackthorn Drive and Carmanhall Road, while the lower element features a rectangular footprint and is attached at upper levels to quadrangular block A of the Grande Central development to the north. This attached block features six to eight-storey buildings containing approximately 195 apartments and ground-floor commercial units to the northern side onto Blackthorn Drive and an office unit onto the plaza on the southside. The site is secured by a 2m-high construction hoarding along the southern and eastern sides onto the plaza / walkway, with a concrete plinth and security railing situated along the western boundary adjoining the footpath along Blackthorn Drive. Structural elements for three basement levels are situated below the two building shells, extending the subterranean element of the site significantly beyond the footprint of the building.
- 2.2. The site is situated approximately a 300m walk from the Stillorgan green line Luas stop and a distance of 600m to the north of the M50 motorway. Vehicular access to the basement levels is currently only provided for via Blackthorn Drive to the north of the South Central apartment blocks and based on the application details there is a very marginal drop in ground levels moving northeast along the eastern boundary of the site.

2.3. The immediate area has been undergoing gradual change in recent years from a light industrial and business estate to a densified mixed-use district. The adjoining properties to the east within the subject urban block comprise lands permitted for substantive residential developments, with An Bord Pleanála (ABP) reference (ref.) 304405-19 (Rockbrook Central) currently under construction and ABP ref. 305940-19 (Sandyford Central) recently completed.

### 3.0 Proposed Development

3.1. The proposed development would consist of the following elements:

- complete works to a six to 14-storey structure;
- adaptation of the existing building to accommodate 110 apartments, including associated communal spaces;
- construct two additional floors measuring a stated 668sq.m onto the six-storey building adjoining block A of the Grande Central complex;
- provision of associated elevational works to the buildings, environmental services, car, bicycle and bin storage at basement level and vehicular access to basement level off Blackthorn Drive with provision for future connection onto Carmanhall Road via the Rockbrook Central (ABP ref. 304405-19) development currently under construction.

3.2. The following tables set out the key features of the proposed development:

**Table 1.** Development Standards

Site Area (gross)	1.2ha
Number of apartments	110
Part V units (% overall units)	22 (20%)
Existing floor area	13,213sq.m
Proposed additional floor area	668sq.m
Apartments GFA	9,031sq.m
Ancillary Residential GFA (circulation)	4,524sq.m
Ancillary Communal Areas GFA	338sq.m
Ancillary Basement Area GFA	792sq.m
Total GFA	14,685sq.m

Residential Density (gross)	89 units per ha
Communal Open Space	779sq.m
Public Open Space	0sq.m
Plot Ratio (gross site area)	3.28:1
Site Coverage (gross site area)	44%

**Table 2.** Unit Mix

	One-bedroom	Two-bedroom (three-person)	Two-bedroom (four-person)	Three-bedroom	Total
Apartments	22	3	57	28	110
% of units	20%	3%	52%	25%	100%

**Table 3.** Stated Maximum Building Heights

Block	Storeys	Height
C	8	30m
C	14	55.5m

**Table 4.** Parking Spaces

Car parking (standard)	39
Car parking (electric)	11
Car parking (car-share)	3
Car parking (accessible)	2
Car parking (total)	55
Motorcycle parking	2
Cycle parking (visitor)	226 (56)

3.3. In addition to the standard contents, the LRD application was accompanied by various technical reports with appendices and drawings, including the following:

- Planning Statement;
- Statement of Response;
- Statement of Housing Mix;
- Environmental Impact Assessment (EIA) Screening Report;
- Appropriate Assessment (AA) Screening Report;
- Architectural & Urban Design Statement;
- Architectural Statement of Response;
- Traffic Statement;

- Residential Travel Plan;
- Civil Infrastructure Report;
- Sunlight & Daylight Access Analysis;
- Verified Views & Computer-Generated Images (CGIs);
- Part V Proposals;
- Ecology Report;
- Schools, Childcare & Social Infrastructure Capacity Assessment;
- Carpark Occupancy Study;
- Public Transport Capacity Analysis;
- Site Specific Flood Risk Assessment;
- Construction Environmental Management Plan;
- Landscape Design & Access Statement;
- Landscape Maintenance & Management Plan;
- Quality Audit & Cycle Audit;
- Sustainability & Energy Report;
- Building Lifecycle Report;
- Townscape & Visual Impact Assessment;
- Housing Quality Assessment;
- Schedule of Accommodation;
- Operational Waste Management Plan;
- Statement Article 103(1a);
- Structural Report on Existing Structure;
- Site Services & Lighting Layout;
- Noise Impact Assessment;
- DLRCC Climate Policy Report;
- Wind & Microclimate Modelling;
- Utility Report;
- Telecoms Assessment;
- Aeronautical Assessment Report.

## **4.0 Planning History and LRD Opinion**

### **4.1. Appeal Site**

4.1.1. The following planning applications relate to the appeal site.

- Dún Laoghaire-Rathdown County Council (DLRCC) ref. D05A/1159 - following the withdrawal of a third-party appeal under ABP ref. PL06D.215205 permission was granted by the Planning Authority in 2006 for the demolition of buildings and the construction of six blocks ranging in height from two to 15 storeys over two basement levels, containing 847 apartments, retail shops and services, office accommodation, a childcare facility, community facility, 39 live/work units and 1,716 car parking spaces. The duration of this permission was extended in 2011 (under DLRCC ref. D05A/1159/E) for a further five years until 2016. In 2009 modifications were permitted by the Planning Authority (under DLRCC ref. D09A/0117) to the subject block C and in 2011 permission was granted by the Planning Authority for a temporary five-year basement car park access off Blackthorn Drive to the northern side;
- DLRCC ref. D13A/0457 – permission was granted by the Planning Authority in 2014 providing for a revised internal configuration of the office floorspace to block C to accommodate 294 office suites and 28 meeting rooms, alongside parking and elevational amendments, and the construction of two additional floors to the six-storey element of block C attached to block A of the Grande Central development. This permission expired in July 2016 in line with the extended period for the parent permission (DLRCC ref. D05A/1159);
- DLRCC ref. D16A/0991 – in 2017 permission was granted by the Planning Authority providing for a revised internal configuration of the office floorspace to block C comprising 294 office suites and 28 meeting rooms, construction of two additional floors to the six-storey building attached to block A of the Grande Central development, as well as other parking and elevational amendments.

4.1.2. The following residential-zoned land tax reference relates to the appeal site:

- ABP ref. VV06D.316595 / DLRCC ref. DM22/0081 – in September 2023 the Board decided that the appeal site is zoned for mixed-use under the Dún Laoghaire-Rathdown County Development Plan 2022-2028, where residential use is not identified as a ‘permitted in principle’ use, and as such the site cannot be considered in-scope for a residential-zoned land tax.



## 4.2. Surrounding Area

4.2.1. The following applications relate to the urban block that the appeal site is situated within:

- ABP ref. 304405-19 – in August 2019 a strategic housing development was granted permission by the Board providing for 428 apartments, a childcare facility and four local retail units in two blocks ranging in height from five to 14 storeys on a site known as Rockbrook Central located adjoining to the east of the basement structure to the appeal site. This development is under construction at present;
- ABP ref. 305940-19 – in March 2020 a strategic housing development was granted permission by the Board providing for the demolition of buildings and the construction of 564 build-to-rent apartments and a childcare facility in six blocks ranging in height from five to 17 storeys on a former Aldi-supermarket site located adjoining to the east of the appeal site along Carmanhall Road. This development has been recently completed;
- ABP ref. 311722-21 – a strategic housing development was granted permission by the Board in March 2022 providing for 190 build-to-rent apartments in two blocks ranging from 14 to 15 storeys on the former Siemen’s site, approximately 120m to the east of the appeal site at the junction of Ballymoss Road and Blackthorn Drive;
- ABP ref. 310690-21 / DLRCC D21A/0295 – in August 2023 permission was granted by the Board for the demolition of buildings and the construction of a nine-storey aparthotel containing 124 suites and ancillary facilities located approximately 120m to the east of the appeal site on Ballymoss Road.

## 4.3. Pre-application Consultation

4.3.1. An initial LRD pre-application meeting took place between representatives of the LRD prospective applicant and the Planning Authority on the 30<sup>th</sup> day of November, 2022 (under DLRCC ref. PAC/LRD1/017/22) in respect of a development generally comprising 110 apartments in the existing six to 14-storey shell structure and an additional two-storeys to the six-storey element. A follow-up stage 2 meeting was

held on the 30<sup>th</sup> day of March, 2023 (under DLRCC ref. PAC/LRD2/003/23) for a similar development proposal.

#### 4.4. **Planning Authority Opinion**

4.4.1. In the Notice of LRD Opinion (under DLRCC ref. PAC/LRD2/003/23) issued on the 30<sup>th</sup> day of March 2023, the Planning Authority stated that they were of the opinion that the documentation submitted in accordance with Section 32B of the Act of 2000, requires further consideration and amendment to constitute a reasonable basis for an application for LRD. Following consideration of the issues raised during the consultation process and the LRD meeting, the Planning Authority stated that the following matters needed to be addressed:

- land ownership and application boundaries;
- unit mix;
- Part V social housing provision;
- residential amenities;
- public realm and mix of uses;
- transportation planning;
- parks and landscaping;
- water services;
- flood risk assessment.

4.4.2. In the opinion of the Planning Authority, an application for a proposed LRD should be accompanied by:

- a statement of response to the issues set out within the Planning Authority's opinion;
- a statement of consistency with the Development Plan for the area;
- a summary of consultations;
- a design statement;
- site ownership details;

- open space details;
- building and boundary treatment drawings;
- a statement of housing mix;
- enhanced photomontages and visual impact assessment;
- materials and finishes;
- hard and soft landscaping details;
- telecoms impact assessment;
- utilities report;
- taking-in-charge details;
- response to Development Plan climate action policy;
- ecological impact assessment report;
- landscaping and infrastructure tie-in details;
- phasing plan;
- details of the legally-constituted management company;
- revised Part V social housing proposals;
- waste management details (environmental enforcement).

#### **4.5. First-Party Response to Opinion**

4.5.1. The application included a Statement of Response to the Planning Authority's pre-application consultation opinion. This Statement outlines how the application is considered to comply with the respective requirements listed in the Planning Authority's opinion. Separate documents addressing unit mix, Part V proposals, flood risk, drainage, telecoms, utilities, climate action, landscaping, noise, construction management and waste management also accompanied the application as part of the response to the Planning Authority LRD opinion. In conclusion the applicant asserts that the response and details submitted address the substantive issues raised by the Planning Authority, providing a robust rationale for the proposed development.

## 5.0 Planning Authority Decision

### 5.1. Decision

- 5.1.1. The Planning Authority decided to grant planning permission for the proposed LRD subject to 44 conditions, the following of which is of note:

**Condition 2** - The development shall be amended as follows such that a minimum of 40% of the total number of units shall be three bedroom (plus) units and a maximum of 60% of the total number of units shall be combined one and two bedroom units in the scheme and no more than 30% of the total number of units shall consist of one bedroom units. Prior to commencement of development, proposals and revised drawings for a revised unit mix to give effect to the above unit mix requirement that accords with County Development Plan Table 12.1 for 'lands within the Sandyford Urban Framework Plan (SUFP)' shall be submitted to the Planning Authority for written agreement.

**REASON:** In the interests of achieving the policies and objectives of the Housing Strategy set out in the County Development Plan.

### 5.2. Planning Authority Reports

- 5.2.1. Planning Reports

The recommendation within the report of the Planning Officer (July 2023) reflects the decision of the Planning Authority and can be summarised as follows:

#### Principle and Density

- the proposed development is consistent with the zoning and specific objectives for the site, as contained in the Dún Laoghaire-Rathdown County Development Plan 2022-2028 with the proposed residential use of the subject unfinished structure consistent with planning policy;
- undue negative impacts on energy use and performance would not arise from the limited demolition works and the reuse of the structure;

- the net density of the site based on the building footprint would be 564 units per hectare, however, the SUFP does not include a density range for the appeal site;
- a plot ratio of 1:4 is required based on the SUFP, but this would not be achieved based on the net site area relative to the gross development floor area resulting in a plot ratio of 1:7.3;
- the original building on site was permitted as part of a much larger development, with the broader density, plot ratio and infrastructural requirements factored in when permitting same;
- the context of the site relative to public transport services supports the specific local objective assigned to the site to allow for up to 110 residential units;
- constraints on density are considered to be quantitative rather than qualitative, and the number of units proposed is acceptable;
- conditions can be attached in relation to the agreement and detail of Part V units;
- section 48 (standard) and 49 (Luas) development contributions apply;

#### Layout, Design and Height

- the form and layout of the development is acceptable based on the emerging and previously permitted built form and layout of the structures on site;
- a 14-storey landmark building had been permitted at the site based on the original masterplan proposals;
- the proposed building heights, including two additional floors to the six-storey element, would meet the performance criteria set out in table 5.1 of appendix 5 to the Development Plan, and these heights are considered to comply with the provisions of the Development Plan, the SUFP and the Building Heights Guidelines;
- the completion of the development and increased height would significantly improve the visual appearance of the area;
- structural matters would be addressed by the building control process;

## Residential Amenities and Development Standards

- the mix of units would not comply with the requirements of table 12.1 of the Development Plan, with an excess of one and two-bedroom units and a deficit of 16 three-bedroom units;
- to address housing mix concerns, units could be amalgamated, although this would lead to a reduction in the overall number of units in the development;
- amendments to the floor plans to address unit mix requirements would not be anticipated to impact on daylight or amenity space provision;
- apartment floor areas, dual aspect provision, floor-to-ceiling heights, lift and stair core access, internal storage, private amenity areas and landscaping are considered to be acceptable;
- excessive noise concerns would not arise with scope to address certain matters raised via planning conditions;
- the calculated impacts on lighting to units are considered acceptable based on the BRE 209 Guide 2022 target values and the high density of the proposals;
- shortfalls in average daylight factors are acceptable on the basis of the compensatory design measures, including the reuse and completion of an existing building originally intended to be used for offices, the well-lit terrace areas, dual aspect provision and the generous apartment floor areas, floor-to-ceiling heights and private amenity space;
- a condition could be attached to address the Development Plan requirement for external storage space to be provided via omission of some visitor parking at basement level;
- the depths of the three ground-floor terraces marginally below the 1.5m standard requirement would be acceptable given the site constraints, including the intention to reuse an existing structure;
- the internal residents' support facilities are welcomed;
- public open space amounting to 290sq.m representing 15% of the net site area is necessary and would not be provided, therefore, a special

development contribution in lieu of the absence of this space should be attached to the permission;

- a shortfall of almost 200sq.m communal open space would arise, although in consideration of the internal residents' support facilities, the site constraints and the planning context for the site as part of a wider development, the overall proposed communal open space provided would be reasonable;
- overshadowing impacts to the communal terrace area would be within acceptable limits;
- a 2m-high transparent screen should be provided around the roof terrace;
- notwithstanding flaws in the applicant's justification for not providing a childcare facility as part of the development, given the limited size of the development, the identified available local capacity and the wider site context, including permitted childcare facilities on the neighbouring Tivway and Siemen's sites, there would not be a necessity for a childcare facility to be provided as part of the proposed development;
- conditions are recommended with respect to drainage proposals;
- the application Building Lifecycle Report is noted and details of the owners' management company should be provided via condition;

#### Neighbouring Amenities

- the separation distances between existing and permitted residences does not raise concerns regarding overlooking;
- a privacy strip or similar measure would be necessary for bedrooms onto the deck access and a screen should be provided onto the roof terrace to address privacy concerns for the bedroom and winter garden serving proposed unit B3 08-05;
- impacts would be less than if the development sought complete demolition works and construction of a new building structure;
- conditions with respect to noise, dust and other impacts can be attached;

### Access, Parking and Traffic

- the Transportation Planning section has set out conditions to address the temporary and permanent vehicular and cycle access arrangements, given the intention to only use the parking at basement level -1 until the adjacent Rockbrook Central strategic housing development is completed (ABP ref. 304405-19);
- the walking environment and public realm around the site are dictated by the previously permitted and partially-completed proposals;
- the public realm improvements are welcomed;
- the proposed car parking provision at a ratio of one space per two apartments would be acceptable;
- conditions would be required to address the relocation of car parking from basement level -1 to level -2 following completion of the Rockbrook central development, and the proposed visitor parking should be provided beside the permanent parking at basement level -2;
- no issues arise with respect to cycle parking provision, motorcycle parking spaces, traffic impacts and the cycle audit submitted;

### Natural and Built Environment

- all mitigation measures contained in the Ecological Impact Assessment should be implemented by way of a condition in the event of a grant of permission;
- flood risk concerns are not raised;
- the proposed development would not be likely to significantly impact on any European sites;
- the project would not be likely to have significant effects on the environment and an EIA screening determination is not required.

### **Inter-Department Reports**

- Housing Officer – no objection, subject to conditions;



- Drainage Planning Division – no objection, subject to conditions;
- Transportation Department (Public Lighting) – no objection, subject to conditions;
- Transportation Planning – no objection, subject to conditions;
- Parks and Landscape Services – conditions recommended;
- Environmental Health – no objection, subject to conditions.

### 5.3. Prescribed Bodies

- Uisce Éireann – wastewater and water supply are feasible without infrastructure upgrades, the developer would be responsible for the design and construction of infrastructure within the site and conditions are recommended, including those relating to connections and agreements, and compliance with Uisce Éireann standards, codes, and practices;
- Transport Infrastructure Ireland – supplementary development contributions apply, as the site falls within the area for the ‘Section 49 Supplementary Development Contribution Scheme – Extension of Luas Line B1’.

### 5.4. Third-Party Submissions

5.4.1. According to the Planning Authority, one third-party submission from a resident of Stillorgan Wood, which is located approximately 300m to the north of the appeal site, was received during the consultation period for the application. The following substantive issues were raised in this submission:

- obtrusive and overscale building;
- there is an excessive population density in the area with limited provision for private and public open space;
- the development would result in a loss of views;
- the existing building should be demolished.

## 6.0 Planning Policy

### 6.1. National Planning Policy

#### Project Ireland 2040 - National Planning Framework

- 6.1.1. Project Ireland 2040 links planning and investment in Ireland through the National Planning Framework (NPF) and a ten-year National Development Plan (NDP). The NPF encapsulates the Government's high-level strategic plan for shaping the future growth and development of Ireland to the year 2040, and within this framework Dublin is identified as one of five cities to support significant population and employment growth. The NPF supports the requirement set out in the Government's strategy for 'Rebuilding Ireland: Action Plan for Housing and Homelessness (2016)', in order to ensure the provision of a social and affordable supply of housing in appropriate locations.
- 6.1.2. National policy objectives (NPOs) for people, homes and communities are set out under chapter 6 of the NPF. NPO 33 seeks to prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location. NPO 37 sets out that a HNDA is to be undertaken for each Local Authority area in order to correlate and accurately align future housing requirements.
- 6.1.3. Other NPOs of relevance to this appeal include NPOs 3(a) (40% of homes in existing settlement footprints), 3(b) (50% of new homes in the five largest cities, including Dublin), 4 (attractive, liveable and well-designed urban places), 13 (development standards), 27 (transport alternatives) and 35 (increased densities) all relating to densification and compact urban growth.

#### Ministerial and Other Guidelines

- 6.1.4. In consideration of the nature and scale of the proposed development, the receiving environment and the site context, as well as the documentation on file, including the submissions from the Planning Authority and other parties addressed below, I am satisfied that the directly relevant Section 28 Ministerial Guidelines, including revisions to same, comprise:

- Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2023) (hereinafter the 'New Apartment Guidelines');
- Design Manual for Urban Roads and Streets (DMURS) (2019);
- Urban Development and Building Heights, Guidelines for Planning Authorities (2018);
- Water Services Guidelines for Planning Authorities – Draft (2018) and Circular FPS 01/2018 issued by the Department of Housing, Planning and Local Government on the 17<sup>th</sup> day of January, 2018;
- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, including the associated Urban Design Manual (2009);
- The Planning System and Flood Risk Management - Guidelines for Planning Authorities, including the associated Technical Appendices (2009);
- Childcare Facilities – Guidelines for Planning Authorities (2001).

6.1.5. The following planning guidance and strategy documents are also considered relevant:

- Cycle Design Manual (2023);
- Transport Strategy for the Greater Dublin Area 2022-2042;
- Office of the Planning Regulator (OPR) Practice Note PN03 - Planning Conditions - (2022);
- Places for People – National Policy on Architecture (2022);
- Building Research Establishment (BRE) 209 Guide - Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice, (3<sup>rd</sup> Edition, 2022);
- Housing for All – A New Housing Plan for Ireland (2021);
- Part V of the Planning and Development Act 2000 - Guidelines (2017);
- Rebuilding Ireland - Action Plan for Housing and Homelessness (2016);
- AA of Plans and Projects in Ireland - Guidance for Planning Authorities (2009);

- Development Management Guidelines for Planning Authorities (2007);
- EIA Guidance for Consent Authorities regarding Sub-threshold Development (2003).

## 6.2. Regional Planning Policy

- 6.2.1. The 'Eastern and Midland Regional Assembly Regional Spatial and Economic Strategy (RSES) 2019-2031' supports the implementation of Project Ireland 2040 and the economic and climate policies of the Government, by providing a long-term strategic planning and economic framework for the region.
- 6.2.2. Sandyford business park is situated in the Dublin metropolitan area, as defined in the RSES for the eastern and midland regional authority (EMRA) area, where it is intended to deliver sustainable growth through the Dublin Metropolitan Area Strategic Plan (MASP) to ensure a steady supply of serviced development land. Key principles of the MASP include compact sustainable growth, as well as accelerated housing delivery and integrated transport. Sandyford is identified in the RSES as an emerging mixed-use district alongside Swords and Lissenhall in north County Dublin, and other areas within Dún Laoghaire-Rathdown, all forming part of the Metrolink / Luas greenline corridor, which is considered in the RSES to have a short to long-term capacity for between 28,000 to 71,000 additional homes. Short to medium-term strategic development of this area is dependent on the phasing of enabling infrastructure, which the RSES refers to as comprising the LUAS green line, public transport and roads upgrades. The following regional policy objectives (RPOs) of the RSES are considered relevant to this appeal:
- RPO 3.2 – in promoting compact urban growth, a target of at least 50% of all new homes should be built within or contiguous to the existing built-up area of Dublin city and its suburbs, while a target of at least 30% is required for other urban areas;
  - RPO 3.3 – core strategies to provide for increased densities;
  - RPO 5.4 – future development of strategic residential development areas within the Dublin Metropolitan area shall provide for higher densities and meet qualitative standards.

### 6.3. Local Planning Policy

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

- 6.3.1. Sandyford business park is identified in the Development Plan as a strategic employment location with significant opportunity for the redevelopment and intensification of its brownfield lands. The appeal site and the adjoining lands to the north and east have a land-use zoning 'MIC' within the Development Plan with a stated objective 'to consolidate and complete the development of the mixed-use inner core to enhance and reinforce sustainable development'. A specific local objective (SLO141) applies to this site 'to facilitate completion of the unfinished block and allow consideration of a maximum of 110 residential units'.
- 6.3.2. Section 4.3 of the Development Plan refers to policy objectives relating to 'Homes' and section 12.3.3 sets out quantitative standards for all residential development in the county. Of particular note is section 12.3.3.1 addressing residential size and mix and referring to policy objective PHP27 addressing housing mix and referring to appendix 2 of the Development Plan comprising the Housing Strategy and Housing Needs Demand Assessment (HNDA) for the county. Table 12.1 of the Development Plan sets out apartment mix requirements, including for residential schemes featuring more than 50 units on lands within the SUFP area, which may include up to 60% studio, one and two-bedroom units, with no more than 30% of the overall development featuring a combination of one-bedroom and studio units and no more than 20% of the overall development as studio units. Section 12.3.1 of the Development Plan sets out that no more than 10% of the total number of units in any private residential development may comprise of two-bedroom, three-person apartment types. Sections 12.3.4 and 12.3.5 of the Development Plan respectively address the general standards for residential development and apartment developments.
- 6.3.3. The site is within the area covered by the SUFP, which is appended to the Development Plan. Specific standards relating to the appeal site are set out within the SUFP, including building heights, infrastructure, support services, amenities, parking and phasing. All proposals within the SUFP area are required to refer to the objectives set out in Appendix 16 of the Development Plan with respect to the 'Sustainable Neighbourhood Infrastructure' zoning (including section 2.3.6 of the

Framework Plan). The site is not identified in the Development Plan as being within an area at risk of flooding, but it is within the area subject to the terms of the 'Luas line B1 extension supplementary development contribution scheme'.

## **7.0 The Appeal**

### **7.1. Grounds of Appeal – First Party**

- 7.1.1. A first-party appeal has been lodged only against condition number 2 attached to the Planning Authority's notification of a decision to grant planning permission for the proposed development. The appeal initially sets out the planning context and history for the site, the design rationale, the intended site services, a visual impact assessment, daylight and shadow analysis, and phasing and environmental considerations. The following grounds of appeal are raised:

#### Design

- condition number 2 should be omitted from the permission, with the implications of attaching this condition resulting in a reduction of seven proposed units during a housing crisis and an excess provision of three-bedroom units;
- the design of the scheme was considered at length by the applicant, including the Planning Authority's formal opinion requesting robust justification for the unit mix, which was addressed as part of the application;
- the layout of the development was considered the most pragmatic in terms of daylight, orientation and general arrangement;

#### Site Context

- within a ten-minute walk of the site the central statistics office (CSO) data for the relevant small areas indicates an existing housing mix accommodating 19% one-person, 61% two / three-person, 18.5% four / five-person and 1.5% six-person units;
- a comparable mix of units was granted for the adjoining strategic housing development at Rockbrook Central (under ABP ref. 304405-19), where it was considered that notwithstanding the request of the Planning Authority to

increase the provision of three-bedroom units, the proposed unit mix would meet the standards set out in national guidance in light of a predominance of larger three-bedroom plus units within the wider area;

### Development Plan Policy

- the Planning Authority accepted that the proposed development accords with the zoning objectives for the site, as contained in the Development Plan and SUFP, as well as a host of other criteria;
- the specific local objective pertaining to the site and wider national policy context provides an enhanced status for the Board to remove condition number 2, as supported by the High Court Judgement 'Michael Redmond v An Bord Pleanála [2019 No.709 J.R.]', a copy of which is appended to the appeal;
- in attaching condition number 2 the Planning Authority fail to recognise the enhanced status for the site arising from the specific local objective assigned to it, which supersedes other policies and objectives of the Development Plan;
- the Development Plan does not set an absolute mandatory requirement for 40% three-bedroom units in a scheme, as the provisions outlined in section 12.3.3.1 of the Development Plan recognise that schemes should 'generally' be in accordance with Table 12.1 of the Development Plan;
- the Planning Authority has applied the provisions of policy objective PHP27 and the HNDA of the Development Plan in an isolated and inappropriate manner, which fails to recognise that the applicant has demonstrated that the unit mix is entirely appropriate for the area;
- section 2.9.2 of the HNDA appended to the Development Plan allows for a unit mix to be determined based on existing and permitted unit types within a ten-minute walk of the development;

### Planning Guidelines

- prioritisation of apartment delivery on brownfield land, such as the appeal site, is supported within the NPF, Housing for All, the Sustainable Residential Development Guidelines, the Building Heights Guidelines, the New Apartment

Guidelines, the RSES and the Development Plan, each of which provide justification for the omission of condition number 2;

- consequent to section 34(2)(ba) of the Act of 2000, the specific planning policy requirements (SPPRs) of the New Apartment Guidelines supersede the provisions of the Development Plan and provide a basis for the omission of condition number 2;
- SPPR 2 of the New Apartment Guidelines sets out that all standards in the guidance shall generally be applied to building refurbishment schemes on sites of any size, or urban infill schemes, but there shall also be scope for Planning Authorities to exercise discretion on a case-by-case basis having regard to the overall quality of a proposed development;
- section 7.15 of the Development Management Guidelines highlights that a statement of objectives in the Development Plan should not be regarded as imposing a blanket limit on development and does not relieve the Planning Authority of their responsibilities in considering the overall merits of the proposals.

## **7.2. Planning Authority Response**

- 7.2.1. The Planning Authority's response to the grounds of appeal requests that the Board refer to the Planning Officer's report for the application and they state that the grounds of appeal do not raise any new matter that would justify a change of attitude to the proposed development.

## **7.3. Observations**

- 7.3.1. None received.

## **7.4. Further Submissions**

- 7.4.1. No further submissions were received by the Board in response to the appeal.



## **8.0 Assessment**

### **8.1. Introduction**

- 8.1.1. This assessment considers the proposed development in the context of the statutory plan for the area, as well as national policy, regional policy and relevant guidelines, including section 28 guidelines referenced in section 6.1 above. I have reviewed the application and appeal documentation and I am aware of the planning provisions relating to the site and the proposed development. I am satisfied that matters do not arise specifically with regard to the proposed development and land-use zoning objectives, building heights, impacts on neighbouring amenities, the standard of the residential accommodation proposed, services, amenities, access, parking, traffic and flood risk. These matters have been addressed by the Planning Authority in their assessment with conditions attached, and the appeal submitted does raise issue with these matters.
- 8.1.2. I acknowledge that the Planning Authority refer to a net density figure for the development as amounting to 564 units per hectare, which would generally be considered an excessively high density in planning terms and one that would be likely to point towards substantive shortfalls in a proposed scheme, possibly including substandard residential accommodation or a lack of residential amenities, such as open space. However, the density of the scheme is primarily guided by the specific local objective for the site (SLO141) and the fact that this site forms part of a much larger urban block that had originally been permitted in 2006 (under ref. DLRCC ref. D05A/1159) and any logical consideration of residential density needs to be undertaken in this context. The Planning Authority calculation of the net site area excludes areas beyond the footprint of the building on site, which would appear an unreasonable approach when considering the original masterplan for the lands provided for the existing public plaza and walkway running along the immediate eastern side of the appeal site, as illustrated in figure 8 of the first-party appeal. The Planning Authority state that the Development Plan was prepared having regard to the Sustainable Urban Housing Guidelines, the Building Heights Guidelines and the New Apartment Guidelines, therefore, I am satisfied that in arriving at the assignment of a specific local objective (SLO141) allowing for up to 110 residential units on the appeal site, the provisions set out under the aforementioned section 28

Guidelines will have been observed and applied. Taking an area surrounding the footprint of the structures on site, as well as the public realm directly adjoining the building including walkways, plazas and seating areas, the site area would more reasonably amount to 0.4ha at surface level. This would result in a residential density of approximately 275 units per hectare, which would be comparable with the 255 units per hectare permitted on the Rockbrook Central site (ABP ref. 304405-19) and 365 units per hectare permitted on the Sandyford Central site (ABP ref. 305940-19). Furthermore, the site is in an accessible location in the city with easy access to a high capacity Luas stop, as well as reasonable access via public buses. The proposed density of the scheme would be in keeping with recent densities permitted in the subject urban block, as well as being suitable for such densities based on the provisions of the New Apartment Guidelines. Consequently, I am satisfied that there are no concerns arising with respect to the residential density of the subject proposals.

- 8.1.3. From a climate change perspective, the capability to use the existing structures on site and avoid demolishing these structures would be of substantive benefit in maintaining and using the embodied carbon of these structures. Furthermore, the completion of a shell structural and the active use of the resultant building would have positive implications for the general appearance and vitality of the area, and I accept that the general design, form and layout of the development has been very much dictated by the constraints of reusing the partially-complete structures on site. With the exception of condition number 2 relating to the unit mix proposed, the first-party appellant has not raised an issue with the need to comply with other conditions.
- 8.1.4. Condition number 2 requires the unit mix within the permitted building to be completed, to provide for a maximum of 60% one and two-bedroom apartments and 30% one-bedroom apartments, as well as a minimum of 40% three-bedroom or larger-size apartments. The proposed unit mix would comprise 20% one-bedroom apartments, 54.5% two-bedroom apartments and 25.5% three-bedroom apartments. To meet the requested unit mix provisions, this would entail internal alterations to the layout of the apartments, which the Planning Authority assert to be capable of being undertaken via amalgamation of smaller units within larger units. The appellant asserts that this condition would result in the loss of seven units in the development, providing a total of 103 residential units.

- 8.1.5. Having regard to the nature and scale of the proposed development, the grounds of appeal submitted solely focussing on condition number 2 and the nature of condition number 2, it is considered that the determination by the Board of the application, as if it had been made to it in the first instance, would not be warranted in this case. Therefore, I am satisfied that the Board should determine the matters raised in the appeal, in accordance with Section 139 of the Act of 2000, which sets out that the Board shall be restricted in such circumstances to considering the terms of any previous permission considered by the Board to be relevant and matters to which a Planning Authority must have regard to, as specified in subsection 34(2)(a) of the Act of 2000.
- 8.1.6. When making a decision in relation to an application, subsection 34(2)(a) of the Act of 2000 states that a Planning Authority shall be restricted to considering the proper planning and sustainable development of the area, including the provisions of the Development Plan, any guidelines issued by the Minister under section 28, the provisions of any special amenity area order relating to the area, any European site or other area prescribed for the purposes of section 10(2)(c) of the Act of 2000, the policy of the Government, the Minister or any other Minister of the Government, the matters referred to in subsection 34(4) addressing conditions that would be appropriate to attach, previous developments by the applicant that have not been satisfactorily completed, previous convictions against the applicant for non-compliance with the Act of 2000, the Building Control Act 2007 or the Fire Services Act 1981, and any other relevant provision or requirement of the Act of 2000, and any regulations made thereunder.
- 8.1.7. There are no special amenity area orders relating to the area of the site and section 10 of this report addresses whether the proposed development would have a significant effect on any European sites in view of their conservation objectives. An EIA screening is carried out in section 9 of this report to consider whether the proposed development would be likely to have significant effects on the environment and whether an EIA report (EIAR) needs to be prepared for the project. Policy regarding apartment unit mix is contained in the section 28 New Apartment Guidelines. Dún Laoghaire-Rathdown County Development Plan 2022-2028 also includes planning policy with respect to apartment unit mix. I have not been made aware of any previous developments that have not been satisfactorily completed by

the applicant, Dante Property Company Ltd, while I also acknowledge that it is the applicant's intention as part of the subject proposals to complete a previously permitted incomplete structure, albeit for alternative use. I have not been made aware of any previous convictions against the applicant company for non-compliance with the Act of 2000, the Building Control Act 2007 or the Fire Services Act 1981. In relation to the consideration of subject 34(4) of the Act of 2000, I note that my assessment considers the appropriateness of attaching a condition to the permission. Accordingly, I am satisfied that for the planning assessment of my report it is the provisions of the New Apartment Guidelines, the Development Plan and the terms of any previous relevant permission that need to be considered when adjudicating on the appropriateness of attaching the subject condition number 2.

## 8.2. Unit Mix

### Development Plan Policy

- 8.2.1. Section 12.3.3.1 of the Development Plan addressing residential size and mix, requires planning applications for 50 residential units or more to incorporate a variety of housing units by type and size, in order to meet the differing household needs in the County. I am satisfied that scope to provide alternative housing types to apartments on this site is constrained by the intention to sustainably reuse the existing six to 14-storey structures on site. As a proposal for apartments within a built-up urban area, the applicant is required to detail the existing and permitted unit types within a ten-minute walk of the proposed development and provide a detailed breakdown of the proposed units to generally be in accordance with table 12.1 of the Development Plan. This table sets out that proposed apartment developments for 50 units or more in the SUFP area may include up to 60% studio, one and two-bedroom units, with no more than 30% of the overall development as a combination of one-bedroom and studio units and no more than 20% of the overall development as studio units. As a consequence and as stated in the table, a minimum of 40% of the proposed units must feature three bedrooms or more, aligning with the requirements of the subject condition number 2. Further to this, section 12.3.1 of the Development Plan sets out that no more than 10% of the total number of units in any private residential development may comprise of two-bedroom, three-person apartment types.

- 8.2.2. Appendix 2 of the Development Plan comprises the Housing Strategy and HNDA addressing demographics and household statistics at various geographical levels, including small area population statistics (SAPS) and electoral division (ED) levels. It is this appendix that the Planning Authority assert to provide their rationale for a specific alternative housing mix for the SUFP area. This is confirmed in policy objective PHP27 of the Development Plan addressing housing mix and stating that it is a policy objective to encourage the establishment of sustainable residential communities by ensuring that a wide variety of housing and apartment types, sizes and tenures is provided throughout the County in accordance with the provisions of the Housing Strategy and HNDA.
- 8.2.3. The Planning Authority's reason for attaching condition number 2 to their decision to grant permission is stated as being 'in the interests of achieving the policies and objectives of the Housing Strategy set out in the County Development Plan'. I note that the Housing Strategy and HNDA supports ten specific policy objectives contained in chapter 4 of the Development Plan and a review of same would only suggest that it is the aforementioned policy objective PHP27 that the Planning Authority is attempting to ensure that the proposed development would comply with.
- 8.2.4. When addressing unit mix within their report, the various extracts of the Development Plan relating to unit mix are initially set out by the Planning Authority, prior to indicating the documentation provided with the application to support the first-party appellant's rationale for the proposed unit mix. The Planning Authority refer to NPO 37 of the NPF stating a requirement for Planning Authorities to prepare HNDAs. The primary means for the Planning Authority rebutting the unit mix proposed in the development, centres on their approach and rationale for the unit mix recommended for the SUFP area in the HNDA. The Planning Authority are satisfied that the HNDA provides robust justification for the unit mix required as a consequence of the planning condition, and they conclude by outlining how internal layout alterations could potentially be employed to meet the unit mix requirements set out in table 12.1 of the Development Plan.
- 8.2.5. The first-party appellant asserts that the Planning Authority's use of the word 'generally' when referring to the application of unit mix requirements set out in table 12.1 of the Development Plan, implies that the provisions of this table are not absolute or mandatory requirements and that there is not a strict necessity to provide

a minimum of 40% three-bedroom apartments in the development. Table 12.1 specifically sets out minimum and maximum limits with respect to the proportion of unit sizes based on the number of bedrooms. The Development Plan clearly stipulates on page 238 that where the apartment element of a proposed development is in excess of 50 units, it would be necessary to comply with the unit mix provisions in table 12.1. Accordingly, I am satisfied that the unit mix provisions outlined in table 12.1 of the Development should be complied with in this case.

- 8.2.6. The first-party appellant asserts that the HNDA sets out that the details of existing and permitted unit types within a ten-minute walk of the proposed development may provide justification for an alternative unit mix in a development. As part of this the first-party appellant provided a map identifying an area within a ten-minute walking distance of the appeal site. The first party also referred to the housing mix as responding to the housing figures at a county and ED level, and that the Development Plan provides scope to respond to housing needs at a smaller scale i.e. a ten-minute walking catchment. The appellant has set out information identifying the existing housing size based on 2022 census data in the SAPS that are within a ten-minute walking catchment of the site. Based on the number of people residing in the respective units, the information broadly indicates 20% of larger-size units in the housing stock capable of accommodating four people or more. In my opinion this would not suggest a substantive proportion of larger-size residential units, such as three-bedroom houses or apartments, within a ten-minute walk of the site.
- 8.2.7. In their Statement of Housing Mix, the first party refers to the concentration residential developments in the immediate area, including the 428 standard apartments and 754 build-to-rent apartments permitted in the immediate urban block, including those recently completed in the Rockbrook Central development. These 1,182 permitted units would provide an additional mix of 6.5% studio apartments, 35.5% one-bedroom, 53.5% two-bedroom and 4.5% three-bedroom apartments. The information collated by the first party identifies 7.9% three-bedroom units within a ten-minute walk of the appeal site. Therefore, the information presented and available would suggest a very limited provision of larger size, three-bedroom apartments emerging within the immediate area to the site.

- 8.2.8. Based on the housing information collated by the appellant, the first-party appellant asserts that when determining the unit mix for the proposed development, the Planning Authority incorrectly applied policy objective PHP27 and the HNDA of the Development Plan, as they failed to sufficiently consider how the subject proposals would be responding to the immediate housing context. The Development Plan is very clear in setting out the unit mix requirements for the SUIP area arising from the HNDA and arising from my assessment above I do not consider the first-party appellant has provided any substantive or definitive information to demonstrate that the existing and permitted unit types within a ten-minute walk of the appeal site provide justification for an alternative unit mix than that required in the SUIP area, as set out in table 12.1 of the Development Plan. Accordingly, I am satisfied that the Planning Authority correctly applied policy objective PHP27 and the provisions of the HNDA of the Development Plan when adjudicating on the application and resolving to attach condition number 2 to their decision.
- 8.2.9. The appellant asserts that as a specific local objective has been assigned to the site, this provides an enhanced status for the proposed development to be undertaken in the manner initially proposed in the application and without complete reliance on the other specific policies and objectives of the Development Plan. The first-party appellant asserts that support and recognition for this enhanced status is provided in principle via the High Court Judgement 'Michael Redmond v An Bord Pleanála [2019 No.709 J.R.]', which I note to refer to an 'institutional lands' objective. My review of the Development Plan does not indicate a particular easement provided for this site in overcoming other policies or objectives in the Development Plan, including the residential unit mix. Furthermore, while the subject specific local objective in this case (SLO141) refers to scope for up to 110 units to be provided on the appeal site, this is clearly an assigned unit limit for development on the site, and as such in meeting the unit mix provisions of the Development Plan, as well as other standards, there must be a reasonable acceptance that the accommodation of 110 units on the appeal site may or may not be achievable and that 110 units is not a statutory target. In conclusion, I am satisfied that the Development Plan does not provide justification for removal, or amendment, of the subject condition number 2.

### New Apartment Guidelines

- 8.2.10. The first-party appellant sets out grounds of appeal referring to the discretionary approach provided to Planning Authorities with respect to the application of residential standards in new apartment developments based on the wording of SPPR 2 of the New Apartment Guidelines.
- 8.2.11. Sections 2.16 to 2.22 inclusive of the New Apartment Guidelines specifically address housing mix requirements, including SPPRs 1 and 2. As a broad and consistent, but flexible safeguard, a nationally-determined apartment mix is initially set out in SPPR 1 restricting housing developments to include up to 50% one-bedroom or studio-type units, with no more than 20% to 25% of the total proposed development as studios and no minimum requirement set for apartments with three or more bedrooms. This SPPR leads on to state that a Development Plan may specify a mix for apartments and other housing developments, but only further to an evidence-based HNDA that has been agreed for an area, county, city or metropolitan area, and incorporated into the relevant Development Plan.
- 8.2.12. In specific circumstances, SPPR 2 of the New Apartment Guidelines allows for the provisions under SPPR 1 of the New Apartment Guidelines not to apply. These circumstances include all building refurbishment schemes on sites of any size, or urban infill schemes on sites of up to 0.25ha. In my opinion, based on the wording of SPPR 2, the provisions of SPPR 1 always apply to residential schemes of 50 or more units. I also note that the existing structure on site is not complete, therefore, I am satisfied that the subject development could not be considered a refurbishment scheme.
- 8.2.13. SPPR 2 of the New Apartment Guidelines also states that there shall be scope for Planning Authorities to exercise discretion on a case-by-case basis, having regard to the overall quality of a proposed development. In this regard, the first-party appellant asserts that the revised unit mix required by the Planning Authority would result in a reduction of seven proposed units during a housing crisis and an excess provision of three-bedroom units, and that the final design of the scheme was considered the most pragmatic in terms of daylight, orientation and general arrangement.
- 8.2.14. I am satisfied that the potential reduction by seven apartments in order to comply with the subject condition would not result in an unsustainable level of development



on the appeal site with intensive and compact use of an urban site continuing to be provided in line with the principles supported in the NPF, the Sustainable Residential Development Guidelines, the Building Heights Guidelines, the New Apartment Guidelines, the RSES and the Development Plan. The potential reduction by seven units would also provide for increased provision of amenities for future residents on a pro rata basis. Based on my findings above and as the proposed apartments and amenities would generally appear to be of a reasonable standard meeting or marginally exceeding relevant development and accommodation standards, as opposed to a unique, exemplary or other exceptionally-positive standards, I am satisfied that the quality of the proposed development is not one that would support the exercise of a discretionary approach in this case, nor would it warrant disregarding the provisions outlined in SPPR 1.

- 8.2.15. In conclusion, I am satisfied that the provisions set out in SPPR 1 of the New Apartment Guidelines apply, and these allow the Planning Authority to rely on their own HNDA incorporated in into the Development Plan when setting a specific unit mix for residential development on the appeal site. Accordingly, I do not consider the provisions of the New Apartment Guidelines to provide justification for removal, or amendment, of the subject condition number 2.

#### Relevant Previous Permissions

- 8.2.16. The grounds of appeal submitted by the first-party assert that a comparable mix of units was granted for the adjoining strategic housing development at Rockbrook Central (under ABP ref. 304405-19), where it was considered that notwithstanding the request of the Planning Authority to increase the provision of three-bedroom units, the Board was satisfied that the proposed unit mix would meet the standards set out in national guidance in light of a predominance of larger three-bedroom plus units within the wider area. The apartment unit mix permitted for the Rockbrook Central development provided for 7% studio, 29% one-bedroom, 59% two-bedroom and 5% three-bedroom apartments. The decision of the Board for the Rockbrook Central development (under ABP ref. 304405-19) was based on the previous Dún Laoghaire-Rathdown County Development Plan 2016-2022, which I note sought a 40% one-bedroom, 40% two-bedroom and 20% three-bedroom unit mix, and it did not feature a HNDA or a specific unit mix requirement for the subject SUFP area. Consequently, I fail to see how the terms of this previous permission, considered

against an alternative statutory plan featuring differing housing mix provisions, can be considered to be relevant and I am not aware of any other permissions that could be considered to be relevant in justifying a unit mix differing from that required for this area based on the provisions of the current Development Plan.

### Conclusion

- 8.2.17. In conclusion, I am satisfied that condition number 2, requiring a revised apartment mix to comply with the provisions of the Development Plan, would be warranted, as it would be necessary in complying with policy objective PHP27 of the Development Plan with respect to the unit mix assigned for the SUIP area, and as the New Apartment Guidelines or other permissions do not provide scope for the unit mix standards of the Development Plan to be disregarded in this case. Further to this, based on the suggested unit amalgamations referred to by the Planning Authority, I am satisfied that the subject condition would not have material implications in terms of the achievement of other relevant residential development standards in the development, including those relating to lighting, layouts, floor areas, aspect, open space and servicing.

## **9.0 Environmental Impact Assessment Screening**

- 9.1.1. The application addresses the issue of EIA within an EIA Screening Report that contains information to be provided in line with Schedule 7A of the Planning and Development Regulations 2001, as revised (hereinafter 'the Planning Regulations'). I have had regard to same in this screening assessment. Where an application is made for subthreshold development and Schedule 7A information is submitted, the Board must carry out a screening determination, therefore, it cannot screen out the need for EIA at preliminary examination.
- 9.1.2. This proposed development is of a class of development included in Schedule 5 to the Planning Regulations. Schedule 5 to Part 2 of the Planning Regulations provides that mandatory EIA is required for various classes of development, including the following:
- Class 10(b)(i) construction of more than 500 dwelling units,

- Class 10(b)(iv) 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.

\*a 'business district' means a district within a city or town in which the predominant land use is retail or commercial use.

9.1.3. The development is described in section 3 above and would provide for completion of existing six to 14-storey structures and extension via two additional storeys to the six-storey element amounting to a stated gross floor area of 14,685sq.m, accommodating 110 apartments and residents' support services, on a gross site area measuring 1.2ha. Taking into consideration the scale and nature of development proposed and the gross site area, having regard to classes 10(b)(i) and 10(b)(iv) of Schedule 5 to Part 2 of the Planning Regulations, the nature and the size of the proposed development is below the applicable class 10(b) mandatory thresholds requiring submission of an EIAR and the undertaking of an EIA.

9.1.4. The criteria within Schedule 7 to the Planning Regulations are relevant in considering whether this proposed development would be likely to have significant effects on the environment that could and should be the subject of EIA. The residential uses proposed would be similar to the surrounding land uses existing and permitted in the area, including within the subject urban block. The proposed development would not increase the risk of flooding and it would not give rise to significant use of natural resources, the production of waste, pollution, nuisance or a risk of accidents. A report titled 'Structural Report on Existing Structure' accompanied the application confirming that the structure would be fit for use as a residential development. A Construction Environmental Management Plan accompanied the application outlining the measures that would be employed as part of the safe operation of construction activities on site. A Civil Infrastructure Report has also been submitted with the application setting out that the development would be served by municipal foul wastewater drainage and water supplies, which Uisce Éireann agree to.

9.1.5. The site does not support habitats or species of conservation significance, as highlighted in the Ecological Report submitted with the application. Connectivity of the site with protected areas and their associated qualifying interest species is

considered further below in section 10 of this report. Given the existing base structure below ground, the possibility of substantive archaeological finds on the site would not arise. The development would be substantive distances from areas of conservation status, including Protected Structures.

9.1.6. The reports submitted with the application, as listed in section 3.3 above, address a variety of environmental issues and the environmental impacts of the proposed development. The reports demonstrate that, subject to the various recommended construction and design-related mitigation measures, the proposed development would not have a significant impact on the environment. I have had regard to the characteristics of the site, the location of the proposed development, and the type and characteristics of the potential impacts. Having regard to the Schedule 7A information, I have examined the sub-criteria and all submissions, and I have considered all information that accompanied the application and appeal, including the following:

- EIA Screening Report;
- AA Screening Report;
- Ecological Report;
- DLRCC Climate Policy Report;
- Planning Statement;
- Townscape and Visual Impact Assessment;
- Architectural and Urban Design Statement;
- Civil Infrastructure Report;
- Construction Environmental Management Plan;
- Site Specific Flood Risk Assessment;
- Traffic Assessment Report.

9.1.7. In addition, noting the requirements of Article 103(1A)(a) of the Planning Regulations, the first party has provided a standalone report as part of the application submitted to the Planning Authority indicating how the available results of other relevant assessments have taken into account the effects of the project on the

environment pursuant to European Union legislation, other than the EIA Directive. In this regard I note the following EU Directives are addressed by the first party in their 'Statement in accordance with Article 103(1A)a' and the application documentation:

- Directive 92/43/EEC – Habitats Directive;
- Directive 2009/147/EC - Birds Directive;
- Directive 2010/31/EU – Energy Performance of Buildings;
- Directive 2000/60/EC - Water Framework Directive;
- Directive 2008/98/EC - Waste Framework Directive;
- Directive 2010/75/EU - Industrial Emissions Directive;
- Directive 2002/49/EC - Environment Noise Directive;
- Directive 2000/14/EC – Outdoor Noise Directive;
- Directive 2018/850/EU - Landfill of Waste;
- Directive 2006/21/EC – Management of Waste from Extractive Industries;
- Directive 2012/27/EU – Energy Efficiency;
- Directive 2003/87/EC – Greenhouse Gas Emissions allowances;
- Directive 2012/18/EU – Major Accidents.

9.1.8. Under the relevant themed headings, the EIA screening information prepared by the first-party appellant addresses the implications and interactions of the proposed development and concludes that the development would not be likely to have significant effects on the environment. I am satisfied that all other relevant assessments have been identified for the purposes of screening for EIA. I have had regard to all of the reports detailed above and I have taken them into account in this assessment, together with the Strategic Environmental Assessment of the Development Plan. I am satisfied that the information required under Article 103(1A)(a) of the Planning Regulations has been submitted. The information provided in the application EIA Screening Report identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

9.1.9. I have completed an EIA screening assessment of the proposed development with respect to all relevant considerations, as set out in Appendix A to this report. I am satisfied that the location of the project, the nature of the project and the environmental sensitivity of the geographical area would not justify a conclusion 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 that would be rendered significant by their extent, magnitude, complexity, probability, duration, frequency or reversibility. In these circumstances, the application of the criteria in Schedule 7 of the Planning Regulations to the proposed subthreshold development demonstrates that it would not be likely to have significant effects on the environment and that an EIA is not required. This conclusion is consistent with the EIA screening information submitted with the subject application and the opinion of the Planning Authority. Any of the suggested conditions, including the condition altering the unit mix in the proposed development, would not have a material impact on the conclusions of this screening. I am satisfied that a Screening Determination can be issued confirming that there is no requirement for an EIAR to be prepared for the project based on the above considerations.

## **10.0 Appropriate Assessment**

### **10.1. Introduction**

10.1.1. The requirements of Article 6(3) of the Habitats Directive, related to screening the need for appropriate assessment (AA) of a project under section 177U of the Act of 2000, are considered in the following section.

### **10.2. Compliance with Article 6(3) of the EU Habitats Directive**

10.2.1. The Habitats Directive deals with the conservation of natural habitats and of wild fauna and flora throughout the EU. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of a European site, but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to an AA of its implications for the site, in view of the European site's conservation objectives. The competent authority must be satisfied that the proposal would not adversely affect the integrity

of a European site before consent can be given. European sites include SACs and SPAs forming part of the Natura 2000 network.

### 10.3. Stage 1 AA Screening

- 10.3.1. The first-party appellant has submitted a document titled 'Appropriate Assessment Screening Report' dating from June 2023 and prepared by Enviroguide Consulting. This document provides a description of the site, the receiving environment and the proposed development, as well as identifying European sites within the possible zone of influence of the development.
- 10.3.2. In their AA Screening Report, the first-party appellant concludes that, on the basis of objective scientific information, the possibility that the proposed development, either on its own or in combination with other plans or projects, having a significant effect on any European site, can be excluded.

#### Site Location

- 10.3.3. A description of the site is provided in section 2 and as part of the assessments above. The site contains a partially-completed structure over basement structures. The habitats recorded on site, as listed in the application Ecological Report, are stated to primarily comprise artificial surfaces (BL3) and recolonising bare ground (ED3) habitats. No Annex I habitats were recorded within the site during the habitat surveys and no species listed for protection under the Habitats Directive or the Wildlife Act were recorded as using the site. Invasive species were not recorded on the site during surveys for the submitted Ecological Report. The first-party appellant's AA Screening Report sets out the surface water drainage regime in the area, highlighting that Carrickmines River is the closest substantial natural waterbody to the site, located approximately 570m to the south of the site and flowing southeast towards Dublin Bay within the Dargle River subcatchment. The closest waterbody within the Dodder River subcatchment, which the appeal site is situated within, is the Brewery Stream approximately 1.3km to the northeast of the site and flowing north to the coast at Blackrock on Dublin Bay. According to the Environmental Protection Agency (EPA), the quality of the Dublin Bay coastal waterbody is classified as 'good' and is 'not at risk' of achieving good status based on categorisation for the purposes of the Water Framework Directive (WFD).

### Proposed Development

10.3.4. A detailed description of the proposed development is provided in section 3 above and expanded upon below where necessary. Details of the construction phase of the development are provided throughout the subject application documentation, including the Structural Report on Existing Structure and the Construction Environmental Management Plan. According to the first-party appellant, foul wastewater from the operational phase of the proposed development would discharge to the public network for treatment at the Ringsend Wastewater Treatment Plant (WWTP). Following various standard practice construction site environmental management measures, as well as sustainable urban drainage system (SUDS) measures, storm waters would be discharged into the network running along Blackthorn Drive, which flows toward the Brewery Stream. Ultimately the resultant treated wastewaters and storm waters from the proposed development would discharge to Dublin Bay.

10.3.5. The potential direct, indirect and secondary impacts that could arise as a result of the proposed works and which could have a negative effect on the qualifying interests of European sites, include the following:

- Construction Phase – demolition, surface water runoff, disturbance and emissions, including dust, noise and vibration;
- Operation Phase – disturbance, surface water runoff and emissions to water.

### Submissions and Observations

10.3.6. The submissions and observations from observers, the Planning Authority and prescribed bodies are summarised in sections 5 and 7 of this report. The Planning Authority conclude that the proposed development would not be likely to significantly impact on any European sites.

### European Sites

10.3.7. The nearest European sites to the appeal site, including SACs and SPAs, comprise the following:



**Table 4.** European Sites

Site Code	Site Name / Qualifying Interests	Distance	Direction
004024	<p>South Dublin Bay and River Tolka Estuary SPA</p> <ul style="list-style-type: none"> <li>• Light-bellied Brent goose <i>Branta bernicla hrota</i> [A046]</li> <li>• Oystercatcher <i>Haematopus ostralegus</i> [A130]</li> <li>• Ringed plover <i>Charadrius hiaticula</i> [A137]</li> <li>• Grey plover <i>Pluvialis squatarola</i> [A141]</li> <li>• Knot <i>Calidris canutus</i> [A143]</li> <li>• Sanderling <i>Calidris alba</i> [A149]</li> <li>• Dunlin <i>Calidris alpina</i> [A149]</li> <li>• Bar-tailed godwit <i>Limosa lapponica</i> [A157]</li> <li>• Redshank <i>Tringa totanus</i> [A162]</li> <li>• Black-headed gull <i>Chroicocephalus ridibundus</i> [A179]</li> <li>• Roseate tern [A193]</li> <li>• Arctic tern [A194]</li> <li>• Wetland and waterbirds [A999]</li> </ul>	3.5km	northeast
000210	<p>South Dublin Bay SAC</p> <ul style="list-style-type: none"> <li>• Mudflats and sandflats not covered by seawater at low tide [1140]</li> <li>• Annual vegetation of drift lines [1210]</li> <li>• Salicornia and other annuals colonising mud and sand [1310]</li> <li>• Embryonic shifting dunes [2110]</li> </ul>	3.5km	northeast
002122	<p>Wicklow Mountains SAC</p> <ul style="list-style-type: none"> <li>• Oligotrophic waters containing very few minerals of sandy plains (<i>Littorelletalia uniflorae</i>) [3110]</li> <li>• Natural dystrophic lakes and ponds [3160]</li> <li>• Northern Atlantic wet heaths with <i>Erica tetralix</i> [4010]</li> <li>• European dry heaths [4030]</li> <li>• Alpine and Boreal heaths [4060]</li> <li>• Calaminarian grasslands of the <i>Violetalia calaminariae</i> [6130]</li> <li>• Species-rich <i>Nardus</i> grasslands, on siliceous substrates in mountain areas (and submountain areas, in Continental Europe) [6230]</li> <li>• Blanket bogs (* if active bog) [7130]</li> </ul>	6.5km	south

	<ul style="list-style-type: none"> <li>• Siliceous scree of the montane to snow levels (Androsacetalia alpinae and Galeopsietalia ladani) [8110]</li> <li>• Calcareous rocky slopes with chasmophytic vegetation [8210]</li> <li>• Siliceous rocky slopes with chasmophytic vegetation [8220]</li> <li>• Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]</li> <li>• Lutra lutra (Otter) [1355]</li> </ul>		
004040	Wicklow Mountains SPA <ul style="list-style-type: none"> <li>• Merlin (Falco columbarius) [A098]</li> <li>• Peregrine (Falco peregrinus) [A103]</li> </ul>	6.6km	south
000725	Knocksink Wood SAC <ul style="list-style-type: none"> <li>• Petrifying springs with tufa formation (Cratoneurion) [7220]</li> <li>• Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]</li> <li>• Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]</li> </ul>	7.2km	south
004172	Dalkey Islands SPA <ul style="list-style-type: none"> <li>• A192 Roseate Tern (<i>Sterna dougallii</i>)</li> <li>• A194 Arctic Tern (<i>Sterna paradisaea</i>)</li> <li>• A193 Common Tern (<i>Sterna hirundo</i>)</li> </ul>	7.9km	east
003000	Rockabill to Dalkey Islands SAC <ul style="list-style-type: none"> <li>• Harbour porpoise [1351]</li> <li>• Reefs [1170]</li> </ul>	8.1km	east
000713	Ballyman Glen SAC <ul style="list-style-type: none"> <li>• Petrifying springs with tufa formation (Cratoneurion) [7220]</li> <li>• Alkaline fens [7230]</li> </ul>	8.2km	south
000206	North Dublin Bay SAC <ul style="list-style-type: none"> <li>• Mudflats and sandflats not covered by seawater at low tide [1140]</li> <li>• Annual vegetation of drift lines [1210]</li> </ul>	8.5km	northeast

	<ul style="list-style-type: none"> <li>• Salicornia and other annuals colonising mud and sand [1310]</li> <li>• Atlantic salt meadows [1330]</li> <li>• Mediterranean salt meadows [1410]</li> <li>• Embryonic shifting dunes [2110]</li> <li>• Shifting dunes along the shoreline with marram grass <i>Ammophila arenaria</i> (white dunes) [2120]</li> <li>• Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</li> <li>• Humid dune slacks [2190]</li> <li>• Petalwort <i>Petalophyllum ralfsii</i> [1395]</li> </ul>		
004006	<p>North Bull Island SPA</p> <ul style="list-style-type: none"> <li>• Light-bellied brent goose [A046]</li> <li>• Shelduck <i>Tadorna</i> [A048]</li> <li>• Teal <i>Anas crecca</i> [A054]</li> <li>• Pintail <i>Anas acuta</i> [A054]</li> <li>• Shoveler <i>Anas clypeata</i> [A056]</li> <li>• Oystercatcher [A130]</li> <li>• Golden plover <i>Pluvialis apricaria</i> [A140]</li> <li>• Grey plover [A141]</li> <li>• Knot [A143]</li> <li>• Sanderling [A144]</li> <li>• Dunlin [A149]</li> <li>• Black-tailed godwit <i>Limosa</i> [A156]</li> <li>• Bar-tailed godwit [A157]</li> <li>• Curlew <i>Numenius arquata</i> [A160]</li> <li>• Redshank [A162]</li> <li>• Turnstone <i>Arenaria totanus</i> [A169]</li> <li>• Black-headed gull [A179]</li> <li>• Wetland and waterbirds [A999]</li> </ul>	8.6km	northeast
001209	<p>Glenasmole Valley SAC</p> <ul style="list-style-type: none"> <li>• Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210]</li> <li>• Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410]</li> <li>• Petrifying springs with tufa formation (Cratoneurion) [7220]</li> </ul>	10.2km	west

004025	<p>Malahide Estuary SPA</p> <ul style="list-style-type: none"> <li>• A130 Oystercatcher (<i>Haematopus ostralegus</i>)</li> <li>• A005 Great Crested Grebe (<i>Podiceps cristatus</i>)</li> <li>• A162 Redshank (<i>Tringa totanus</i>)</li> <li>• A067 Goldeneye (<i>Bucephala clangula</i>)</li> <li>• A141 Grey Plover (<i>Pluvialis squatarola</i>)</li> <li>• A149 Dunlin (<i>Calidris alpina</i>)</li> <li>• A046 Light-bellied Brent Goose (<i>Branta bernicla hrota</i>)</li> <li>• A054 Pintail (<i>Anas acuta</i>)</li> <li>• A048 Shelduck (<i>Tadorna tadorna</i>)</li> <li>• A069 Red-breasted Merganser (<i>Mergus serrator</i>)</li> <li>• A143 Knot (<i>Calidris canutus</i>)</li> <li>• A156 Black-tailed Godwit (<i>Limosa limosa</i>)</li> <li>• A140 Golden Plover (<i>Pluvialis apricaria</i>)</li> <li>• A157 Bar-tailed Godwit (<i>Limosa lapponica</i>)</li> </ul> <p>Habitats</p> <ul style="list-style-type: none"> <li>• Wetlands</li> </ul>	10.9km	north
000205	<p>Malahide Estuary SAC</p> <ul style="list-style-type: none"> <li>• 1140 Mudflats and sandflats not covered by seawater at low tide</li> <li>• 1310 Salicornia and other annuals colonising mud and sand</li> <li>• 1330 Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>)</li> <li>• 1410 Mediterranean salt meadows (<i>Juncetalia maritimi</i>)</li> <li>• 2120 Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes)</li> <li>• 2130 Fixed coastal dunes with herbaceous vegetation (grey dunes)*</li> </ul>	10.9km	north
000714	<p>Bray Head SAC</p> <ul style="list-style-type: none"> <li>• Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]</li> <li>• European Dry Heaths [4030]</li> </ul>	12km	southeast
004113	<p>Howth Head Coast SPA</p> <ul style="list-style-type: none"> <li>• A188 Kittiwake (<i>Rissa tridactyla</i>)</li> </ul>	12.3km	northeast

002193	Ireland's Eye SAC <ul style="list-style-type: none"> <li>• 1220 Perennial vegetation of stony banks</li> <li>• 1230 Vegetated sea cliffs of the Atlantic and Baltic coasts</li> </ul>	12.4km	northeast
000202	Howth Head Coast SAC <ul style="list-style-type: none"> <li>• Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]</li> <li>• European dry heaths [4030]</li> </ul>	12.7km	northeast
004117	Ireland's Eye SPA <ul style="list-style-type: none"> <li>• A017 Cormorant (<i>Phalacrocorax carbo</i>)</li> <li>• A184 Herring Gull (<i>Larus argentatus</i>)</li> <li>• A188 Kittiwake (<i>Rissa tridactyla</i>)</li> <li>• A199 Guillemot (<i>Uria aalge</i>)</li> <li>• A200 Razorbill (<i>Alca torda</i>)</li> </ul>	14.2km	northeast
000199	Baldoyle Bay SAC <ul style="list-style-type: none"> <li>• Mudflats and sandflats not covered by seawater at low tide [1140]</li> <li>• Salicornia and other annuals colonising mud and sand [1310]</li> <li>• Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) [1330]</li> <li>• Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</li> </ul>	14.3km	northeast
004016	Baldoyle Bay SPA <ul style="list-style-type: none"> <li>• Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</li> <li>• Shelduck (<i>Tadorna tadorna</i>) [A048]</li> <li>• Ringed Plover (<i>Charadrius hiaticula</i>) [A137]</li> <li>• Golden Plover (<i>Pluvialis apricaria</i>) [A140]</li> <li>• Grey Plover (<i>Pluvialis squatarola</i>) [A141]</li> <li>• Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]</li> <li>• Wetland and Waterbirds [A999]</li> </ul>	14.3km	northeast

10.3.8. In determining the zone of influence for the proposed development I have had regard to the nature and scale of the project, the distance from the development site to European sites, and any potential pathways that may exist from the development site to a European Site. Table 3 of the application AA Screening report identifies the potential links from European sites to the appeal site. Distances and direction from

the site to European sites are listed in table 4 above. I do not consider that any other European Sites other than those identified in table 5 potentially fall within the zone of influence of the project, having regard to the nature and scale of the development, the results of ecological surveys for the site, the distance from the development site to same, and the lack of an obvious pathway to same from the development site.

**Table 5.** Identification of relevant European Sites using Source-Pathway-Receptor model and compilation of information (Qualifying Interests and Conservation Objectives)

Site Name / Code	Qualifying Interests (QIs) / Special Conservation Interest (SCIs)	Connections	Consider Further
South Dublin Bay and River Tolka Estuary SPA 004024	QIs – 14 bird species <a href="https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004024.pdf">https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004024.pdf</a>	Weak hydrological connections exist through:  Surface water ultimately discharging to Dublin Bay;  Wastewater from the site passes and would be treated in Ringsend WWTP, which also discharges to Dublin Bay.	Yes
North Bull Island SPA 004006	QIs – 18 bird species  To maintain the favourable conservation condition of the wetland habitat in North Bull Island SPA as a resource for the regularly occurring migratory waterbirds that utilise it  To maintain the favourable conservation condition of the qualifying species		
North Dublin Bay SAC 000206	QIs – ten coastal habitats and species <a href="https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000206.pdf">https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000206.pdf</a>		
South Dublin Bay SAC 000210	QIs - 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]  <a href="https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000210.pdf">https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000210.pdf</a>		
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#### 10.4. Potential Effects

10.4.1. Habitat loss and fragmentation would not arise given the location and nature of the site. The development would not increase disturbance effects to birds in Dublin Bay, including during construction (and operational) phases, given the separation distance from these sensitive areas across an extensive urban area.

10.4.2. 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 European sites:

- surface water drainage from the proposed development site during construction and operational phases;
- increased wastewater being sent to Ringsend WWTP during the operational phase of the proposed development.

##### Construction Phase

10.4.3. Having regard to the information submitted with the subject appeal, surface water emissions from the development would be controlled through the use of normal best practice construction site management. The proposed construction management measures outlined in the application documentation are typical and well-proven construction methods and would be expected by any competent developer whether or not they were explicitly required by the terms and conditions of a planning permission. Furthermore, their implementation would be necessary for a residential development on any site, in order to protect the surrounding environs, regardless of proximity or connections to any European site or any intention to protect a European site. I am satisfied that the construction practices set out are not designed or intended specifically to mitigate any potential effect on a European site.

- 10.4.4. I am satisfied that the potential for likely significant effects on the qualifying interests of European sites in Dublin Bay, inclusive of estuarial areas, can be excluded given the absence of a likely pollution source on the site, the considerable intervening distances and the volume of waters separating the appeal site from European sites in Dublin Bay (dilution factor).
- 10.4.5. In the event that the pollution and sediment-control measures were not implemented or failed during the construction phase, I remain satisfied that the potential for likely significant effects on the qualifying interests of European sites can be excluded given the distant, indirect and interrupted hydrological connection, the nature and scale of the development and the distance and volume of water separating the appeal site from European sites in Dublin Bay (dilution factor).
- 10.4.6. The construction phase will not result in significant environmental impacts that could affect European sites within the wider catchment area.

#### Operational Phase

- 10.4.7. During the operational stage surface water from the site would be discharged to the public surface water drainage system after passing through various SUDS measures. In the event that the pollution control and surface water treatment measures were not implemented or failed, I remain satisfied that the potential for likely significant effects on the qualifying interests of European sites in Dublin Bay can be excluded given the indirect, distant 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 appeal site from European sites in the Dublin Bay area (dilution factor).
- 10.4.8. Wastewater from the development would ultimately be treated at Ringsend WWTP and the proposed development would result in a residential loading equivalent to a maximum of 449 residents based on the unit mix initially submitted with the application. The first party has referred to information contained in a recent EIAR for upgrade works to Ringsend WWTP, which concludes that significant effects on marine biodiversity and the European sites within Dublin Bay from the operation of Ringsend WWTP are unlikely to be occurring.
- 10.4.9. Having regard to the scale of the development proposed, it is considered that the development would result in an insignificant increase in the loading at Ringsend



WWTP, which would in any event be subject to Uisce Éireann consent and would only be given where compliance with EPA licencing in respect of the operation of the plant was not breached. Notwithstanding this, water quality is not a target for the maintenance of any of the qualifying interests within the SACs closest to Ringsend WWTP (i.e., South Dublin Bay SAC and North Dublin Bay SAC). Their qualifying interest targets relate to habitat distribution and area, as well as vegetation structure and the control of negative indicator species and scrub. The development would not lead to any impacts upon these qualifying interests, consequent to changes to the physical structure of the habitats or to the vegetation structure that defines their favourable conservation status.

10.4.10. On the basis of the foregoing, I conclude that the proposed development would not impact the overall water quality status of Dublin Bay and that there is no possibility of the operational of the proposed development undermining the conservation objectives of any of the qualifying interests or special conservation interests of European sites in or associated with Dublin Bay via surface water runoff and emissions to water.

#### In-combination Impacts

10.4.11. The first-party appellant's AA Screening Report refers to several projects and plans that could act in combination with the development and give rise to significant effects to European sites within the zone of influence. 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.

10.4.12. 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 and the Dún Laoghaire-Rathdown County Development Plan 2022-2028. These Development Plans have been subject to AA by the respective Planning Authorities, who have concluded that their implementation would not result in significant adverse effects on the integrity of any European sites. The proposal would not generate significant demands on the existing municipal sewers for foul water. While this project would marginally add to the loadings to the municipal sewer, evidence shows that negative effects to European sites are not arising, as

referenced in the first-party appellant's AA Screening Report. Phased upgrade works to the Ringsend WWTP extension have commenced and the facility is currently operating under the EPA licencing regime that is subject to separate AA Screening.

10.4.13. The development is not associated with any loss of semi-natural habitat or pollution that could act in a cumulative manner to result in significant negative effects to any European site. I am satisfied that there are no projects which can act in combination with the development that could give rise to significant effects to European sites within the zone of influence.

#### AA Screening Conclusion

10.4.14. The distance between the proposed development site and any European sites, and the very weak ecological pathways are such that the proposal would not result in any likely changes to the European sites that comprise part of the Natura 2000 network in Dublin Bay.

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

10.4.16. The possibility of significant effects on other European sites has been excluded on the basis of objective information. Measures intended to reduce or avoid significant effects on European sites have not been relied upon in my reaching of a conclusion in this screening process.

## **11.0 Conclusion and Recommendation**

11.1. Having regard to the above assessments, I recommend that the subject condition number 2 be attached, for the reasons and considerations set out in the draft Order below.

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

## **12.0 Recommended Order**

### **Planning and Development Acts 2000 to 2023 as amended**

**Planning Authority:** Dún Laoghaire-Rathdown County Council

**Planning Register Reference Number:** LRD23A/0505

Appeal by Dante Property Company Limited care of Genesis Planning Consultants, Suite 59, Armagh Business Park, Dean Swift Building, Hamiltonsbawn Road, Armagh BT60 1HW, against the decision made on the 19<sup>th</sup> day of September, 2023, by Dún Laoghaire-Rathdown County Council to grant subject to conditions a permission to Dante Property Company Limited in accordance with plans and particulars lodged with the said Council.

### **Proposed Development:**

The development will consist of:

- the completion of the Sentinel Building to provide for 110 no. apartments. Particulars of the development will comprise as follows;
- the provision of 22 no. 1 bed units, 60 no. 2 bed units and 28 no. 3 bed units along with provision of associated residential communal spaces both at terrace roof level and within the building. Ancillary communal spaces at ground level within the building will include for a resident's gym and resident's lounge;
- the provision of 2 no. additional floors on the existing 6 storey section of the existing Sentinel building;
- the provision of associated internal works and elevational works to complete the building;
- provision of associated car parking and motorcycle parking at basement level;

- provision of electric vehicle charge points with associated site infrastructure ducting to provide charge points for residents;
- provision of associated bicycle storage facilities at basement level and bin storage facilities.
- provision of associated bicycle storage facilities at ground level;
- use of existing access from Blackthorn Drive;
- provision of an ESB substation at ground floor level;
- all ancillary site development works to include for plant and works to facilitate foul, water and service networks for connection to the existing foul, water, and ESB networks.

at The Sentinel, Block C of the former Allegro Site, Blackthorn Drive, Sandyford Business Estate, Sandyford, Dublin 18

### **Decision**

Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to ATTACH condition number 2 and the reason therefor.

### **Reasons and Considerations**

Having regard to the nature and scale of the proposed development, the pattern of development and permitted developments in the area and the provisions of the Dún Laoghaire-Rathdown County Development Plan 2022 – 2028 and the Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities issued by the Department of Housing, Local Government and Heritage in July 2023, it is considered that the modification to the proposed development, as required by the Planning Authority in its imposition of condition number 2 would be warranted, as condition number 2 would ensure that the proposed development would be in accordance with the unit mix provisions of the Dún Laoghaire-Rathdown

County Development Plan 2022 – 2028 and as there is no justifiable reason in this case not to impose the unit mix provisions required in condition number 2.

### **Appropriate Assessment Screening**

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on European Sites, taking into account 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 and observations on file, the information submitted as part of the subject application documentation, and the Planning Inspector's report. In completing the screening exercise, the Board agreed with and adopted the report of the Planning Inspector and 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 any European Site in view of the Conservation Objectives of such sites, and that a Stage 2 Appropriate Assessment is not, therefore, required.

### **Environmental Impact Assessment Screening**

The Board completed an environmental impact assessment screening of the proposed development and considered that the Environment Impact Assessment Screening Report submitted by the first-party appellant, which contains information set out in Schedule 7A to the Planning and Development Regulations 2001, as amended, identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

Having regard to:

- the nature and scale of the proposed development, which is below the threshold in respect of classes 10(b)(i) and 10(b)(iv) of Part 2 to Schedule 5 of the Planning and Development Regulations 2001, as revised;
- the location of the proposed apartments on lands zoned within the Dún Laoghaire-Rathdown County Development Plan 2022-2028 as 'MIC' with a stated objective 'to consolidate and complete the development of the mixed-use inner core to enhance and reinforce sustainable development' and a specific local objective (SLO141) 'to facilitate completion of the unfinished

block and allow consideration of a maximum of 110 residential units' and the results of the Strategic Environmental Assessment of the said Development Plan;

- the nature of the existing site and the existing and permitted pattern of development in the surrounding area;
- the availability of mains water and wastewater services to serve the proposed development;
- the location of the development outside of any sensitive location specified in Article 299(C)(1)(a)(v) of the Planning and Development Regulations 2001, as revised;
- the guidance set out in the 'Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development', issued by the Department of the Environment, Heritage and Local Government (2003);
- the criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as revised, and;
- the features and measures proposed by the first-party appellant that are envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified to be provided as part of the project Construction Environmental Management Plan and the Civil Infrastructure Report.

It is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an environmental impact assessment report would not, therefore, be required.

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Colm McLoughlin  
Senior Planning Inspector

14<sup>th</sup> December 2023

## Appendices

### Appendix A: EIA Screening Determination

A. CASE DETAILS		
<b>An Bord Pleanála Case Reference</b>		ABP-318255-23
<b>Development Summary</b>		Complete existing six to 14-storey building and construct additional two storeys over six-storey block, to accommodate 110 apartments at The Sentinel, Block C of the former Allegro site, Blackthorn Drive, Sandyford Business Park, Dublin 18
	<b>Yes/No/N/A</b>	
<b>1. Has an AA screening report or NIS been submitted?</b>	Yes	An AA screening report was submitted with the application to the Planning Authority. An Ecological Report was also submitted with the application.
<b>2. Is an IED/ IPC or Waste Licence (or review of licence) required from the EPA? If YES has the EPA commented on the need for an EIAR?</b>	No	
<b>3. Have any other relevant assessments of the effects on the environment which have a significant bearing on the project been carried out pursuant to other relevant Directives – for example SEA</b>	Yes	SEA and AA were undertaken in respect of the Dún Laoghaire-Rathdown County Development Plan 2022-2028.

B. EXAMINATION	Yes/ No/ Uncertain	Briefly describe the nature and extent and Mitigation Measures (where relevant)  (having regard to the probability, magnitude (including population size affected), complexity, duration, frequency, intensity, and reversibility of impact) <b>Mitigation measures</b> –Where relevant specify features or measures proposed by the applicant to avoid or prevent a significant effect.	Is this likely to result in significant effects on the environment? Yes/ No/ Uncertain
<b>1. Characteristics of proposed development</b> (including demolition, construction, operation, or decommissioning)			
1.1 Is the project significantly different in character or scale to the existing surrounding or environment?	No	The surrounding area is characterised by a mix of uses, including an apartment complex to the north, commercial units to the west, a hospital to the south and apartment complexes under construction or recently completed to the east. The proposed development would provide for infill development on a brownfield site in an urban location that is not regarded as being of a scale or character significantly at odds with the surrounding pattern of development.	No
1.2 Will construction, operation, decommissioning or demolition works cause physical changes to the locality (topography, land use, waterbodies)?	No	The proposed residential development would involve completion of an existing structure, with very limited demolition works.	No
1.3 Will construction or operation of the project use natural resources such as land, soil, water, materials/minerals or energy, especially resources which are non-renewable or in short supply?	Yes	Construction materials will be typical for an urban development of this nature and scale.	No



<p><b>1.4</b> Will the project involve the use, storage, transport, handling or production of substance which would be harmful to human health or the environment?</p>	<p>Yes</p>	<p>Construction activities will require the use of potentially harmful materials, such as fuels and other such substances. Use of such materials would be typical for construction sites of the nature proposed. Any impacts would be local and temporary in nature and the implementation of the standard construction practice measures, as outlined in the Construction Environmental Management Plan (CEMP), would satisfactorily mitigate potential impacts. No operational impacts in this regard are anticipated.</p>	<p>No</p>
<p><b>1.5</b> Will the project produce solid waste, release pollutants or any hazardous / toxic / noxious substances?</p>	<p>Yes</p>	<p>Noise and dust emissions during construction are likely. Such construction impacts would be local and temporary in nature, and with the implementation of the standard measures outlined in the CEMP, the project would satisfactorily mitigate the potential impacts.</p> <p>Operational waste would be managed through measures outlined in the Operational Waste Management Plan submitted with the application to obviate potential environmental impacts. Other operational impacts in this regard are not anticipated to be significant.</p>	<p>No</p>
<p><b>1.6</b> Will the project lead to risks of contamination of land or water from releases of pollutants onto the ground or into surface waters, groundwater, coastal waters or the sea?</p>	<p>Yes</p>	<p>Operation of the standard measures listed in the CEMP will satisfactorily mitigate emissions from spillages during construction.</p> <p>The operational development will connect to mains services and discharge surface waters only after passing through fuel interceptors and SUDS. Surface water drainage will be separate to foul services within the site.</p>	<p>No</p>

<p><b>1.7</b> Will the project cause noise and vibration or release of light, heat, energy or electromagnetic radiation?</p>	<p>Yes</p>	<p>There is potential for construction activity to give rise to noise and vibration emissions. Such emissions will be localised and short term in nature, and their impacts would be suitably mitigated by the operation of standard measures listed in the CEMP.</p>	<p>No</p>
<p><b>1.8</b> Will there be any risks to human health, for example due to water contamination or air pollution?</p>	<p>Yes</p>	<p>Construction activity is likely to give rise to dust emissions. Such construction impacts would be temporary and localised in nature and the application of standard measures within the CEMP would satisfactorily address potential risks to human health. No significant operational impacts are anticipated for piped water supplies in the area.</p>	<p>No</p>
<p><b>1.9</b> Will there be any risk of major accidents that could affect human health or the environment?</p>	<p>No</p>	<p>No significant risk is predicted having regard to the nature and scale of the development. Any risk arising from construction will be managed as per measures in the CEMP and would be localised and temporary in nature. The development proposals would not be at risk of flooding. The site is outside the consultation / public safety zones for the nearest Seveso / COMAH sites.</p>	<p>No</p>
<p><b>1.10</b> Will the project affect the social environment (population, employment)</p>	<p>Yes</p>	<p>Development of this site would result in an increase in population in this area. The development would provide housing that would serve towards meeting an anticipated demand in the area.</p>	<p>No</p>

<p><b>1.11</b> Is the project part of a wider large scale change that could result in cumulative effects on the environment?</p>	<p>Yes</p>	<p>Significant cumulative effects on the environment would not be expected to arise.</p>	<p>No</p>
<p><b>2. Location of proposed development</b></p>			
<p><b>2.1</b> Is the proposed development located on, in, adjoining or have the potential to impact on any of the following:</p> <ol style="list-style-type: none"> <li>1. European site (SAC/ SPA/ cSAC/ pSPA)</li> <li>2. NHA/ pNHA</li> <li>3. Designated Nature Reserve</li> <li>4. Designated refuge for flora or fauna</li> <li>5. Place, site or feature of ecological interest, the preservation/conservation/ protection of which is an objective of a development plan/ LAP/ draft plan or variation of a plan</li> </ol>	<p>No</p>	<p>The nearest European sites are listed in table 4 of this report and in the application AA Screening Report. The site is located approximately 1.4km from Fitzsimon's Wood proposed Natural Heritage Area (pNHA) (site code: 001753), which is a semi-natural woodland that holds species of plants and animals whose habitat need protection, including Smooth Newt. The appeal site is not directly connected to this pNHA.</p> <p>Protected habitats or habitats suitable for substantive habituating by protected species were not found on site during ecological surveys and measures to address potential impacts to bats and birds are included in the Ecological Report.</p>	<p>No</p>
<p><b>2.2</b> Could any protected, important or sensitive species of flora or fauna which use areas on or around the site, for example: for breeding, nesting, foraging, resting, over-wintering, or migration, be affected by the project?</p>	<p>No</p>	<p>The proposed development would not result in significant impacts to protected, important or sensitive species.</p>	<p>No</p>
<p><b>2.3</b> Are there any other features of landscape, historic, archaeological, or cultural importance that could be affected?</p>	<p>No</p>	<p>There is no potential for archaeology on site given its present state, including basement structures, and the site does not have conservation status.</p>	<p>No</p>

<b>2.4</b> Are there any areas on/around the location which contain important, high quality or scarce resources which could be affected by the project, for example: forestry, agriculture, water/coastal, fisheries, minerals?	No	The site is within a built-up urban area.	No
<b>2.5</b> Are there any water resources including surface waters, for example: rivers, lakes/ponds, coastal or groundwaters which could be affected by the project, particularly in terms of their volume and flood risk?	No	The development will implement SUDS measures to control surface water run-off. The development would not increase risk of flooding to downstream areas with surface waters discharging into the local piped network.	No
<b>2.6</b> Is the location susceptible to subsidence, landslides or erosion?	No	There is very limited change in ground levels across the site. Structural investigations reveal the existing building shell is fit for the proposed purposes.	No
<b>2.7</b> Are there any key transport routes (e.g. National Primary Roads) on or around the location which are susceptible to congestion or which cause environmental problems, which could be affected by the project?	No	The site is served by a local road network. There are sustainable transport options available for future residents, including Luas light rail services. A significant contribution to traffic congestion is not anticipated to arise from the proposed development.	No
<b>2.8</b> Are there existing sensitive land uses or community facilities (such as hospitals, schools etc) which could be affected by the project?	No	No significant construction or operational impacts would be anticipated for other facilities.	No

<b>3. Any other factors that should be considered which could lead to environmental impacts</b>			
<b>3.1 Cumulative Effects:</b> Could this project together with existing and/or approved development result in cumulative effects during the construction/ operation phase?	Yes	Permitted developments have been identified in the immediate vicinity, however these developments are separate to the subject proposals and they would not give rise to	No

		significant cumulative environmental effects with the subject project.	
<b>3.2 Transboundary Effects:</b> Is the project likely to lead to transboundary effects?	No	No transboundary considerations arise	No
<b>3.3</b> Are there any other relevant considerations?	No	No	No

<b>C. CONCLUSION</b>			
<b>No real likelihood of significant effects on the environment.</b>	<input checked="" type="checkbox"/>	<b>EIAR Not Required</b>	
<b>Real likelihood of significant effects on the environment.</b>	<input type="checkbox"/>	Refuse to deal with the application pursuant to section 8(3)(a) of the Planning and Development (Housing) and Residential Tenancies Act 2016 (as amended)	

<b>D. MAIN REASONS AND CONSIDERATIONS</b>
<p>Having regard to -</p> <ul style="list-style-type: none"> <li>the nature and scale of the proposed development, which is below the threshold in respect of classes 10(b)(i) and 10(b)(iv) of Part 2 to Schedule 5 of the Planning and Development Regulations 2001, as revised;</li> <li>the location of the proposed apartments on lands zoned within the Dún Laoghaire-Rathdown County Development Plan 2022-2028 as 'MIC' with a stated objective 'to consolidate and complete the development of the mixed-use inner core to enhance and reinforce sustainable development' and a specific local objective (SLO141) 'to facilitate completion of the unfinished block and allow</li> </ul>

consideration of a maximum of 110 residential units' and the results of the Strategic Environmental Assessment of the Development Plan;

- the nature of the existing site and the existing and permitted pattern of development in the surrounding area;
- the availability of mains water and wastewater services to serve the proposed development;
- the location of the development outside of any sensitive location specified in Article 299(C)(1)(a)(v) of the Planning and Development Regulations 2001, as revised;
- the guidance set out in the 'Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development', issued by the Department of the Environment, Heritage and Local Government (2003);
- the criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as revised, and;
- the features and measures proposed by the first-party appellant that are envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified to be provided as part of the project Construction Environmental Management Plan and the Civil Infrastructure Report.

It is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an environmental impact assessment report would not, therefore, be required.

Inspector: \_\_\_\_\_ **Colm McLoughlin**

Date: **14<sup>th</sup> December 2023**