



An
Bord
Pleanála

Inspector's Report

ABP-320640-24

Development	Construction of 33 no. residential units (2 no. houses and 31 no. apartments)
Location	353 and 363 Blackhorse Avenue, Dublin 7
Planning Authority	Dublin City Council – North
Planning Authority Reg. Ref.	4237/19
Applicant(s)	Lark Finance Ltd. & SM Blackhorse Ltd.
Type of Application	Permission
Planning Authority Decision	Grant Permission with Conditions
Type of Appeal	Third Party
Appellant(s)	K & S Fitzsimons J Reilly
Observer(s)	Navan Road Community Council
Date of Site Inspection	9 th December 2024 8 th May 2025
Inspector	P Maguire

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1.0 Introduction

- 1.1. This is a remitted case file. I note the Order of the High Court on file which states:
- “IT IS ORDERED that the planning application bearing the reference ABP-308308-20 be remitted to the First Named Respondent for further consideration and determination in accordance with law such remittal to take effect from the point in time immediately following the receipt by the First Named Respondent of correspondence and enclosures from Dublin City Council on the 11th day of November 2020”.*
- 1.2. This appeal case is therefore reactivated under a new case number, ABP-320640-24.
- 1.3. The appeal has been made to An Bord Pleanála (‘the Board’) by K & S Fitzsimons and J. Reilly under the provisions of Section 37 of the Planning and Development Act 2000, as amended (‘the Act’), following a grant of permission under Section 34 of the Act.
- 1.4. I note that the Board, having regard to the above Order, the quashing of the previous decision (ABP-308308-20), and the passage of time, invited all parties to the appeal to make any further general submissions/observations that they may have on the planning application under Section 131 of the Act, hereinafter referred to as “Section 131 Notice”. The applicant’s S. 131 Notice response was received by the Board in October 2024 and subsequent submissions/observations received in December 2024.
- 1.5. This Inspector’s Report (IR) and recommendation is made pursuant to Section 146(2) of the Act. The Board¹ are required to consider both before determining the matter.

2.0 Site Location and Description

- 2.1. Located at the junction of Blackhorse Avenue (R806) and Villa Park Road, the appeal site is situated opposite the Cabra Gate entrance to Phoenix Park, in Dublin 7. It has an area of 0.35ha and a primary frontage of c. 100m along Blackhorse Avenue. The posted speed limit is 30kph along Villa Park Road, whereas 50kph applies elsewhere.
- 2.2. The site is generally flat and consists of two detached dwellings, 353 and 363 Blackhorse Avenue, albeit significantly overgrown. The more prominent of the two, number 363, is located directly opposite Cabra Gate where it is accessed by a pedestrian gate, with vehicular access off Villa Park Road, adjacent to some

¹ An Coimisiún Pleanála from 18th June 2025.

outbuildings. It has a hipped roof structure and is of vernacular merit, whereas the other dwelling, number 353, is set further back on site and appears prefabricated in design. It too has a pedestrian gate on Blackhorse Avenue with vehicular access via a laneway to the rear, off Villa Park Road. Both dwellings are derelict in appearance.

- 2.3. The surrounding area to the north is predominantly residential in nature, typified by two-storey semi-detached and terraced housing in Villa Park and similar along Blackhorse Avenue, including Martin Close. Park Crescent House, a three-storey apartment complex, is located some 100m to the southeast. A pair of semi-detached houses, 2-4 Villa Park Road, bound the site to the northwest and a semi-detached house, number 351 Blackhorse Avenue, bounds the site to the east, along with a commercial premises to the rear, 4A Villa Park Road. Other site boundaries include walls of varying height, railings supplemented by security fencing, mature hedgerow and chain-link fencing, with a significant quantum of tree cover evident within the site.
- 2.4. The surrounding area to the south is dominated by the Phoenix Park, a National Historic Park. The adjacent Cabra Gate provides access to the North Road which runs generally parallel to Blackhorse Avenue and links Chesterfield Avenue, the central spine road in the park, with the North Circular Road to the east. To the west of Cabra Gate lies Cabra Gate Lodge. Both are listed in the Record of Protected Structures (RPS ref. 6772) and in the National Inventory of Architectural Heritage. The appeal site is also adjacent to the Phoenix Park Conservation Area but similarly separated by Blackhorse Avenue and the park walls. Áras an Uachtaráin, the official residence of the President of Ireland, a Protected Structure (RPS ref. 6742) and recorded monument (SMR ref. DU018-007006), is located c. 420m south-southwest.

3.0 Proposed Development

- 3.1. Planning permission is sought for the demolition of two houses along with associated sheds and outbuildings, and the construction of 31 no. apartments and 2 no. houses.
- 3.2. The proposed development is described in the statutory notices as:

A residential development of 33 no. residential units comprising of: 2 no. 3 storey, 4-bedroom semi-detached houses with balconies to rear elevation of houses at second floor level and 1 no. 4 storey apartment block (ranging from 3 to 4 storeys) consisting of 31 no. apartments (11 no. 1 bedroom units and 20 no. 2 bedroom units) with

balconies/terraces to the south east elevation; 2 no. communal roof terraces will be located at fourth floor level; 1 no. ESB substation and switch room; waste storage area; entrance lobbies; 2 no. bicycle parking rooms (each with 28 no. spaces, providing 56 spaces in total); Landscaping; public lighting; boundary treatment; 27 no. surface level car parking spaces; 12 no. surface level bicycle parking spaces; new vehicular access from Villa Park Road; pedestrian access from Villa Park Road and Blackhorse Avenue; and all associated site development and engineering works necessary to facilitate the proposed development. The proposed development would also consist of the demolition of the 2 no. existing single storey detached dwellings and associated outbuildings and sheds.

3.3. The following tables summarise the key elements of the proposed development:

Site Area	0.3515ha
Dwelling Units	33 no. (31 no. apartments and 2 no. houses)
Density	94dph
Building Height	3-4 storey apartment (c.13.2m) 3-storey houses (c. 9.6m)
Floor Demolition Areas Proposed	426sq.m (2 no. houses and outbuildings) 3,158sq.m
Site Coverage	33%
Plot Ratio	0.9
Dual Aspect	67% (21 of 31 no. apartments)
Part V	10% (3 of 33 no. units)
Open Space / Amenities	27% communal open space (370sq.m of site area)
Car Parking Spaces	27 no. spaces (including car club space) 0.8 spaces per residential unit
Bicycle Parking Spaces	68 (56 no. residential, 12 no. visitor) 1.7 spaces per residential unit

Table 1 – Key Figures

	1-bed	2-bed	3-bed	4-bed	Total
Apartment	11	20	-	-	31
Houses	-	-	-	2	2
Total	11 (33%)	20 (61%)	-	2 (6%)	33 (100%)

Table 2 – Unit Mix

3.4. In addition to a Supporting Planning Statement (Downey Planning, October 2019), the application documents include:

- Appropriate Assessment Screening Report (Biosphere, September 2019)
- Arboricultural Impact Assessment (Tree Management Services, September 2019)
- Arboricultural Tree Survey (Tree Management Services, March 2019)
- Archaeological Assessment (IAC, September 2019)
- Architects Design Statement (MOLA, September 2019)
- Architectural Heritage Impact Assessment (ARC, September 2019)
- Bat Assessment (Keeley, B. and Mullen, D., July 2019)
- Building Lifecycle Report (MOLA, September 2019)
- Daylight, Sunlight and Overshadowing Study (IES, April 2020)
- Drainage Report (Ian Black, September 2019)
- Flood Risk Assessment (Pinnacle, September 2019)
- Housing Quality Assessment (MOLA, September 2019)
- Landscape and Visual Impact Assessment (Downey, October 2019)
- Landscape Design Rationale (Dermot Foley, September 2019)
- Preliminary Construction Waste Management Plan (Pinnacle, September 2019)
- Public Lighting Design (M and E, September 2019)
- Residential Travel Plan (Pinnacle, September 2019)
- Traffic Statement (Pinnacle, September 2019)
- Verified Views (Urban 3D, September 2019)

3.5. Further Information

3.5.1. The proposal was amended by further information which increased the setback of the apartment block, omitted the houses to the rear and repositioned the children's play area, in addition to enhanced landscaping and boundary treatment. Along with a supporting statement (Downey Planning, April 2020), the response included:

- Further Information Response Report, incl. Verified Views (MOLA, April 2020)
- Landscape Design Rationale No. 2 (Dermot Foley, March 2020)
- Noise Impact Assessment (TMS Environment, April 2020)
- Updated Residential Travel Plan (Pinnacle, April 2020)
- Traffic and Transport Assessment, incl. Road Safety Audit (Pinnacle, April 2020)

3.6. Clarification of Further Information

3.6.1. The proposal was further amended at clarification stage with minor adjustments to the road infrastructure and children's play area resulting in the removal of 2 no. parking spaces with a total of 25 no. spaces (22 no. regular bays, 2 no. accessible bays and 1 no. car club dedicated bay) now proposed. In addition to a supporting statement (Downey Planning, August 2020), the clarification response included the following:

- Clarification of Further Information, incl. Drone Survey (MOLA, August 2020)
- Landscape Design Rationale No. 3 (Dermot Foley, July 2020)

4.0 Planning Authority Decision

4.1. Decision

4.1.1. Permission was granted on 4th September 2020, subject to 22 no. conditions. The conditions are generally of a standard nature; however, the following are of note:

Condition 3(a) – minimum 2m along Blackhorse Avenue and Villa Park Road.

Condition 3(b) – requires a separation railing from the access to the children's play area along the pedestrian route bordering parking bay nos. 13, 14, 15 and 16.

Condition 4 – financial contribution in lieu of public open space.

Condition 5(h) – requires the retention of historic lodge and associated boundaries.

4.2. Planning Authority Reports

4.2.1. The Planning Officer's Report (12/12/19) can be summarised as follows:

Principle

- Notes the Z1 zoning under which residential development is permissible.

Proposed Demolition

- No objection to the demolition of the 'prefabricated' dwelling or outbuildings.
- Notes the commentary in the Architectural Heritage Impact Assessment (AHIA) in respect of 363 Blackhorse Avenue i.e., little or no heritage impact.
- Notes the archaeology and conservation comments which seek retention of 363 Blackhorse Avenue, the latter being particularly opposed to the demolition.
- Notes that whilst the dwelling contributes to the streetscape and character of the area, states that it is not of such importance or value, that retention should be required and therefore considers the demolition is acceptable, on balance.

Proposed Development

- Layout – highlights specific concerns regarding the building line, stating that a modest breach of this line may be acceptable, but considers the development, as proposed, significantly detracts from the character and amenities of the area.
- Layout – notes the setting is characterised by low-level and low-density development, with mature trees, whereas the proposal, in such close proximity to Blackhorse Avenue, would overwhelm and transform this setting, to its detriment.
- Scale and design – no objection to the provision of buildings with greater height on the site but considers the apartment block excessive in the context of the character and pattern of development in the area, and when taken together with the very close proximity to Blackhorse Avenue, states that it represents an incongruent and stark transition from the character and scale of development on adjoining sites.
- States that redevelopment of the site should incorporate appropriate transition in scale, to ensure that character and amenities of the area are not unduly impacted.
- Notes the Conservation Officer's objections to the height, scale and volume of the proposal, along with the impact on the character of the surrounding area, in

particular the detrimental visual impact from the Phoenix Park and the proximity to Cabra Gate and Lodge in terms of scale, volume and height, which is overbearing and will undermine the special architectural quality of these historic structures.

- Notes the parks section considers the height, density and facades of the apartment block incongruous with landscape character, exacerbated by the loss of tree cover.
- Daylight and sunlight – notes that the proposal incorporates the majority of the communal amenity space to the front of the site and raises concerns regarding the quality and usability of this space and the impact on future occupants of the ground floor units due to its proximity to the roadway, restricted depth and location immediately adjoining habitable rooms of ground floor residential units – considers a BRE daylight and sunlight assessment of all communal open spaces necessary.

Plot Ratio, Site Coverage and Density

- Notes that the proposal, with a plot ratio of 0.9, is within the indicative range (0.5-2.0) for Z1 lands and at 33% is below the indicative site coverage (45-60%).

Residential Quality/Standards

- States that the proposal is compliant with SPPR 1 and SPPR 4 of the apartment guidelines but raises concerns regarding the dual aspect nature of 13 no. units which face northwards onto the access deck, impacting on residential quality.
- Notes that all apartments would meet or exceed floor space requirements in the Development Plan and apartment guidelines, with the majority exceeding the minimum floor space requirements by at least 10%, in addition to the quantum of private open space, with ground floor terraces set behind hedge planting.
- Notes that whilst the Development Plan advises against external access deck arrangements, considers it acceptable in this instance having regard to the high level of amenity that will be offered by reason of the south-facing orientation into the Phoenix Park and the low intensity of usage due to the low number of units on each deck and proximity to the communal access stair cores.
- Notes that the proposal incorporates a minimum 2.7m floor to ceiling height across all other floors, as per SPPR 5, and provides for a maximum of 5 apartments per floor per stair/lift core, below the maximum limit of 12 set out at in SPPR 6.

Impact on Neighbouring Properties

- Notes the mesh screen to the access deck could give rise to undue overlooking however considers the minimum separation distance of 15m reasonable to ensure appropriate protection of residential amenities in such an urban context, subject to additional screening along the northern boundaries.
- Notes the rear-facing terraces of the proposed dwellings which look directly onto the rear gardens of numbers 2 and 4 Villa Park Road and states that amendments or omission by condition should be considered in the event of a grant of permission.

Public and Communal Open Space

- Notes the concerns of the parks section regarding the lack of public open space but does not consider it unreasonable at this location beside the Phoenix Park.
- Notes the communal open space (roof terraces and communal garden) exceeds the minimum requirements but reiterates concerns regarding the location of the communal garden adjacent to the Blackhorse Avenue in terms of usability and also considers the roof terraces at the eastern end would give rise to overlooking.
- Notes the apartment guidelines and Development Plan requirements in relation to toddler and children's play spaces but considers it inappropriate to incorporate such space either at roof level or in the communal garden.

Part V

- States that the provision of social housing can be addressed by planning condition.

Traffic and Transport

- Notes the issues raised by the roads section including concerns regarding the site entrance, the parking layout, the internal access road width and discrepancies within the accompanying Traffic Statement, along with requirements regarding the provision of EV charging points and improvements to the public footpath.

Drainage

- Notes that the drainage section has no objection subject to conditions, including a requirement to maintain 3m between proposed structures and sewers which route through/adjacent to the site, but considers this should be addressed pre-decision.

Biodiversity

- Notes the issues raised by the parks section in relation to bats, including the requirement for a repeat survey for maternity roost detection (June-August), the lack of investigation into connectivity with the Phoenix Park in terms of commuting, and the bat-related mitigation, noting that the proposed felling is not supported.
- Notes that the parks section also considered that a habitat survey should have been submitted with the application, particularly in relation to the site's relatively undisturbed mature tree cover and adjacency to the Phoenix Park.

AA and EIA

- States that there is no direct link from the site to the receptors and, as such, direct, indirect and in-combination impacts on the Natura 2000 network can be ruled out, noting that the parks section concurs that Stage 2 is not required.
- Concludes that there is no real likelihood of significant effects on the environment arising from the proposed development and an EIA is not required.

4.2.2. The Planning Officer's Report (17/06/20) can be summarised as follows:

Further Information – Item 1 (historic context, character, height, building lines etc.)

- Notes the omission of the proposed houses and setback of apartment block.
- Notes the further submissions received including the submission from the Office of Public Works (OPW) who request that refusal be considered (see section 4.4).
- States that increased separation distance to the protected structures and the greater linkages with the established building line along Blackhorse Avenue allow the proposed development to better assimilate into the streetscape.
- Notes that the revised proposal would come within c. 11m of number 2 Villa Park Road and states that it does not satisfactorily incorporate screening in order to mitigate against overlooking, particularly to the north.
- Notes the comments from the park section in relation to the landscaping proposals, tree stock and planting bed specification in particular, in order to accommodate the necessary tree planting and provide meaningful screening.

- States that the amended arrangements also give rise to a number of pedestrian safety concerns in terms of conflict between vehicles and pedestrians, with the need for the play area to be accessible in a safe manner for residents.
- Suggests that the front boundary closes off the development, and together with the wall on the opposite side of Blackhorse Avenue, states the proposed arrangement would create a section of dead frontage to the detriment of visual amenities, and considers a dwarf wall and railings, with landscaping, more appropriate.
- Notes the parks section comments who requested larger canopy trees to the front of the site to help break up the building mass and reduce its visual impact.
- Notes the particular safety and security concerns expressed within the OPW submission and states that the applicant shall be given an opportunity to respond.

Further Information – Item 2 (amenity space, play space and sunlight/daylight etc.)

- Notes the applicant's response, in particular the desire to retain a south-facing area of open space and the proposal to provide a separate play space to the rear.
- Considers the main open space area to the front of the site acceptable, however, reiterates concerns in relation to the proposed boundary treatments.
- Notes that both open space areas would receive adequate daylight, in accordance with the recommendations of BRE (2011) guidance.

Further Information – Item 3 (overlooking, wind assessment and screening etc.)

- Considers the revised screening mechanisms satisfactory and notes the parks section comments regarding tree retention along the northern boundary, stating that the trees would be located in the play area and their retention would also improve screening of the development from neighbouring properties to the north.

Further Information – Item 4 (average daylight factor)

- Notes the results of the updated assessment and the difficulty in taking accurate account of the impact of the proposed mesh screen.
- Consider a minor level of non-compliance with BRE guidance acceptable in terms of light penetration given the importance screening from a privacy perspective.

Further Information – Item 5 (roads issues)

- Notes the comments from the road section with concerns remaining over vehicle and pedestrian conflicts and parking bay layouts, and conditions to address same.

Other

- Notes that there is no requirement for any water infrastructure diversions.

4.2.3. The Planning Officer's Report (04/09/20) can be summarised as follows:

Clarification of Further Information – Item 1(a) (movement conflicts etc.)

- Notes the site layout revisions including single pedestrian route to the play area, railing and gate separating the play area from the parking area, relocation of visitor cycle parking, removal of 2 no. parking spaces and a turning area for vehicles.
- Notes the roads section report requiring the continuation of the railing from the access to the play area along the pedestrian route to enhance pedestrian safety.
- States that the planning authority is satisfied with the applicant's response.

Clarification of Further Information – Item 1(b) (landscaping – planting beds)

- Notes that the applicant has confirmed the integrity of the trees will be retained with the 2m wide tree pit while maintaining the width of the shared surface and parking.
- States that the planning authority is satisfied with the applicant's response.

Clarification of Further Information – Item 1(c) (landscaping – boundary treatment)

- States that the proposed amendments to the landscaping and boundary treatment are acceptable and an appropriate response for the front of the site, providing for a higher level of visual and residential amenity than was initially proposed.

Clarification of Further Information – Item 1(d) (existing trees)

- Considers the removal of the trees acceptable, having regard to the condition of the trees to be removed and the extent of compensatory tree planting to take place.

Clarification of Further Information – Item 2 (OPW submission)

- Considers that the proposal will not have any impact on the structural stability of the Phoenix Park wall given the lack of a basement and intervening public road.
- Recommends a condition regarding the stability of the wall (none attached).

- Considers the drone imagery a useful tool to assess the line of sight from the development to Áras an Uachtaráin, stating that there will no views of the Áras.

Conclusion

- Considers the proposal will result in the sustainable use of an underutilised site, providing good quality amenity for future occupants and protecting the residential amenities of the area, without resulting in any negative impacts on the Phoenix Park or comprising the security of Áras an Uachtaráin or any property in the area.

4.2.4. Other Technical Reports

- | | |
|---------------------------|--|
| • Archaeology (28/11/19) | No objection subject to condition. |
| • Conservation (06/12/19) | Further information requested:

Sought revisions in terms of height and building line having regard to the immediate historic context and prevailing character. |
| • Drainage (20/08/20) | No objection subject to condition. |
| • Parks (09/12/19) | Refusal recommended:

Contrary to the policies of the City Development Plan, City Biodiversity Action Plan and City Tree Strategy – with particular concerns regarding bats, habitats, trees, landscape impact and open space. |
| • Roads (27/08/20) | No objection subject to condition. |
| • Waste (21/11/19) | No objection subject to condition. |

4.3. Prescribed Bodies

- Irish Water (18/05/20): No objection subject to condition.

4.4. Third Party Observations

- 4.4.1. Some 43-no. third-party observations received. The issues raised are similar to the grounds of appeal and were summarised in the Planning Officer's Report as follows:

- Development is out of character with the area

- Visual amenity
- Residential amenity
- Overdevelopment
- Overbearing, overlooking and overshadowing
- Non-compliance with requirements of Design Standards for New Apartments
- Loss of privacy
- Density is excessive
- Height and design
- Breach of building line
- Number of 1-bed units exceeds the maximum allowable
- Development is required to comply with Part M of the Building Regulations
- Parking, traffic congestion and road safety
- Absence of play space for children
- Noise and light pollution
- Inadequate and inappropriate open space provision
- Failure to retain trees on site
- Impact on adjoining Protected Structure
- Impact on the Phoenix Park
- Existing 19th Century lodge should be retained on site
- Risk to security of Áras an Uachtaráin
- Risk to security of the American Ambassador
- Shading analysis is inadequate
- Impact on proposed pedestrian crossing
- Photomontages are inaccurate
- Elevation drawings do not depict lift overruns

- The site is at risk of flooding
- Permission has previously been refused for 3 and 4 storey development in the area
- Site is better suited to housing than apartment units
- Lack of community engagement
- Application contains insufficient information
- No details of the proposed 'Bleeperbike' service have been provided
- Recommendations within the Bat Survey report have not been incorporated
- Traffic assessment undertaken is inadequate
- An Environmental Impact Assessment is required for a development of this scale
- AA Screening does not refer to underground watercourses on/adjacent to the site
- Impact on biodiversity

4.4.2. An additional 44-no. third-party observation received at further information stage. The issues raised were summarised in the Planning Officer's Report as follows:

- Previous issues identified have not been addressed
- Size and density are excessive
- Number of 1-bed units is excessive
- Development is incongruous
- Impact on Cabra Gate and Gate Lodge
- Demolition of the existing cottage is unacceptable
- Non-compliance with 2018 Apartment Guidelines
- Development has an overbearing impact on surrounding properties
- Overlooking, overshadowing and loss of privacy
- Proposed height will negatively impact on adjacent properties
- Noise and security issues for neighbouring properties
- Proposed landscaping is inadequate and will take time to mature
- Proposed landscaping would overhang the property boundary

- Parking, traffic and road safety
- Transport assessment is inadequate
- Security risk for Áras an Uachtaráin
- Errors within supporting documentation
- Lighting plans have not been provided
- Development is flawed, in context of current Covid-19 climate
- Loss of an important form of building on the site
- A part M compliant lift should be provided to serve all floors
- Impact on biodiversity
- Impingement on right to light
- Engineering concerns

4.4.3. The concerns of the OPW can be summarised as follows:

- impacts on the stability of the Phoenix Park boundary wall, a protected structure
- impact on users of the Phoenix Park, by reason on overlooking and light nuisances, and the institutions that reside within the park, due to proximity and scale
- recent developments pose a threat to the historic integrity of the Phoenix Park
- visual blight, limiting public enjoyment and out of keeping with the historical area
- the submission contains the views and observations of An Garda Síochána, these include serious concern for the safety and security of the President of Ireland, who resides at Áras an Uachtaráin, and which would be overlooked by the proposal
- the OPW requests that consideration is given to refusal of the application

5.0 Planning History

5.1. Relevant to appeal site:

5.1.1. PA ref. 3792/22 – in April 2024, the Board upheld the decision of the planning authority and granted permission (ABP-315001-22) for the demolition of two houses and the

construction of 31 apartments. A Natura Impact Statement (NIS) was submitted with this application. The decision is currently before the High Court (No. 2024 781 JR).

5.2. Adjacent properties:

2 Villa Park Road

- 5.2.1. PA ref. 2100/18 – in April 2018, the planning authority granted permission for ground floor extensions to front and rear, a 1st floor extension to side and attic conversion etc.

3 Villa Park Road

- 5.2.2. PA ref. 3307/19 – in September 2018, the planning authority granted permission for non-habitable attic conversion, raised gable with mini hip, and dormer to rear etc.

5 Villa Park Road

- 5.2.3. PA ref. 3502/20 – in January 2021, the planning authority granted permission for retention of storage shed at rear of property and all associated works etc.

9 Villa Park Road

- 5.2.4. PA ref. 2903/20 – in November 2020, the planning authority granted permission to widen a pedestrian entrance to provide vehicular access to front boundary wall etc.

11 Villa Park Road

- 5.2.5. PA ref. 3365/18 – in December 2018, the Board partially upheld the decision of the planning authority and refused permission for the proposed attic window on the front elevation (ABP-302561-18), considering that this element of the proposal would be visually intrusive and would seriously injure the amenities of the area. Further, having regard to the previous refusal pertaining to the same development, (ABP-300448-18), the considered that there was no change in circumstances that would warrant a reversal of this decision. Permission was granted, however, to retain the raised parapet on first floor extension, the first-floor attic dormer to rear and two flat rooflights.

375 Blackhorse Avenue

- 5.2.6. PA ref. 3603/14 – in January 2015, the planning authority granted permission for 7 no. 3-bed, two-storey houses. This housing development is now known as 'Martin Close'.

- 5.2.7. PA ref. 3435/09 – in October 2010, the Board overturned a decision of the planning authority and refused permission (PL29N.236504) for a 15-unit, three-storey

apartment block on this site. The reason referred to the pattern of existing residential development in the vicinity and to the size and shape of the site. The Board considered that the proposal, by reason of its scale and layout significantly forward of the building line with inadequate separation from the public road would constitute overdevelopment of the site, which would be incongruous in the streetscape, would seriously injure the amenities of property in the vicinity and the residential amenity of future occupants.

Park Springs, Nephin Road

- 5.2.8. PA ref. 4181/17 – in July 2018, the Board upheld the decision of the planning authority and refused permission (ABP-300813-18) for two additional apartments. It considered that the proposed second floor level apartments would, by reason of the distance to boundaries of the building, the design of the additional level, and proximity of windows and balconies to rear gardens adjoining the boundaries, be visually obtrusive and overbearing and would lead to overlooking of adjoining gardens and a loss of privacy. It is therefore concluded that the proposal would seriously injure the amenities of neighbouring residential properties and would contravene the “Z1” zoning objective.

‘The Pallet Site’, Blackhorse Avenue

- 5.2.9. PA ref. 3705/20 – in May 2020, the Board upheld the decision of the planning authority and granted permission (ABP-311000-21) to demolish a building and construct a 17-unit, four-storey apartment block. The site bounds the Phoenix Park wall (RPS 6781).
- 5.2.10. In a previous Board decision (ABP-300456-17) from July 2018, the intermediate floor was conditioned out so that the apartment building was limited to three-storeys only.

5.3. Other relevant history:

BusConnects

- 5.3.1. ABP-313892-22 – in June 2024, the Board approved the Blanchardstown to City Centre Core Bus Corridor Scheme, which is within 300m of the site, along the Navan Road, albeit accessible via Nephin Road. This decision is subject to legal challenge.

DART+ West

- 5.3.2. ABP-314232-22 – in July 2024, the Board granted a Railway Order (DART+ West Electrified Heavy Rail Order) for the Dublin city to Maynooth and M3 Parkway lines. Pelletstown station is within c. 1.3km. This decision was subject to legal challenge.

6.0 Policy Context

6.1. Local Planning Policy

Dublin City Development Plan 2022-2028

- 6.1.1. The current City Development Plan, as varied, came into effect on 14th December 2022. The planning authority decision of 4th September 2020 was made under the previous Plan, 2016-2022. This appeal shall be determined under the current Plan.
- 6.1.2. The appeal site is zoned 'Z1 – Sustainable Residential Neighbourhoods' with a land use zoning objective *'to protect, provide and improve residential amenities'*. Residential uses are permissible in this zoning subject to normal planning considerations as detailed in section 14.3.1 of the Plan, including that related to policy.
- 6.1.3. Section 14.6 of the Plan relates to transitional zone areas and states that it is important to avoid abrupt transitions in scale and land-use between zones, and in dealing with development proposals in these areas, it is necessary to avoid developments that would be detrimental to the amenities of the more environmentally sensitive zones.
- 6.1.4. The site lies directly opposite Cabra Gate of the Phoenix Park. The Park is zoned 'Z9 – Amenity / Open Space Lands / Green Network', with a zoning objective *'to preserve, provide and improve recreational amenity, open space and ecosystem services'*.
- 6.1.5. The Phoenix Park is a protected archaeological complex and Conservation Area (CA), with Cabra Gate and Lodge (ref. 6772), walls (ref. 6781) and Áras an Uachtaráin (ref. 6742) all listed in the Record of Protected Structures. The latter is also a monument.
- 6.1.6. Further east along Blackhorse Avenue, and immediately outside the Phoenix Park walls, lies another recorded monument known as 'Poor Man's Well' (SMR ref. DU018-021). The site lies partly within its zone of archaeological potential (ref. R149622).
- 6.1.7. The main policies and objectives are set out under chapters 2 (Core Strategy), 4 (City structure), 5 (housing and sustainable neighbourhoods), 8 (sustainable movement), 10 (green infrastructure), 11 (built heritage and archaeology) and 15 (development standards). Appendices 3 and 5 are also relevant in terms of height and parking.
- 6.1.8. The following sections are relevant to the appeal:
- 2.4 – The Core Strategy (Table 2-8)

- 4.5.3 – Urban Density
- 4.5.4 – Increased Height as Part of the Urban Form and Spatial Structure
- 4.5.5 – Urban Design and Architecture
- 5.2.2 – Regeneration, Compact Growth and Densification
- 5.5.7 – Specific Housing Typologies
- 8.5.7 – Car Parking
- 10.5.2 – Biodiversity
- 10.5.3 – Landscape
- 10.5.4 – Parks and Open Spaces
- 10.5.7 – Urban Forest
- 11.5.3 – Built Heritage Assets of the City (Red-Hatched Conservation Areas)
- 11.5.4 – Retrofitting, Sustainability Measures and Addressing Climate Change
- 11.5.5 – Archaeological Heritage
- 15.2.3 – Planning Application Documentation – Planning Thresholds (Table 15-1)
- 15.5 – Site Characteristics and Design Parameters
- 15.6 – Green Infrastructure and Landscaping
- 15.8 – Residential Development
- 15.9 – Apartment Standards (incl. separation distances, overlooking etc.)

6.1.9. The documents listed in section 3.4 above in addition to those submitted under further information and Section 131 have been considered in the context of Table 15-1.

6.1.10. Summary of relevant policies and objectives:

- | | |
|------|---|
| SC10 | Seeks to ensure appropriate densities and the creation of sustainable communities in accordance with the principles set out in the relevant planning guidelines, and any amendment thereof. |
| SC11 | Seeks to promote compact growth and sustainable densities through the consolidation and intensification of infill and brownfield lands, particularly on public transport corridors etc. |

SC16	Seeks to recognise the predominantly low-rise character of Dublin City whilst also recognising the potential and need for increased height in appropriate locations and other locations identified in Appendix 3 etc.
SC22	Seeks to promote understanding of the city's historical architectural character to facilitate new development which is in harmony with the city's historical spaces and structures.
QHSN6	Seeks to promote and support residential consolidation and sustainable intensification through the consideration of applications for infill development subject to the provision of good quality accommodation.
QHSN10	Seeks to promote residential development at sustainable densities throughout the city in accordance with the Core Strategy, particularly on vacant and/or underutilised sites, having regard to the need for high standards of urban design and architecture and to successfully integrate with the character of the surrounding area.
QHSN36	Seeks to promote the provision of high-quality apartments within sustainable neighbourhoods by achieving suitable levels of amenity within individual apartments, and within each apartment development.
SMT27	Seeks to provide sustainable levels of car parking as per Appendix 5.
GI26	Provides for a financial contribution in lieu of provision of appropriate open space in the vicinity where it is not feasible or realistic on site.
GI28	Seeks to ensure that in new residential developments, public open space is provided which is sufficient in amenity, quantity and distribution to meet the requirements of the projected population, including play facilities for children and that it is accessible by safe secure walking etc.
GIO27	Seeks to support the implementation of the Phoenix Park Management Plan by the Office of Public Works so as to protect and conserve the historic landscape of the Phoenix Park and its archaeological, architectural and natural heritage whilst facilitating visitor access etc.
GI41	Seeks to protect existing trees as part of new development, particularly those that are of visual, biodiversity or amenity quality and significance.

BHA2	Seeks to <i>inter alia</i> protect structures included on the RPS from any works that would negatively impact their special character and appearance.
BHA6	Sets out presumption against the demolition or substantial loss of any building or other structure which appears on historic maps up to and including the Ordnance Survey of Dublin City, 1847 etc.
BHA9	Seeks to protect the special interest and character of all Conservation Areas – development within or affecting such an area must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character, appearance and setting etc.
BHA10	Sets a presumption against demolition of a structure that positively contributes to the character of a Conservation Area etc.
BHA24	Seeks to positively encourage and facilitate the refurbishment of the historic built environment for sustainable and economically viable uses.

6.2. Regional Planning Policy

Regional Spatial and Economic Strategy (RSES)

- 6.2.1. The Eastern and Midland RSES 2019-2031 (EMRA, 2019) sets the regional policy context. Regional Strategic Outcome (RSO) 1 supports sustainable settlement patterns and RSO 2 promotes the concept of compact growth and urban regeneration.
- 6.2.2. In this regard, the key enablers for growth include promoting compact urban growth to realise targets of at least 50% of new homes within or contiguous to the existing built-up area of Dublin city and suburbs and a target of at least 30% for other urban areas.
- 6.2.3. Regional Policy Objective (RPO) 3.2 requires that local authorities, in their core strategies, set out measures to achieve compact urban development targets of at least 50% of all new homes within or contiguous to the built-up area of Dublin city and suburbs and a target of at least 30% for other urban areas. Allied to this, RPO 4.3 supports the consolidation and re-intensification of infill / brownfield sites to provide high density and people intensive uses within the existing built-up area of Dublin City and suburbs and ensure that the development of future development areas is co-ordinated with the delivery of key water infrastructure and public transport projects.

- 6.2.4. In similar regard, and noting the site's location within the Dublin MASP boundary, one of the 'Guiding Principles' is to promote sustainable consolidated growth of the Metropolitan Area, including brownfield and infill development, to achieve this stated target of 50% of all new homes within or contiguous to the built-up area of Dublin City and suburbs, and at least 30% in other settlements; and to support a steady supply of sites and to accelerate housing supply, in order to achieve higher densities in urban built-up areas, supported by improved services and public transport. In this regard, the RSES acknowledges the significant role of the planned '*BusConnects*' projects.

6.3. National Planning Policy and Guidelines

National Planning Framework (NPF)

- 6.3.1. Project Ireland 2040, the National Planning Framework *First Revision* (DHLGH, April 2025), sets the national planning policy context. National Strategic Outcome (NSO) 1 promotes the concept of compact growth, noting that achieving effective density and consolidation, rather than more sprawl of urban development, is a top NPF priority.
- 6.3.2. In this regard, National Policy Objective (NPO) 5 targets 50% of future population and employment growth in the existing five cities and their suburbs and NPO 8 seeks to deliver at least 50% of all new homes targeted in the five cities and suburbs, within their existing built-up footprints and ensure compact and sequential patterns of growth.
- 6.3.3. The NPF also signals a move away from rigidly applied planning policies and standards in relation to building design, in favour of performance-based criteria, to ensure well-designed, high-quality outcomes. It emphasises that general restrictions on building height may not be applicable in all circumstances in urban areas and should be replaced by performance-based criteria appropriate to the general location.
- 6.3.4. In this regard, NPO 22 provides that in urban areas, planning and related standards, including building height and car parking, will be based on performance criteria that seek to achieve well-designed high-quality outcomes order to achieve targeted growth.
- 6.3.5. Section 6.6 (Housing) of the revised NPF details a significant departure from its predecessor in terms of annual housing output. It considered that an average output of 25,000 new home between 2018 and 2040 would be required in order to deliver 550,000 households to 2040 (NPO 32), whereas NPO 42 of the current revised NPF targets the delivery of approximately 50,000 additional homes per annum to 2040.

- 6.3.6. In this regard, NPO 43 prioritises the provision of new homes at locations that can support sustainable development and at an appropriate scale relative to location. NPO 45 seeks to increase residential density in settlements, through a range of measures including infill development schemes, regeneration and increased building heights.

Guidelines for Compact Settlements

- 6.3.7. The Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (DHLGH, 2024) sets out policy and guidance in relation to the planning and development of urban and rural settlements, with a focus on sustainable residential development and the creation of compact settlements. They are accompanied by a non-statutory Design Manual, albeit unpublished at time of writing.
- 6.3.8. Section 2.2 notes that these Guidelines should be read in conjunction with other guidelines where there is overlapping policy and guidance. Where there are differences between these Guidelines and other previously issued Section 28 Guidelines, it is intended that the policies and objectives and specific planning policy requirements (SPPR's) of the Compact Settlements Guidelines will take precedence.
- 6.3.9. In this regard, section 3.0 of the Guidelines deals with settlement, place and density. Section 3.3.1 relates specifically to the five cities and MASP areas. Amongst the key priorities is to deliver brownfield and infill development within the existing built-up footprint and in a sequential manner closest to the urban core. Table 3.1 states that it is a policy and objective of these Guidelines that net residential densities in the range of 50-250dph shall generally be applied in 'urban neighbourhoods' of Dublin and Cork.
- 6.3.10. Table 3.8 characterises a 'high-capacity public transport node or interchange' as including locations within 500m walking distance of an existing or planned *BusConnects* 'Core Bus Corridor' stop and 'accessible locations' as lands within 500m (up to 5-6 min. walk) of existing or planned high frequency (10-min. peak hr.) urban bus services. Table 3.8 is not exhaustive and a local assessment is advocated.
- 6.3.11. Section 5.0 of the Guidelines sets out the standards for new housing, including SPPR 1 (separation distances), SPPR 2 (private open space) and SPPR 3 (car parking).

Guidelines for New Apartments

- 6.3.12. The Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (DHLGH, 2022, updated July 2023) focus on the locational

and planning specific aspects of apartment development. Design parameters include locational considerations and internal space standards for different apartment types including amenity spaces etc. Many of these parameters are subject to SPPRs which take precedence over any conflicting Development Plan policies and objectives.

- 6.3.13. In terms of location, these Guidelines suggest that the appeal site falls within a 'central and/or accessible urban location' i.e., within easy walking distance (up to 5-min or 400-500m) to/from high frequency (min. 10-min. peak hr. frequency) urban bus services. It notes that such locations are generally suitable for small- to large-scale and higher density development, albeit subject to location, that may wholly comprise apartments.
- 6.3.14. Section 6.6 of the Guidelines states that planning authorities should have regard to quantitative performance approaches to daylight provision outlined in guides like *A New European Standard for Daylighting in Buildings* (IS EN 17037:2018), *UK National Annex* (BS EN 17037:2019) and the associated practice guide BRE 209 2022 (3rd ed., June 2022), or any relevant future standards or guidance specific to the Irish context. Section 6.7 relates to alternative, compensatory design solutions where an applicant cannot fully meet all of the requirements of the daylight provisions outlined above.

Guidelines for Urban Development and Building Heights

- 6.3.15. The Urban Development and Building Heights Guidelines for Planning Authorities (DHPLG, 2018) reflects the policy direction espoused in the NPF in terms of achieving compact growth through urban infill and brownfield development. Section 1.10 states that it would be appropriate to support the consideration of building heights of at least 6 storeys at street level as the default objective in major town centres identified in the RSES, subject to the criteria in Section 2 and Section 3 of these Guidelines.
- 6.3.16. Section 3.1 of the Guidelines sets a presumption in favour of buildings of increased height in our town/city cores and in other urban locations with good public transport accessibility. It also outlines some broad principles that should be applied when considering proposals for taller buildings including whether such proposals positively assist in securing NPF objectives such as fulfilling targets related to brownfield etc.
- 6.3.17. Section 3.2 of the Guidelines sets out criteria that the proposal should satisfy at the scale of the relevant city/town; at the scale of district/neighbourhood/street; at the scale of the site/building; and other specific assessments. SPPR 3 gives primacy to these criteria even where objectives of the Development Plan may indicate otherwise.

6.4. Other National Policy and Guidance

Housing for All

- 6.4.1. *Housing for All*, a New Housing Plan for Ireland (DHLGH, 2021) is the government's housing policy to 2030. In this regard, it notes that Ireland needs an average of 33,000 homes built per annum until 2030 to meet the NPF targets. These homes need to be affordable, built in the right place, to the right standard and in support of climate action.

Climate Action Plans

- 6.4.2. The Climate Action and Low Carbon Development Act 2015, as amended, ('the Climate Act'), commits the State to a legally binding 51% reduction in overall GHG emissions by 2030 and to achieving net zero emissions by 2050. Section 15 places an obligation on the Board to make all decisions in a manner consistent with this Act.
- 6.4.3. The Climate Action Plan 2024 (CAP24) follows the commitment in the Climate Act, and sets out the range of emissions reductions required for each sector to achieve the committed targets. Measures to reach a 50% reduction in transport emissions include a 20% reduction in total vehicle kilometres and a 50% increase in daily active travel.
- 6.4.4. The Climate Action Plan 2025 (CAP25) was published in April 2025 (DECC) and builds upon CAP24 by refining and updating the measures and actions required to deliver the carbon budgets and sectoral emissions ceilings and states that it should be read in conjunction with CAP24. As with CAP24, the CAP25 Annex of Actions contains only new, high-impact actions for delivery in 2025. In terms of reduction in total vehicle kilometres, Action TR/25/9 relates to *BusConnects*, and the commencement of works.

National Sustainable Mobility Policy

- 6.4.5. The National Sustainable Mobility Policy (Dept. of Transport, 2022) sets out a policy framework to 2030 for active travel and public transport to support Ireland's overall requirement to achieve a 51% reduction in greenhouse gas emissions by 2030.

Design Manual for Urban Roads and Streets (DMURS)

- 6.4.6. Guidance relating to the design of urban roads and streets is set out in DMURS (DTTS and DHPLG, 2013, updated May 2019). Section 3.3.1 notes that new street networks should be based on layouts where all streets lead to other streets, limiting the use of cul-de-sacs and maximising the number of walkable/cyclable routes. Section 3.3.2

notes that on larger and/or irregular blocks short cul-de-sacs may be used to serve a small number of dwellings and to enable more compact/efficient forms of development.

- 6.4.7. Section 4.4.1 notes that the standard carriageway width on local streets should be between 5 and 5.5m (i.e. lane widths of 2.50-2.75m) and states that total carriageway width on local streets where a shared surface is provided should not exceed 4.8m.
- 6.4.8. Section 4.4.4 indicates that the stopping sight distance (SSD) for a road design speed of 50kph is 45m; 40kph is 33m; and 30kph is 23m. Section 4.4.5 notes that priority junctions in urban areas should have a maximum X-distance of 2.4m but this can be reduced to 2m where vehicle speeds are slow and flows on the minor arm are low.

National Biodiversity Action Plan 2023 – 2030

- 6.4.9. Ireland's 4th National Biodiversity Action Plan (NBAP) was launched on 25th January 2024. It sets the national biodiversity agenda until 2030 and aims to deliver the transformative changes required to the ways in which we value and protect nature.

6.5. Other Guidance

Phoenix Park Conservation Management Plan

- 6.5.1. The Phoenix Park Conservation Management Plan (OPW, September 2011) aims to balance the responsibility to protect, conserve and enhance the unique landscape, environment, ecology, wildlife, built heritage and views of the Phoenix Park with active and creative policies to facilitate wider access and to increase opportunities for enjoyment, information, education and recreation for now and into the future.
- 6.5.2. Section 6.4 notes that certain developments in and around the Park boundaries have been detrimental to its character and to views, some within Park enclosures, stating that further development could erode the quality of views and the Park setting. In this regard, specific objective SO 6.4 seeks to encourage the planning authorities and neighbouring landowners to protect, enhance and have regard to the landscape setting of the Park so that important views and visual links are sustained or reinstated.

Traffic and Transport Assessment Guidelines (PE-PDV-02045)

- 6.5.3. This TII technical guidance (May 2014) relates to traffic and transport assessments (TTA). Section 2.1 considers the thresholds at which the production of a TTA in relation to planning applications is recommended. Table 2.1 details the relevant thresholds,

including where traffic to/from the development exceeds 10% of the traffic flow on the adjoining road or 5% where congestion exists or the location is sensitive; residential development in excess of 200 dwellings. Table 2.3 sets out sub-threshold TTA criteria.

Road Safety Audit (GE-STY-01024)

- 6.5.4. This TII standard (December 2017) outlines the requirements for Road Safety Audit in the management of the Irish national road infrastructure. The stated objective of this standard is to ensure that the road safety implications of all schemes are fully considered for all users of the road and others affected by the scheme in question.

6.6. Natural Heritage Designations

- 6.6.1. Closest proposed Natural Heritage Areas (pNHAs):

- Royal Canal pNHA (002103) – c. 1.3km north, northeast
- Liffey Valley pNHA (000128) – c. 2.6km west, southwest
- Grand Canal pNHA (002104) – c. 2.9km south, southeast

- 6.6.2. Closest Special Areas of Conservation (SACs) and Special Protection Areas (SPAs):

- South Dublin Bay and River Tolka Estuary SPA (004024) – 5.6km east
- South Dublin Bay SAC (000210) – 7.4km southeast
- North Bull Island SPA (004006) – 8.7km east
- North Dublin Bay SAC (000206) – 8.8km east
- Northwest Irish Sea candidate SPA (004236) – 11.1km east

6.7. EIA Screening

- 6.7.1. The proposal is for 33 no. dwellings on a site area of 0.35ha. An environmental impact assessment (EIA) screening report was not submitted with the planning application.
- 6.7.2. The proposed development is of a class included in Schedule 5 of the Regulations, albeit significantly sub-threshold. Schedule 5, Part 2, Class 10 of the Regulations provides that EIA mandatory for: (b)(i) construction of more than 500 dwelling units and (b)(iv) urban development involving an area >10ha in other parts of a built-up area.

- 6.7.3. The Planning Officer's Report includes an EIA section. It states that the proposal and site are significantly below any relevant thresholds and, as such, EIA is not mandatory for this development. Notwithstanding, it states that a preliminary examination of the requirement for sub-threshold EIA was undertaken and, on the basis of the information on file and it was concluded that there is no real likelihood of significant effects on the environment arising from the proposed development and an EIA is not required.
- 6.7.4. The applicant has however submitted an EIA Screening Report (Downey, October 2024) with the appeal including criteria to comply with Schedule 7A of the Regulations. Therefore, under Article 109(2B), where an application is made for sub-threshold development and Schedule 7A information is submitted, the Board must carry out a screening determination and cannot therefore screen it out at preliminary examination.
- 6.7.5. Appendix 1 sets out my screening determination. In this regard, I am satisfied that the proposed scheme would not be likely to have significant effects on the environment and an EIA (and the preparation and submission of an EIAR) would not be required.
- 6.7.6. Any suggested conditions, including those altering any design aspects of the proposal, would not have a material impact on the conclusions of this screening determination.

6.8. WFD Screening

- 6.8.1. A screening for the purposes of the Water Framework Directive (WFD) has also been carried out (Appendix 2). On the basis of objective information, I conclude that the proposal will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any waterbody in reaching its WFD objectives. Consequently, it can be excluded from any further assessment.

7.0 The Appeal

7.1. Grounds of Appeal

- 7.1.1. Third-party appeals have been received from Kevin and Siobhan Fitzsimons, and John Reilly. The latter appeal is on behalf of Villa Park and Blackhorse Avenue community.
- 7.1.2. The appeal by Kevin and Siobhan Fitzsimons can be summarised as follows:

Traffic and Transport

- Increased traffic movements at an already busy junction, particularly at peak times, will lead to safety issues for motorists and pedestrians, including school children.
- Inadequate parking provision, with no allocation for visitors, will result in cars parked in the Villa Park estate, which is already overwhelmed with excess parking.

Residential Amenity

- Particular concerns regarding the rooftop terrace at the western end of the block that will give rise to overlooking and result in a serious invasion of family privacy.
- Overlooking from the balconies to the northwest end will further impact privacy.
- Use of the communal terraces will result in noise and nuisance on residential properties in the vicinity and should be inaccessible, except for maintenance.
- Concerns regarding the impact of the deck access on the amenities of existing residential properties to the north, and on the future occupants of the apartments.
- Notes the City Development Plan 2016-2022 advised against bedrooms facing directly onto the deck access for reasons for privacy and amenity but acknowledges the Council accepted this arrangement notwithstanding the fact.
- Potential overlooking from the deck access areas and measures by residents to eliminate this, such as obscure glazing, will compromise the existing amenities.
- Considers the 'hit and miss metal screen' as further evidence of unacceptability.
- Submits that the proposal will have serious injurious impacts on the existing residential amenities of Nos. 2 and 4 Villa Park Road, noting that for the proposed planting along the northern boundary to be effective, trees will have to be of a sufficient height to prevent any overlooking, thus impacting on garden sunshine.
- Raises concerns regarding the negative visual impact of the mesh screens from both the perspective of the external views and from the adjacent access decks.
- Also raises concerns regarding the impact of the mesh screens on light penetration to the apartments, contending that the Average Daylight Factor study highlights an unacceptable failure rate which will impact on the amenities of the apartments.

Visual Amenity

- Notes the provisions of section 16.2.1 of the City Development Plan 2016-2022 in terms of a creative response to, and respect for, the character of the area.
- Notes the Council's comments on the original scheme, with particular concerns over height, in addition to the specific objections from conservation and parks.
- In the absence of any changes to height, scale or volume, it's argued that objections remain valid giving the historic setting and character/pattern of the area.
- The proposed apartment block is unacceptable in terms of height, scale and mass.

Demolition

- States that the demolition of No. 363 Blackhorse Avenue is contrary to the advice of the archaeology and conservation sections and submits that it should be incorporated into the design, resulting in a more acceptable form of development.

Áras an Uachtaráin

- Concerned about the Council's dismissal of the issues raised by the OPW.

7.1.3. The appeal by John Reilly can be summarised as follows:

Traffic and Transport

- Submits that the access road will introduce additional traffic hazards in terms of road geometry, including those related to access and egress, sightlines/visibility, and proximity to junctions, and increased traffic volume and on-street parking.
- States that there will be a security risk as the property perimeter will be exposed and the additional volume of cars, bikes and pedestrians will give rise to loitering.
- A through road will also bring additional fumes, noise and light pollution to the area.
- Raises concerns regarding the efficacy of the traffic statement in terms of impacts and risk, suggesting that a survey carried out at peak times over the course of a week, and allowing for seasonal weather adjustments, would have been preferable, and submitting that the survey is based on very favourable conditions.
- States that the risk assessment has not considered the hazards on neighbouring property or the public, submitting that the mitigation measures need clarified.

- Raises concerns regarding the proximity of the parking spaces to the proposed access road, stating this will cause a hazard due to proximity and manoeuvring.
- Suggests that on-street restriction, such as 'double yellow lines' may be required.
- States that the lack 'Autotrack' drawings for the junction access to the site make an assessment on the additional hazards difficult at this congested area.
- Additional traffic will apply further pressure to a pinch point, elevating the hazard.
- There is no mitigation proposed in relation to the development lighting.
- Alleges that there are a number of errors in the revised traffic assessment.
- Raises concerns regarding the quantum and design of parking spaces, stating that it does not comply with section 16.38.9 (of the City Development Plan) and submitting that the car management strategy is not a sufficient alternative, carrying the risk of overspill car parking on the neighbouring roads, thus causing a hazard.
- States Villa Park Road is already overwhelmed with excessive resident parking and queries the 'equivalency of 36 spaces' in the car management strategy.
- Submits that the parking spaces on the site boundaries will impact amenity space.

Residential Amenity

- Object to the density of the proposed development and the required infrastructure that negatively impacts on the surrounding properties and local community.
- Submits that the proposal is contrary to section 16.2.1.1 of the City Development Plan 2016-2022 and also section 16.10.1 in terms of apartment unit mix.
- The proposed development is out of character with properties in the area.
- Submits that Martin Close is a good example of sustainable housing with a positive impact on the local community, stating that a similar scheme should be considered and noting that previous apartment proposals on that site were refused permission.
- The amendments at further information increased the scheme's overbearing on surrounding properties but has had minimal effect on the overbearing nature of the apartment block at the Cabra Gate Lodge to the detriment of the residents therein.
- Particular overbearing concerns noted in respect of No. 2 Villa Park Road and No. 351 Blackhorse Avenue, referencing a 'factor of 4.4' in respect of the latter.

- States that the overbearing nature of the proposal increases overshadowing and overlooking and suggests that this goes against the concerns raised by the Planning Officer, noting that 15m was considered reasonable, and is now 10.240m.
- States that there is a direct line of sight into neighbouring properties and amenity space due to the height of the building and location of windows and terraces.
- Nos. 1 and 3 Villa Park Road and Nos. 349 and 351 Blackhorse Avenue will be directly overlooked as a result of the further information amendments and any development should blend in with existing houses at a maximum of two storeys.
- Apartment entrances directly overlook Nos. 2 and 4 Villa Park Road and the living areas and amenity space for Villa Park Road, 21 properties, will be overlooked.
- Proposed trees along the boundary with Nos. 2 and 4 Villa Park Road will add to overshadowing and there is inadequate assessment of sunlight/daylight issues.
- The proposed planting will not mitigate all overlooking in any event and the proximity of the planting will result in vegetation overhanging neighbour's gardens.
- Queries the need for the garden roof terraces at the proposed height and submits that the amenity space should be focussed at ground level on the site, suggesting that the site is overdeveloped as the amenity space is at a minimum.

Visual Amenity

- Architecture and style of the apartment block contrasts with surrounding properties and regrets the lack of community engagement in respect of the proposal.

Security

- Raises concerns regarding the security impact on Áras an Uachtaráin and whilst noting the drone survey, suggests that the conclusion is not a worst-case scenario.
- Cautions that 'due diligence' should be exercised given these particular risks.
- Also raises security concerns regarding the impact on surrounding properties.

Other Issues

- Raises concerns regarding the proximity of the play area in terms of noise.
- Raises concerns regarding an underground stream beside No. 351 Blackhorse Avenue and suggests that this could lead to poor drainage and flooding.

- Notes the Council's planning condition regarding retention of Gate Lodge.
- Highlights purported inconsistencies in the planning authority reports.

7.2. Applicant Response

7.2.1. Downey Planning, responded on behalf of the applicant, Lark Finance Ltd. & SM Blackhorse Ltd.

7.2.2. In relation to the Fitzsimon's appeal, the response can be summarised as follows:

Traffic and Transport

- An appropriate level of level of car parking has been provided.
- A safe means of access can be achieved whilst maintaining pedestrian safety.

Residential Amenity

- Roof terraces incorporate raised screens to prevent direct overlooking and noise.
- Proposed height is within Development Plan limits, and since superseded by the Building Heights Guidelines, and justifiable at this location.
- Minimal number of apartments served by the deck access and it is intentionally wider (1.8m) than a standard corridor to incorporate planter boxes etc.
- Precedent for deck access under ABP-302344-18 and ABP-307468-20.
- Notes that a number of the apartments do not achieve the quantitative ADF figure but submit that the high-quality design provides suitable compensatory measures.

Visual Amenity

- States that the development poses no risk or impact on Áras an Uachtaráin or the wider Phoenix Park as demonstrated at clarification of further information stage.

Demolition

- No. 363 Blackhorse Avenue is not a protected structure or within an architectural conservation area (ACA) and its demolition is justified in the heritage report.
- No evidence to support the retention of the existing buildings and any attempt to incorporate it into the development would be unfeasible and sterilise the site.

7.2.3. In relation to John Reilly's appeal, the response can be summarised as follows:

Traffic and Transport

- The proposal has been subject to a detailed TTA and Stage 1 Road Safety Audit.
- Traffic count carried out during school term (February 2020), prior to Covid-19 restrictions and in accordance with best practice regarding AM and PM peaks.
- Access location and sightlines are in accordance with DMURS.
- Junction radii in accordance with Council requirements.
- Public lighting can be addressed by condition.
- Disputes references to a “through road”.
- Quantum of parking is appropriate to the site location and accords with the Development Plan standards i.e., maximum of 1 space per residential unit.
- Additional parking encourages greater private car journeys, contrary to guidelines.
- States that 1 no. car club space is equivalent to c. 10 no. cars and the parking ratio is effectively 1.16 spaces per residential unit, including the car club space.
- Any illegal parking would be addressed by the management company or Council.
- Parking along the boundary with No. 2 Villa Park Road will be separated by buffer planting.

Residential Amenity

- The density and design have taken account of relevant national guidelines including those relating to apartments and building heights.
- Rejects the relevancy of previous refusals at No. 375 Blackhorse Avenue, given the different policy context; rejects the appellants desire for a continuation of the suburban model of two-storey semi-detached houses leading to further sprawl.
- Unit mix is in accordance with the Apartment Guidelines.
- Pent-up demand for apartments and therefore density and type are appropriate.
- Within the maximum height (16m) set out in the Development Plan.
- Supported by SPPR 1 of the Building Heights Guidelines.
- Rejects the suggestion that there will be height impacts on Cabra Gate Lodge.

- Highlights the transition from 3- to 4-storey as a positive design feature.
- No windows on the eastern elevation thus no potential for overlooking.
- Submits that the removal of existing trees as part of the proposed development will increase the level of light penetration into No. 2 Villa Park Road and there will be no impact on views or aspects from the adjacent bedroom with high level windows.
- All living spaces are on the southern side of the apartment block and no balconies face directly on to adjoining properties or give rise to overlooking.
- No directly opposing rear windows of adjoining properties, they are either gable or front elevations thus no direct line of sight to private amenity areas.
- No undue overshadowing of adjoining properties; designed to BRE standards.
- Roof terraces, which incorporate privacy screens, provide alternative communal amenity space, although not fundamental to achieving the required quantum.
- Children's play area would not generate excessive levels of noise.
- Sufficient passive surveillance to discourage and kind of anti-social behaviour.

Security

- Notes the independent drone survey and submits that the proposal presents no danger or security risk to Uachtarán na hÉireann or any visiting dignitaries.
- The appellant has not brought new evidence to justify this ground.

Other Issues

- No evidence of an underground stream during site survey work.
- Condition 5(h) appears to be a clerical error and consider it should be omitted.

7.3. Planning Authority Response

None.

7.4. Observations

- 7.4.1. Observations "intended to be linked to the appeal lodged by John O'Reilly" were received from Navan Road Community Council (NRCC). They raise similar concerns:

- Traffic, including access, parking and pedestrian issues.
- Public transport, including actual proximity (walking time) to bus stops.
- Height, including precedent decisions in the area i.e., 375 Blackhorse Avenue.
- Height, including security issues in relation to Áras an Uachtaráin.
- Efficacy of the drone survey in relation to OPW knowledge and understanding.
- Trees, including issues regarding their removal
- The existing house, built in or around 1930, and justification for its demolition.

7.5. Section 131 Notice – Applicant Response

7.5.1. Downey, Chartered Town Planners, responded on behalf of the applicant to the Section 131 Notice. In addition to a supporting statement, the response included:

- Badger Assessment (Keeley, B., November 2022)
- Bat Assessment (Keeley, B. and Mullen, D., August 2019, updated October 2021)
- EIA Screening Report (Downey, October 2024)
- Section 131 Response (Downey, October 2024)
- Daylight, Sunlight and Overshadowing Study (IES, October 2024)
- Supplementary Noise Impact Assessment (TMS Environment, September 2022)

7.5.2. The response can be summarised as follows:

- States that the Section 131 Response report sets out how the proposal is consistent with the relevant policy, including the City Development Plan 2022-2028, Apartment Guidelines 2023 and Compact Settlements Guidelines 2024.
- Notes that an EIA Screening Report is included, which was not contained within the original planning application and states that this has taken into account the information submitted with the planning application as well as further survey and ecological assessments that were carried out for a subsequent planning application on the site (for a similar development) and thus provides a comprehensive suite of information that will enable the Board to carry out their own assessments.

- Notes the new Daylight, Sunlight and Overshadowing Study carried out in the context of the new BRE 209 Guidelines and therefore submits that the Board's assessment and decision will have the latest information made available to them.
- Requests that the Board, having taken into consideration the content of the application, which was approved by the Council, the detail contained within the Section 131 Response, which includes updated information on the planning policy and environmental grounds as they relate to the proposal noting the passing of time since the appeal was first lodged, and make an Order granting permission.

7.6. Section 131 Notice – Third Party Responses

7.6.1. The initial response from John Reilly can be summarised as follows:

- Observations to the original decision still stand and requests that these, along with the Court decision be taken into account.
- Requests that the Board decline the proposed development.

7.6.2. Third parties were offered the opportunity to comment on the applicant's response.

7.6.3. Comments from NRCC broadly reflect their observations and are summarised thus:

- Raises concerns regarding the timeframe to respond and states that they were unable to comment on the supplementary daylight study or noise assessment.
- Submits that the 'amended' scheme disregards previous suggestions that smaller house-types, similar to the existing cottage, would be more suitable.
- Notes the recommendation of the conservation officer and the comments contained in the applicant's AHIA and agrees with the 'admission' that the apartment block will bring about change in urban character.
- Queries references to the removal of Cabra Gate and notes their restoration.
- States that such an ugly high intrusion will have a lasting 'direct impact on heritage'.
- Submits that the 'existing cottage' is of utmost importance to the residents along Blackhorse Avenue and Villa Park and warrants retention by planning condition.
- In terms of tenure, suggests that a minimum of 50% of all units be secured against 'builder retention for letting' as has occurred elsewhere in the area.

- Raises concerns regarding the quantum of parking proposed, suggesting that this could lead to parking on Villa Park Road, and blocking buses on Blackhorse Ave.
- Raises concerns regarding the impact of separation distances and parking on existing residents working from home; the proposed screening measures in terms of design, and the impact on heritage are also cited as a cause for concern.
- Submits that low-rise development would be consistent with the Z1 zoning having regard to the historic nature of Blackhorse Avenue and policy SC16 of the Plan.
- Raises concerns regarding the applicant's openness to "further liaison".
- Submits that the roof terraces and play area will lead to noise and intrusion.
- Highlights a security risk regarding the proximity of the proposed apartment block to Áras an Uachtaráin and refers to Section 44A of the Planning Act in terms of security, and the adjacent 'Martin Close' development in terms of design height.
- Raises concerns over the use of "Ashtown, Dublin 7" and references to a 'brownfield site' and 'greenfield resource' in the application documentation.
- Not objecting to suitable housing, rather just the height proposed and/or condition the retention/refurbishment of the existing cottages with the addition of similar, highlighting a previous case at 'Belleville' on Blackhorse Avenue as precedent.

7.6.4. Additional comments from John Reilly reflect his appeal and are summarised as:

- Raises concerns regarding the timeframe to respond.
- States that the community agree that the 'gate lodge', which they suggest is 19th Century and a 'dual composition' with Cabra Gate should be retained.
- Highlights differing views between the Conservation Officer and the AHIA, and states that this is a "prime example of bias" and contrary to the OPW comments.
- No 'balance struck' and major aspect of Z1 zoning neglected, in addition to lack of consideration over archaeological impacts by the developer, Council and Board, and invites the Board to review the initial Planning Officer report in this regard.
- Unnecessary inclusion of communal terraces injures residential amenity spaces by reason of overlooking, noting that the site has adequate recreational space.
- States that there is no evidence of the basis for the separation distance of 16m.

- Reiterates previous concerns regarding the adequacy of the traffic assessment, stating that the developer is referencing a blanket condition (under DMURS) to approve the design as opposed to a risk assessing the junction and infrastructure.
- Highlights other areas of concern regarding the traffic report including a consideration of single lane traffic in the vicinity; adequate 'Autotrack' drawings; current traffic volumes; peak time traffic movements; sightlines etc.
- Invites the Board to conduct a habitat survey, stating that there has been several sightings of badgers and bats, as well as other species and would appreciate if the applicant could clarify comments regarding badgers and the Habitats Directive.
- Reiterates previous comments by the Planning Officer, who considered 15m separation distance reasonable (now 10.240m) and concerns regarding unit mix.
- Submits that the omission of a storey (5 no. apartments) would negate several factors raised at appeal and still achieve a density of 74dph i.e., improved daylight and less overshadowing, less overlooking and overbearance, and reduced traffic.
- Raises concerns about the archaeological impacts of the proposed development.

8.0 Planning Assessment

8.1. Preliminary Points

8.1.1. Having examined the application details and all other documentation on the appeal file, including the appeal submissions and observations, and inspected the site, and having regard to relevant local, regional and national policies and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal.

8.1.2. The issues can be addressed under the following headings:

- Land Use Zoning and Density
- Demolition and Cultural Heritage
- Traffic and Transport
- Residential Amenity
- Visual Amenity

- Natural Heritage
- Other Issues

8.2. Land Use Zoning and Density

- 8.2.1. As noted, the proposed development relates to the construction of a 3-4 storey apartment block consisting of 11 no. one-bed units and 20 no. two-bed units on a previously developed brownfield site comprising two houses and sheds. It is proposed to demolish both houses to facilitate the apartments and associated infrastructure.
- 8.2.2. The appellants and observer raise a number of substantive issues regarding the principle of the proposed development, including that relating to zoning and density.

Land Use Zoning

- 8.2.3. The appeal site is zoned 'Z1 – Sustainable Residential Neighbourhoods' in the current City Development Plan 2022-2028, with a zoning objective 'to protect, provide and improve residential amenities', and where residential uses are permissible subject to 'normal planning considerations', i.e., the policies and objectives outlined in the Plan.
- 8.2.4. I note that the appeal site lies directly opposite the Cabra Gate entrance to the Phoenix Park and it is zoned 'Z9 – Amenity / Open Space Lands / Green Network', with a zoning objective 'to preserve, provide and improve recreational amenity, open space and ecosystem services'. The Plan cautions against abrupt transitions in scale and land use between zones, and this concern has been indirectly raised in the appeal.
- 8.2.5. However, the crux of the appellant's concerns in terms of zoning relates to compliance with the zoning objective, and specifically the protection of residential amenities. I note that the observer suggests that a low-rise scheme would be consistent with the zoning having regard to the stated historic nature of Blackhorse Avenue and policy SC16 of the Development Plan. Whilst policy SC16 recognises the predominantly low-rise character of the city, it also acknowledges the locational need for increased height.
- 8.2.6. The applicant, on the other hand, submits that the proposal is in keeping with the area zoning and that of the zoning objective; namely it is a permissible use and facilitates high-quality accommodation which should be available in sustainable communities.
- 8.2.7. At the heart of this issue, it is not therefore whether residential development is acceptable in this zoning, rather whether the particular apartment scheme proposed

adversely impacts on existing residential amenities and the character of this area. In this regard, I am therefore satisfied that an apartment scheme is appropriate on the appeal site, subject to consideration of residential amenity and character impacts.

- 8.2.8. The only residual issue is the transition between the proposed development on the appeal site and the Z9 zoning which dominates the Phoenix Park. The presence of the intervening North Road, within the Park, Blackhorse Avenue and the Park wall collectively provide an acceptable degree of separation to avoid an abrupt transition. The granular detail in terms of character is considered further in the sections below.

Density

- 8.2.9. The density, as initially proposed, was 94dph based on 2 no. houses and 31 no. apartments. The planning authority permitted the apartments at a density of 88dph.
- 8.2.10. The appellants object to the density of the proposed scheme and the infrastructure which they submit will negatively impact on the surrounding properties and community. The issue here therefore echoes their concerns over zoning, or more accurately, residential amenity, as outlined above. This is fully considered in section 8.5 below.
- 8.2.11. The applicant submits that the proposed density is in line with the Compact Settlements Guidelines, which advocates higher density at appropriate locations and stipulates a density range of 50-250dph on lands within city urban neighbourhoods.
- 8.2.12. As noted above, Table 3.1 of the Compact Settlements Guidelines states that it is a policy and objective of the guidelines that net densities in the range of 50-250dph shall generally be applied in the urban neighbourhoods of Dublin City. In this regard, I note that 'city urban neighbourhoods' includes '(i) the compact medium density residential neighbourhoods around the city centre that have evolved over time etc.' and '(iv) lands around existing or planned high-capacity public transport nodes or interchanges etc.'
- 8.2.13. The applicant submits that the site is c. 200m from Dublin Bus stop 8296 on Blackhorse Avenue, c. 330m from stop 1658 (Skreen Road) and c. 510m from stop 1660 (Navan Road) and states these are served by numerous routes, including 2, 37, 38, 38A, 38D, 39, etc. I note that stops 1661 (Navan Road) and 1701 (Our Lady's Church) are within a 500m walk of the site and that the Navan Road will be served by *BusConnects*, when operational. In this regard, I am fully satisfied that the appeal site is within a 'city urban neighbourhood' where densities of 50-250dph are to be applied.

- 8.2.14. Policy SC10 seeks to ensure appropriate densities and the creation of sustainable communities in accordance with the principles set out in the Sustainable Residential Development Guidelines (2009) 'and any amendment thereof'. Section 1.2 of the Compact Settlements Guidelines notes that they replace the 2009 guidelines and the Plan would appear to support densities between 50-250dph by virtue of that provision.
- 8.2.15. Whilst I note that Appendix 3, Table 1 of the Development Plan outlines various density ranges which will be supported, 'as a general rule', in the city, none of the locations align conveniently with the appeal site. In this regard, I am satisfied that the minimum density of 100dph for the City Centre and Canal Belt (100-250dph) does not apply. The supporting text in Appendix 3 also notes that the 2009 Guidelines 'will be supported' but points to a design-led approach with transport capacity considerations.
- 8.2.16. Likewise, policy SC11 seeks to promote compact growth and sustainable densities through the consolidation and intensification of infill and brownfield lands, particularly on public transport corridors etc. I also note the provisions in policies QHSN6 and QHSN10 relating to urban consolidation and urban density, respectively. The latter seeks to promote residential development at sustainable densities throughout the city in accordance with the Core Strategy, particularly on vacant and/or underutilised sites, having regard to the need to successfully integrate with the character of the area.
- 8.2.17. It is therefore important to note the provisions of the Core Strategy of the Plan (Table 2-8), which targets a residential yield of 12,900 units on infill/smaller scale brownfield sites. At c. 0.35ha and previously developed, the appeal site would support the achievement of the Core Strategy. Whilst I note the observers concerns regarding the term 'brownfield', inferring that it relates to a previous industrial use, the Development Plan glossary defines brownfield as any land which has been subject to building etc.
- 8.2.18. I also note the appellants submission regarding the applicant's Section 131 response. It suggests that the omission of a storey (5 no. apartment units) would negate several factors raised at appeal, including those in relation to residential amenity and traffic, and still achieve a density of 74dph. I consider this in the relevant sections below but suffice to say that the proposed density at 88dph is generally acceptable in this case and would support the ambitious Core Strategy target in terms of urban consolidation.
- 8.2.19. I do not, however, consider such a density 'significantly higher and denser than the prevailing context', where certain performance criteria ought to be applied (Appendix

3, Table 3). Appendix 3 goes on to suggest that such criteria need only be applied at building heights over 4-storey and explicitly states that heights of 3-4 storeys will be promoted as the minimum outside of the canal ring², in the suburban areas of the city.

Conclusion on Land Use Zoning and Density

- 8.2.20. Having regard to the location of this underutilised site, within a defined 'city urban neighbourhood', and placing significant weight on the Z1 zoning objective, the Core Strategy and policies SC10, SC11, QHSN6 and QHSN10 relating to urban density, compact growth and urban consolidation, the proposal is acceptable in principle, subject to further consideration of the residential amenity and character impacts.
- 8.2.21. The character impacts are considered below in terms of the demolition of the existing buildings on the appeal site in addition to impact of the proposal on visual amenities.

8.3. Demolition and Cultural Heritage

- 8.3.1. As noted, it is proposed to demolish both houses on the appeal site, Nos. 353 and 363 Blackhorse Avenue, to facilitate the apartments and associated infrastructure. It is the demolition of the latter that is of particular concern to the appellants who note that it is contrary to the Council's own internal advice. Elsewhere it is submitted that the house, referred to as a 'gate lodge', is a 'dual composition' with Cabra Gate Lodge and should be retained. In similar vein, the observer submits that No. 363 Blackhorse Avenue, referred to them as a 'cottage', is of the utmost importance to the residents of the area and should be retained, citing an analogous case at 'Belleville' on Blackhorse Avenue.
- 8.3.2. The applicants, on the other hand, state that this 'cottage', which I do note to be of vernacular merit, is not a protected structure or within an ACA and as such there is no specific or legal obligation to retain it. They further state that there is no evidence to support the retention of the existing buildings and to incorporate them into a development would be unfeasible and have the effect of sterilising the appeal site.
- 8.3.3. In this regard, the applicants refer to the commentary of a Council Planning Officer in a subsequent application at the appeal site under PA ref. 3792/22. They note that whilst the 'dwelling contributes to the streetscape and to the character of the area, its contribution is not so important that it is worthy of protected status' and therefore not

² The terms 'canal ring' and 'canal belt' are used interchangeably in the text of the City Development Plan.

‘in the best interests of the sustainable development of the area’. On this basis, the applicants invite the Board to take a similar approach in their decision and reasoning.

Built Heritage

- 8.3.4. I have reviewed the comments from the Council’s archaeologist and architectural conservation officer. The archaeologist states that the ‘lodge building inside the southern border of the site’ is depicted on the OS First Edition map, surveyed 1843, and likely to be contemporary and associated with the Cabra Gate Lodge complex on the opposite side of the road. In this regard, they recommend that the building is reused within the new development, whilst the applicant states that their suggested condition appears erroneously included in the Council’s decision [Condition 5(h)].
- 8.3.5. Whereas the architectural conservation officer states that the building is of 20th Century origin but similarly does not support its demolition, regardless of its status, stating that it contributes positively to the surrounding historic context, and together with Cabra Gate Lodge forms an attractive entrance to the historic Phoenix Park.
- 8.3.6. I have also reviewed the submitted AHIA. It states that OS mapping indicates that there were no buildings on site in the location of the present structures in 1907 or before that, with two structures appearing on the Cassini map of c. 1935, suggesting that the easternmost of these structures is the present house, No. 363. Based on the nature of its construction and the architectural character of its features, it suggests that the house was built sometime between 1910-1930 and that it is a plain vernacular building without any notable features, and regarding the latter comment I fully agree. Additionally, I note the observer stated that the house was ‘built in or around 1930’.
- 8.3.7. There is an obvious dispute over the building’s origin, not just between the Council’s archaeologist and the applicant, but evidently the conservation officer as well. I have thus reviewed the historic OS mapping of the area and I do not consider that the existing house, No. 363 Blackhorse Avenue, is 19th Century in origin, as suggested by the archaeologist and appellants. I note that the historic 25 Inch map, 1897-1913, illustrates two buildings on the appeal site, neither of which lie within the footprint of No. 363 Blackhorse Avenue. This places construction firmly in the 20th Century, with the Last Edition of the OS 6 Inch map illustrating the house, shown as “Fred’s Ville”.
- 8.3.8. I am therefore fully satisfied that the house is of a different period and architectural value, and I strongly reject any suggestion that it is of ‘dual composition’, with Cabra

Gate Lodge, which was built c. 1835, and pre-dates No. 363 by a century or so. I also therefore note that the provisions of policy BHA6, which sets a presumption against the demolition or substantial loss of any building or other structure which appears on historic maps up to and including 1847, do not apply to the present circumstances.

Conservation Area & Protected Structures

- 8.3.9. In terms of demolition, I also note the proximity of the appeal site to the Phoenix Park Conservation Area as set out in Section 11.5.3 of the Development Plan. Whilst these areas do not have a statutory basis in the same manner as protected structures or ACAs, they are recognised as areas that have conservation merit, as outlined in Plan policy BHA9. Similar to residential amenity impacts, I consider this further below in terms of character, in addition to concerns regarding the impact on Cabra Gate and Lodge in the context of policy BHA2, relating to protected structures and their setting.
- 8.3.10. Whilst I also note that policy BHA10 sets out a presumption against the demolition or substantial loss of a structure that positively contributes to the character of a Conservation Area, it relates specifically to any “demolition in a Conservation Area”. I am therefore satisfied that its provisions do not apply to the proposed development.

Historic Buildings

- 8.3.11. Finally, I am also cognisant of policy BHA24 which seeks to “positively encourage and facilitate” the refurbishment of the “historic built environment” for sustainable and economically viable uses. As noted, the architectural value of No. 363 Blackhorse Avenue is distinct and distinguishable from the Cabra Gate Lodge complex and I do not consider it a historic building in the context of policy BHA24. Moreover, there is sufficient flexibility in the wording that does not mandate slavish adherence to this policy, notwithstanding the comments from the conservation officer as noted above.
- 8.3.12. This applies equally to their concerns in respect of embodied energy which included references to Section 16.10.17 of the City Development Plan 2016-2022. This section, relating to the ‘retention and re-use of older buildings of significance which are not protected’, is addressed under the heading “Reuse and Refurbishment of Historic Building” in the current Plan, and relates specifically to policy BHA24, as set out above.
- 8.3.13. The Board may wish to seek specific comment from the planning authority over the rationale for attaching Condition 5(h), but it appears to me that it was attached in error,

as suggested by the applicant. I specifically note that the Planning Officer considered the demolition acceptable, on balance. The effect of retaining No. 363 Blackhorse Avenue, as suggested by the Council's archaeologist, and incorporating it into the scheme would require a significant redesign of the proposal that would effectively render the permission a nullity. For the reasons outlined, demolition is acceptable.

Archaeology

8.3.14. It should also be noted that the appeal site lies partly within a zone of archaeological potential (ref. R149622) of a recorded monument known as 'Poor Man's Well' (ref. DU018-021) and immediately north of the zone for Phoenix Park (ref. DU018-007).

8.3.15. I have noted the report of the Council's archaeologist, as referred to by the appellants, but it does not raise any substantive archaeological issues. The report does, however recommend two conditions in the event of a grant of permission: archaeological monitoring and retention of the 'lodge' building. Demolition of the 'lodge' building has been addressed above, and having regard to the applicant's archaeological report, I recommend a monitoring condition in the event of a grant of planning permission.

Conclusion on Demolition and Cultural Heritage

8.3.16. Having regard to the location of this underutilised, brownfield site and affording appropriate consideration to the provisions of the Development Plan, I am not convinced that retention of No. 363, as suggested by the appellants and observer, outweighs the overall benefits of the development. To accept the approach of the Council's archaeologist and conservation officer, and uphold the grounds of appeal in this regard, would, in my opinion, require the attachment of unjustified weight to policies such as BHA6 and BHA10, and in doing so encumber the Core Strategy.

8.3.17. On balance, I am therefore fully satisfied that the proposed demolition is justified.

8.4. Traffic and Transport

8.4.1. Much of the appeal submission is given over to traffic and transport concerns. The appellants submit that increased traffic movements will lead to public safety issues by reason of a traffic hazard, with particular concerns relating to road geometry, including sightlines and visibility, and increased on-street parking. Specific concerns are also raised in relation to the amount of parking proposed and the submitted traffic reports.

- 8.4.2. The applicant, on the other hand, states that the scheme capitalises on nearby linkages to public transport and cycling routes, thus providing varied modes and route choices in accordance with DMURS. In terms of parking, the applicant submits that the quantum is appropriate and complies with the Compact Settlements Guidelines.

General Arrangements

- 8.4.3. The proposed apartment block is laid out in linear form with a roughly east-west alignment, albeit on a slightly cranked footprint which mirrors the horizontal alignment of Blackhorse Avenue. In this regard, the front elevation is set back c. 8m from the southern boundary to the western extent and c. 12m to the east, and I note this setback generally reflects the established building line either side along Blackhorse Avenue.
- 8.4.4. The proposed vehicular access is via Villa Park Road, a tree-lined carriageway which is c. 7.5m in width and flanked by 3m wide footpaths. This road forms a priority-controlled junction with Blackhorse Avenue, c. 25m southwest of the proposed access point. There is an uncontrolled pedestrian crossing point at this junction and it is demarcated with tactile paving. Double-yellow lines extend from Blackhorse Avenue into Villa Park Road, albeit terminating outside No. 1. The proposed entrance to the site is located immediately south of No. 2 Villa Park Road. Whilst Blackhorse Avenue is subject to a speed limit of 50kph, I note that 30kph applies along Villa Park Road and I observed it to be a low-speed environment during my site inspection with informal parking on both sides. I also noted a pinch-point in the footpath to the front of the site.
- 8.4.5. The proposed access road is a short section of cul-de-sac on a similar alignment to the apartment block, terminating in a turning area which includes 19 no. perpendicular parking spaces around the perimeter with a further 6 no. parallel spaces to the northern side of the access road. Of these 25 no. spaces, there are 2 no. accessible and 1 no. car club spaces. Some landscaping is located between the spaces and site boundary.

Increase in Traffic Movements

- 8.4.6. Existing vehicular access to No. 363 Blackhorse Avenue is via a gated entrance at the junction of Villa Park Road and Blackhorse Avenue. It was locked at the time of my site inspection as was the gated entrance to No. 353 via the laneway to the north. Both entrances, which are sub-optimal, would be removed as part of the works, and whilst I do recognise the lack of traffic movements currently associated with the appeal site, this is due to both houses being unoccupied, a situation which could be reversed.

- 8.4.7. In terms of traffic impacts, the applicant's TTA anticipates that the proposal will generate a total of 8 no. two-way traffic movements during the AM peak (weekdays 08:00-09:00) and a total of 6 no. vehicle movements during the PM peak (weekdays 17:00-18:00). In this regard, the TTA states that the additional trips will be immaterial with minimal reduction in capacity or increase in queuing/delays at the local junctions.
- 8.4.8. Moreover, and having regard to the junction analysis presented in the TTA, I note that the proposed development is below the relevant thresholds at which the production of a TTA is recommended, as outlined in section 6.5 above, i.e., trips are not expected to exceed 10% of traffic flow on the adjoining road or 5% in a congestion scenario etc.
- 8.4.9. Whilst I note the appellants concerns regarding the timing of the baseline count and traffic modelling, I have reviewed the methodology employed in the TTA and I am satisfied that it is in line with industry standards for such assessment. In this regard, I note that the Blackhorse Avenue / Villa Park Road junction will operate within capacity for all assessed scenarios up to the design year of 2038 with a maximum ratio of flow to capacity (RFC) of 0.246 in the AM peak. Best practice, as noted by the TTA, is to ensure that the RFC is below 0.85 to achieve a theoretical reserved capacity of >15%.
- 8.4.10. The TTA therefore concludes that the anticipated traffic levels would be adequately accommodated and as such the proposal would have no material adverse impact on the operation of the modelled junctions. I note that the Council's roads section had no concerns regarding the efficacy of the TTA and the appellant has not detailed any specific flaw other than submit that the survey is based on very favourable conditions.
- 8.4.11. I also note that the TTA does not factor in the reduced car parking rates which will evidently reduce trips to/from the appeal site as access to a car will be limited, and I agree with the applicant that this will cause a modal shift towards public transportation.

Road Geometry and Public Safety

- 8.4.12. I note the initial concerns of the Council's roads section in relation to the entrance junction and radii, sightlines, the footpath and carriageway widths. Inconsistencies across the various site layout drawings, including grass verge dimensions and 'discrepancies in the submitted Traffic Statement' were also identified. Further information was sought in this regard, in addition to a Road Safety Audit, a revised parking layout and details in relation to cycle parking stands and visitor cycle parking.

- 8.4.13. As noted, the applicant's further information response resulted in the omission of the 2 no. houses to the rear of the apartment block, resulting in a significantly altered layout in terms of access and parking. It also contained a revised Residential Travel Plan, a TTA and a Stage 1 Road Safety Audit. It is stated that the Road Safety Audit was carried out in accordance with the TII standards document GE-STY-01024 and it notes that there were no recorded collisions at or near the site between 2005-2016.
- 8.4.14. The Road Safety Audit did, however, identify six individual problems including the undefined access road; the location of road signs; a lack of public lighting; the obstruction of sightlines on to Villa Park Road; and the proximity of parking bays to the external cycle stands. Recommended remedial measures include the delineation of the parallel parking bays and obstruction free sightlines and I note that they have been incorporated into the amended site layout in addition to other areas of concern, including carriageway width and internal movement for larger vehicles i.e., fire tender.
- 8.4.15. In this regard, sightlines at the access point are illustrated as 2m by 23m in both directions and the carriageway width scales at c. 4.2m in accordance with DMURS. I also note that the Council's roads section did not object to the amended proposal subject to some minor revisions to the footpath to the front of the site along Blackhorse Avenue and the provision of a railing between the play area and parking bays. I recommend that these issues are conditioned in the event of a grant of permission, in addition to a construction traffic management plan. On this basis, I do not consider that the proposal will adversely impact on public safety by reason of a traffic hazard.

Car Parking

- 8.4.16. As noted, a total of 25 no. parking spaces, including 2 no. accessible bays and 1 no. car club dedicated bay, are proposed. The appellants submit that this is inadequate, highlighting a lack of visitor parking and suggesting a departure from Plan standards.
- 8.4.17. The applicant, on the other hand, submits that the proposed parking is appropriate and complies with the guidance set out in the Compact Settlements Guidelines given the site's location in an urban neighbourhood and its proximity to numerous bus links. I note that SPPR 3 of these guidelines states that parking should be minimised, substantially reduced or wholly eliminated in urban neighbourhoods with the maximum rate of 1 no. space/unit for residential development at such locations, where justified.

- 8.4.18. The appeal site is located in Zone 2 for the purposes of the Plan parking standards. Appendix 5, Table 2 stipulates the same maximum standard of 1 space per dwelling and I note that Appendix 5, Section 4.0 states that this includes residents and visitors. There is no departure from the Development Plan parking standards in this regard.
- 8.4.19. Given the proximity to existing and planned high-capacity public transport nodes along the Navan Road and the urban neighbourhood location, I am satisfied that a ratio of 0.8 car spaces per residential unit is acceptable in this instance. With 11 no. 1-bed and 20 no. 2-bed apartments, I consider that parking demand is highly unlikely to increase in the future year scenarios as it would for a traditional housing scheme with growing households and a resultant increase in car ownership. The proposal thus accords with policy SMT27 which seeks to provide for sustainable levels of parking.
- 8.4.20. In this context, I roundly reject the appellants suggestion that the nearby Martin Close scheme, which includes 2 no. parking spaces per dwelling, is a good example of sustainable housing. The applicant quite correctly points out that to continue the suburban model of two-storey semi's will lead to further sprawl and car dependence.

Conclusion on Traffic and Transport

- 8.4.21. The appeal site is located in a low-speed environment and within c. 500m of a high capacity and high-frequency public bus service on the Navan Road, existing and planned. Whilst the proposal will introduce new traffic to the area and this will be felt by the residents in the immediate vicinity of the site in terms of vehicular noise and movement, I agree with the applicant that there will be no material adverse impact on Blackhorse Avenue/Villa Park junction. I am also satisfied that the parking provision and road geometry is acceptable subject to planning authority Condition 3, (a) and (b).
- 8.4.22. In this regard, I do not envisage any public safety issue by reason of a traffic hazard. However, notwithstanding my conclusion above in relation to land use zoning and development density, and for the reasons discussed below, should the Board be of the opinion that the omission of the third storey (5 no. apartments) is warranted, then, having regard to the above, I suggest that the quantum of parking is reduced *pro rata*.

8.5. Residential Amenity

- 8.5.1. Of major concern to the appellants and observer is the impact of the proposal on the residential amenity of the area. Such concerns tend to overlap with perceived impacts

on character, particularly where the area is dominated by residential development, but given the particular nuance of this case, I will address each separately. This section therefore deals with the issues of overbearance, overlooking, overshadowing and noise in terms of residential amenity, including that of Cabra Gate Lodge, a residence.

Overbearance and Overlooking

- 8.5.2. The applicant submits that the design team has taken cognisance of the issues of overlooking and overbearance through successful siting and orientation, planting and use of mesh screening, and therefore such issues have been suitably addressed.
- 8.5.3. The appellants, on the other hand, suggest that the rooftop terrace at the western end of the block, the adjacent balconies and deck access generally will give rise to overlooking resulting in an invasion of privacy due to direct lines of sight into neighbouring houses with perceived impacts on Nos. 2-4 Villa Park Road highlighted. They also submit that the reduction in separation distance from 15m to 10.240m at further information stage increased the scheme's overbearance and overlooking, suggesting that Nos. 1 and 3 Villa Park Road and Nos. 349 and 351 Blackhorse Avenue will be directly overlooked as a result of the further information amendments.
- 8.5.4. Section 15.9.18 of the Development Plan defines 'overbearance' as the extent to which a development impacts upon the outlook of the main habitable room in a home or the garden, yard or private open space serving a home. It states that in established residential developments, any significant changes to established context must be considered. Relocation or reduction in building bulk and height are considered as measures to ameliorate overbearance, whereas it notes that overlooking may also be overcome by design i.e., window placement, use of oblique windows, landscaping etc.
- 8.5.5. Overbearance is therefore a negative perception derived from the proximity of a building, whereas overlooking, perceived or actual, relates to the building's occupants.
- 8.5.6. As noted, the proposed apartment block is laid out in linear form with an east-west alignment, with a slightly cranked footprint which parallels Blackhorse Avenue. The front elevation is set back c. 8m and 12m from the southern boundary, and this generally reflects the established building line on either side along Blackhorse Avenue.

- 8.5.7. The FFL's are noted as 38.10mAOD to the west (A) and 37.65mAOD to the east (B) and this generally reflects site topography and the vertical alignment along Blackhorse Avenue. At 4-storeys it has a height of 13.2m above FFL B, but tapers to 3-storeys.
- 8.5.8. There would be a notable height difference between the semi-detached houses to the east (Nos. 349-351 Blackhorse Avenue), west (Nos. 1-3 Villa Park Road) and north (Nos. 2-4 Villa Park Road), and the apartment block, c. 8.3m, 7.6m and 7.35m from eaves to top parapet respectively. Separation distances, however, vary between c. 6.93, 10.28 and 30.15 metres, and from 3-storeys, the immediate height difference with 351 Blackhorse Avenue and 2 Villa Park Road is reduced to 5.36m and 3.94m.
- 8.5.9. These separation distances are reasonable having regard to Section 15.9.17 of the Plan which observes the traditional 22m rule between 'opposing first floor windows'. In this regard, I note that No. 351 Blackhorse Avenue and No. 2 Villa Park Road 'gable on' to the development. The only directly opposing windows are therefore between Nos. 1-3 Villa Park Road and apartments A-1-1 and A-2-1 over a distance of c. 30m.
- 8.5.10. Whilst I do note upper floor clerestory and portrait windows in the gable end of No. 2 Villa Park Road, and these appear to serve a bedroom and landing³, the opposing, albeit slightly offset apartment windows (A-1-1 and A-2-1), are detailed with opaque glazing. Other windows in this particular façade serve the stairwell landing areas.
- 8.5.11. There are also two small upper floor windows in the gable end of No. 351 Blackhorse Avenue, however the eastern elevation is blank apart from recessed balconies (B-1-5 and B-2-5). Other balconies (B-1-3, B-2-3 and B-3-3) are c. 22m from this gable end. All balconies will have galvanized metal railings and are predominantly south-facing.
- 8.5.12. Whilst SPPR 1 of the Compact Settlements Guidelines states that a separation distance of 16m between opposing windows serving habitable rooms at the rear or side of houses or apartments above ground floor level shall be maintained, this can be reduced where there are no opposing windows serving habitable rooms and where suitable privacy measures have been designed to prevent undue overlooking. This is evidently the case where the separation distance is limited to 6.93 and 10.28 metres.
- 8.5.13. SPPR 1 also states that there shall be no specified minimum separation distance at ground level or to the front of houses, duplexes and apartments in statutory plans with

³ As per the drawings permitted under PA ref. 2100/18.

applications determined on a case-by-case basis to prevent undue loss of privacy. I have therefore no concerns regarding the separation distances from the apartment block, including the balconies, to the neighbouring houses. In such circumstances, I do not agree that the proposal gives rise to significant overlooking or overbearance.

8.5.14. Given the intervening Phoenix Park wall and Blackhorse Avenue, I am also satisfied that the proposal will not overlook or be overbearing on Cabra Gate Lodge, 22m away.

8.5.15. Whilst I am sympathetic to the appellants concerns regarding potential overlooking from the communal terraces, particularly that adjacent to Nos. 2-4 Villa Park Road, and to a lesser extent from the terrace at the opposite end of the third floor, I note the mitigatory design features, including privacy screens, that would prevent such a scenario. I would, however, question the functionality and need for these outdoor terraces, cumulatively 179sq.m, given the abundance of open space to the front of the building and proximity to the expansive recreational spaces within the Phoenix Park.

8.5.16. In this regard, whilst I note the stated concerns of the Planning Officer over the quality and usability of the space to the front of the site and subsequent further information request, I consider that this has been addressed through the additional set-back of the building, removal of the 2 no. houses and incorporation of the children's play area to the rear. In this regard, I agree with both the applicant and appellants. The most appropriate solution is for the main quantum of communal space to the front, where it benefits from the south aspect and passive surveillance, and play area to the rear. This, in my opinion, would be fully in accordance with Section 15.9.8 of the Plan.

8.5.17. Indeed, the noise assessment submitted at further information stage proves the usability of this area. This, in my opinion, renders the terraces superfluous, and I also note that the minimum quantum of space (194sq.m) can be met in their absence. I recommend that the Board condition out the roof terraces in the event of a grant.

8.5.18. Finally, regarding the deck access, the applicant submits that a minimal number of apartments are served by this arrangement and refers to precedent cases under ABP-302344-18 and ABP-307468-20. Whilst I do also share some reservations regarding the design quality of the proposed deck access, and particularly the screen mesh, which is designed to mitigate any overlooking from same, I do note that it is to the rear of the building with limited views from the public domain. I also accept that the design

quality is generally high overall, and note the rear elevation also includes brick finishes. I do however recommend that the Board condition all finishes in the event of a grant.

Overshadowing

- 8.5.19. The appellants submit that the proposal increases overshadowing and suggest that there is inadequate assessment of daylight and sunlight issues whereas the applicant states that there is no undue overshadowing of adjoining properties as per BRE 209.
- 8.5.20. In terms of overshadowing, I note that Section 3.2 of the Building Heights Guidelines provides that appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlined in guides like the BRE's *Site Layout Planning for Daylight and Sunlight* (2nd ed.) or *Lighting for Buildings – Part 2: Code of Practice for Daylighting* (BS 8206-2: 2008). This guidance was updated as noted in Section 6.6 of the New Apartments Guidelines (2023). Relevant guidance is therefore contained in European Standard EN17037 or UK National Annex BS EN17037 and BR 209 2022, *Site Layout Planning for Daylight and Sunlight* (3rd ed.). I note this guidance post-dates that set out in Appendix 16 of the Development Plan.
- 8.5.21. Moreover, Section 5.3.7 of the Compact Settlements Guidelines sets out a different approach to the consideration of daylight and sunlight issues than the one set out in the Building Heights Guidelines and New Apartments Guidelines. The new guidance notes that planning authorities must weigh up the overall quality of the design and layout of the scheme and the measures proposed to maximise daylight provision, against the location of the site and the general presumption in favour of increased scales of urban development. This approach would supersede the previous approach, including that in the Building Heights Guidelines, which requires alternative compensatory design solutions to be set out when daylight provisions are not met.
- 8.5.22. As noted, the applicant's Section 131 response included an updated Daylight, Sunlight and Overshadowing Study (IES, October 2024) which references the current guidance documents in Section 4 (Methodology). The study provides an assessment of daylight and sunlight penetration to the proposed apartments and of the impact the proposed development would have on daylight, sunlight, open spaces and gardens of adjacent houses. A total of 17 no. dwellings were assessed, albeit referenced as 'Villa Park Rd West Dwellings', 'Villa Park Rd East Dwellings' and 'Blackhorse Avenue Dwellings' with 40 no. 'points' or windows tested for daylight and 19 no. tested for sunlight.

Having regard to the site location, I agree these are the potential sensitive receptors and I note that 10 no. windows relate to the nearest house, No. 2 Villa Park Road.

- 8.5.23. In terms of daylight, the report indicates that 4 no. of the assessed windows (10%) fall below the BRE guidance i.e., have a modelled VSC level less than 27% and less than 0.8 times the former value. Of these windows, 3 no. have a VSC value between 15% and 27% where special measures are usually needed to provide adequate daylight. However, I note that of these 3 no. windows, one is an upper floor landing window whilst the others are in an open plan living/dining area where larger than conventional windows that meet the standard are in situ⁴. Similarly, for the window with a VSC of 10.27% and 47% of existing levels, it too serves the open plan living / dining area of No. 2 Villa Park Road which is well glazed and includes wraparound clerestory opes.
- 8.5.24. In this regard, I note Section 2.2.7 of BR 209 2022 states that if the VSC, with the new development in place, is both less than 27% and less than 0.80 times its former value, occupants of the existing building will notice the reduction in the amount of skylight. Whilst I accept that this will be the case for the occupants of No. 2 Villa Park Road, I do not consider that daylight in the living / dining area will be significantly affected.
- 8.5.25. In terms of sunlight, the report indicates that 1 no. of the assessed windows (5%) falls below the recommended 25% APSH and 4 no. of the assessed windows (21%) falls below the recommended 5% winter sunlight hours. As expected, the only loss of sunlight is associated with No. 2 Villa Park Road given its relative proximity, c. 10.28m, from the proposed development. However, as with daylight, the affected windows serve the open plan living / dining area where other windows meet both APSH and winter sunlight recommendations. I consider this space will receive adequate sunlight.
- 8.5.26. In terms of sunlight to existing gardens and open spaces, the report indicates that at least 50% of open space for all assessed properties will receive at least 2 hours sunlight on 21st March, with the exception of No. 2 Villa Park Road. In this regard, I note that there will be an annual loss of sunlight of 59% and this will be noticeable as per Section 3.3.17 of BR 209 2022. I do note however that the baseline for this property is low given the comparatively small area and the impact of existing trees.

⁴ As per the drawings permitted under PA ref. 2100/18.

- 8.5.27. The report also addresses the degree to which daylight and sunlight will penetrate the proposed development including the open spaces. This is particularly important in the context of the appellants concerns regarding the deck access. The report notes that a total of 82 no. rooms were assessed and states that 80 no., or 98%, meet the target daylight levels outlined in BR 209 2022. This equates to 49 of the 51 no. bedrooms tested and all 31-no. living / dining / kitchen spaces tested. Whilst I note that both bedrooms are located to the north, the report suggests that the failure reason is due to the screen mesh, to help reduce overlooking, and they would pass in its absence.
- 8.5.28. Moreover, the report indicates that compensatory design measures have been incorporated on this basis, including larger than minimum aggregate floor areas (71%) and communal amenity spaces (205%), although for the reasons outlined above, I do not consider such a quantum of communal space necessary. I also note that 71%, or 22 no. units, are dual-aspect and enjoy a high-quality outlook over the Phoenix Park.
- 8.5.29. In terms of the bedrooms which do not meet the requisite standard, I note the respective apartments (B-1-1 and B-2-1) are oversized i.e., +10% minimum floor area.
- 8.5.30. I am therefore satisfied that this is generally in accordance with Section 6.7 of the New Apartments Guidelines and fully consistent with Section 5.3.7 of the Compact Settlements Guidelines. The latter reminds us of the general presumption in favour of increased scales of urban residential development when weighing up the overall design quality of the scheme and the measures proposed to maximise daylight.
- 8.5.31. In terms of sunlight, the report notes that a total of 31 no. points were assessed and states that all 31 no., or 100%, meet the target sunlight levels outlined in BR 209 2022.
- 8.5.32. In terms of sunlight to communal spaces, Section 6.3 of the report suggests that 97% will receive at least 2 hours sunlight on 21st March, thus exceeding recommendations.
- 8.5.33. Therefore, in terms of the adequacy of the levels of daylight and sunlight, I do not necessarily agree with the appellants and observer that the proposal would result in an unacceptably low level of amenity for existing residents or future occupants.

Apartment Standards

- 8.5.34. The appellants also raise concerns regarding the impact of the proposal on the future occupants of the apartments. Whilst this is generally in the context of overshadowing, as noted above, it does warrant consideration in terms of apartment accommodation.

8.5.35. I have therefore reviewed the Housing Quality Assessment (HQA) submitted by the applicant and whilst I note shortfalls in the aggregate living / kitchen / dining space for 13 no. units, this is within the 5% variation that can be applied. I am therefore satisfied that each of the proposed apartments generally meets the required accommodation standards set out in the New Apartments Guidelines, and Appendix 1 in particular. In this regard, I am satisfied that residential amenity of future occupants will be secured.

Noise

8.5.36. Finally, I also note concerns regarding noise from the proposed roof terraces. For identical reasons to concerns in relation to overlooking, namely the privacy screens around the roof terraces, I do not consider any significant noise impacts will arise. I do however recommend their omission in terms of functionality, particularly given the proximity to the Phoenix Park, and given the required standard is met in their absence.

8.5.37. Any perceived noise impacts during the operational phase of the proposed development will be no different than any other apartment scheme which includes mechanical plant. In this regard, I note the content of the updated noise assessment which demonstrates that there will be no adverse noise impact from mechanical plant on existing or future residents, with the main source being traffic noise, where impact on the communal spaces can be mitigated by landscaping and boundary treatment.

8.5.38. Residual noise and safety concerns during the construction phase can be addressed by condition, and in this regard, I recommend a CEMP condition in the event of a grant of permission, in addition to revised landscaping and boundary treatment proposals.

Conclusion on Residential Amenity

8.5.39. On balance, I am satisfied that the proposed development will not adversely impact on the existing residential amenity of neighbouring properties or that of future apartment occupants by reason of overbearing, overlooking, overshadowing or noise.

8.6. Visual Amenity

8.6.1. The appeal site is located within an established residential area, however, its character is also derived somewhat from its proximity to the Phoenix Park, including the adjacent Cabra Gate and Gate Lodge, which are protected structures, as are the perimeter wall of the Phoenix Park and Áras an Uachtaráin, located c. 420m to the south-southwest.

- 8.6.2. The concerns of the observer and appellants therefore relate to the impact of the apartment block on the visual amenity of the area and on the adjacent protected structures, whereas the applicant states that the proposal poses no risk or impact on Áras an Uachtaráin or the wider Phoenix Park, including Cabra Gate and Gate Lodge.
- 8.6.3. As noted, the application was accompanied by an AHIA, Landscape and Visual Impact Assessment (LVIA) and Verified Views. The applicant's further information response and subsequent clarification included updated photomontages and a drone survey. Whilst I accept that the Verified Views do not represent a worst-case scenario in terms of tree cover / foliage, as noted by the parks section, they are not solely relied upon in my overall assessment, having visited the site in the winter (December) and spring.
- 8.6.4. Having regard to my considerations above in terms of overbearance etc., I am satisfied that the proposed development will not impact on the visual amenities of the adjacent property where prevailing height is two-storey and the building transitions from 3 to 4-storey. This is supported by the LVIA and photomontages i.e., Viewpoints 1, 5 and 6. The building is thus generally acceptable in terms of height, scale and massing and will not result in an incongruous or jarring development in the local neighbourhood. I will therefore focus attention on the Phoenix Park, including the protected structures.

Conservation Area & Protected Structures

- 8.6.5. The AHIA concludes that the proposed apartment building has a modest, polite and ordered character and is likely to be regarded as being respectful of its surroundings, including the Phoenix Park and the Cabra Gate and Gate Lodge. Whilst it notes that its existence will bring about a change in the urban character, it states that it will have no physical impact on the heritage of Cabra Gate or Gate Lodge. In this regard, I note that the visual effects from Viewpoints 2, 3 and 4, as initially proposed, ranged from 'minor adverse' to 'minor-moderate adverse', and this is softened by the increase in setback at further information stage, as illustrated in the revised photomontages.
- 8.6.6. Whilst I note the concerns raised by the Council's conservation officer, I am satisfied that these were largely addressed by the applicant's further information response in terms of building line and setting. To ape the special character of the nearby protected structures is, in my opinion, patently unfeasible with a development of this scale, and which, for the reasons outlined in section 8.2 above, is appropriate infill development.

- 8.6.7. I am therefore satisfied that the proposal, which is a suitable juxtaposition between suburban-style housing and the Phoenix Park, is acceptable from a visual amenity perspective and does not adversely impact on the setting of the nearby protected structures or the Phoenix Park Conservation Area. In this regard, I do not consider that the protected structures or Conservation Area are fundamental to the character of the area, which is mainly derived from the housing to the north and ribboning along Blackhorse Avenue, including the 3-storey Park Crescent House, c. 100m southeast.
- 8.6.8. By the same token, the overall setting and character of Cabra Gate and Gate Lodge is mainly derived from, and indeed mostly appreciated with, the Phoenix Park backdrop and walled enclosure foreground. Views with the appeal site as the backdrop are limited and fleeting and there is sufficient and compelling evidence in the LVIA in this regard. The proposal therefore accords with policies BHA2 and BHA9.

Áras an Uachtaráin

- 8.6.9. The applicant's clarification of further information response included a drone survey to address the stated concerns regarding Áras an Uachtaráin. The report illustrates a distance of c. 444.5m between the apartment building and the front elevation of Áras an Uachtaráin and c. 75m of a tree planting belt between the buildings, south of North Road, within the Phoenix Park. I viewed this line of sight from Áras an Uachtaráin towards the site and observed the intervening tree coverage during my site inspection. I noted that some birch trees near this line of sight appeared leaning and damaged.
- 8.6.10. Notwithstanding the content of the drone survey, the question is not whether Áras an Uachtaráin is visible from the upper floors and roof level of the apartment block, rather whether the upper floors and roof level are visible from the front of Áras an Uachtaráin. As it stands, this appears to be purely dependent on the intervening belt of trees.
- 8.6.11. Whilst I accept that the northern view from the front of Áras an Uachtaráin is not one of the views and prospects designated in the Phoenix Park Conservation Management Plan (OPW, September 2011), it is where the President of Ireland meets and greets all visiting dignitaries, as noted by the Office of Public Works in their submission.
- 8.6.12. This view, albeit a semi-private one, should be treated with an abundance of caution and thus I cannot attach any determinative weight to the drone survey, particularly given the trees and vegetation were in full leaf. What is required, in my opinion, is a LVIA and Verified Views from the front of Áras an Uachtaráin towards the appeal site

in a worst-case scenario. In the absence of same, and notwithstanding the presumption in favour of increased scales of urban development, I agree with the OPW that the proposed scheme could impact on the institutions that reside within the Park.

- 8.6.13. This, in my opinion, could significantly and adversely affect the character and visual amenity from one of the foremost institutions of the State. Therefore, attaching appropriate weight to objective GIO27, which seeks to support the implementation of the Phoenix Park Management Plan so as to protect and conserve the historic landscape of the Phoenix Park etc. I consider that the third floor should be omitted. In this regard, I am satisfied that a three-storey building would be adequately screened.

Conclusion on Visual Amenity

- 8.6.14. I consider that the proposed development represents a suitable transition between the suburban housing along Blackhorse Avenue and Villa Park Road, and the Phoenix Park. It will be adequately assimilated and whilst 'moderate adverse' impacts have been identified, these are outweighed by the benefits of the proposal. In this regard, I do not consider that the apartment building would adversely impact on the character or visual amenity of the area, including that derived from Cabra Gate and Gate Lodge.
- 8.6.15. I do, however, have very specific concerns regarding the possibility of the third floor being visible from the front of Áras an Uachtaráin, which is otherwise an uninterrupted view of open pasture and trees, and sets the context for State visits. I therefore recommend that the Board omit the third floor by way of condition if they are minded to grant permission. Thus, the proposed parking should also be reduced *pro rata*.

8.7. Natural Heritage

- 8.7.1. As noted, the applicant submitted updated bat and badger assessments under Section 131. In terms of ecology, the appellants invite the Board to conduct a habitat survey, stating that there have been several sightings of badgers and bats, and other species. I also note that the observer raises concerns regarding the removal of existing trees.

Biodiversity

- 8.7.2. In this context, I have engaged the Inspectorate Ecologist team who have considered the adequacy of the submitted information for the purposes of ecological impact assessment (bats and badgers) and screening for appropriate assessment (AA).

- 8.7.3. The Inspectorate Ecologist, Dr. M. Flynn, has provided a report on the issues raised and made recommendations in relation to AA and biodiversity (see Appendix 3).
- 8.7.4. In terms of biodiversity, the report concludes that the proposal will not result in significant effects on protected species including bats and badgers. It also considers that the Board can be confident that the obligations under relevant statutory provisions are met in terms of ensuring no significant effects on such species or their habitats.

Trees

- 8.7.5. The main cluster of trees is located centrally on site and to the east of No. 363 Blackhorse Avenue. Other trees are sporadically located around the perimeter of the site. The footprint of the proposed building would traverse the main cluster of trees and I note that 41 no. (of a total of 49 no. trees) are recommended for removal to facilitate the development. The tree survey also states that the majority of trees, 36 no., are Category C i.e., low quality with a life expectancy of c. 10 years. Whilst I note that 5 no. are Category B, with a life expectancy of at least 20 years, the remainder are Category U and recommended for removal on the basis of arboricultural management, and I note a significant quantum of compensatory planting is proposed.
- 8.7.6. Whilst I acknowledge the concerns of the observer, and indeed the Council's parks section in relation to the loss of existing trees, and I am conscious of policy GI41 which seeks to protect existing trees as part of new development, it relates particularly to those that are of biodiversity significance, which is evidently not the case here. Having regard to the tree survey and impact assessment, and the report of the Inspectorate Ecologist, I am therefore satisfied that the removal of the existing trees can be justified.

Conclusion on Natural Heritage

- 8.7.7. Having reviewed the ecological information submitted with the application, including the updated bat and badger assessments in the Section 131 response, and having regard to the report of the Inspectorate Ecologist, I am fully satisfied that no significant impacts arise in relation to badgers or bats, subject to the recommended conditions.
- 8.7.8. On balance, the removal of existing trees from the appeal site is justified and I recommend that the Board attach a landscaping condition in the event of a grant.

8.8. Other Issues

- 8.8.1. Drainage and flooding, open space and security are amongst the other issues raised.

Drainage and Flooding

- 8.8.2. I note that the appellants raise concerns regarding an underground stream beside No. 351 Blackhorse Avenue and suggest that this could lead to poor drainage and flooding, whereas the applicant states that there is no evidence of such a stream on the site.
- 8.8.3. Given the site's proximity to the aforementioned 'Poor Man's Well', there is some merit to the appellants assertion regarding a groundwater feature in the area. Indeed, there appears to be evidence of a surface feature on the OS 25 Inch map, 1897-1913, along the eastern boundary of the site, albeit filled in or culverted in the later OS 6 Inch map.
- 8.8.4. In the absence of any basement levels and given the separation distance from the building footprint to the locus of this historic feature, I have no hydrogeological concerns. Any minor dewatering issues can be addressed through a CEMP condition.
- 8.8.5. Moreover, the application is accompanied by a drainage report and flood risk assessment (FRA). Noting the lack of infiltration in the underlying soils, the drainage report states that runoff will be attenuated before discharging via flow control (2 l/s) into the existing Ø225mm surface water sewer. Similarly, the FRA states that groundwater flooding is not anticipated given the lack of groundwater in the trial holes.
- 8.8.6. The FRA concludes that the proposal will not pose any flooding issues for the development itself or lands / properties downstream. Having regard to the appeal site location within Flood Zone C 'Low Probability' and the submitted reports, including that of the Council's drainage section, who had no objection subject to conditions, I am satisfied that the proposal will not give rise to fluvial, pluvial or groundwater flooding.

Public Open Space

- 8.8.7. As noted, the proposal incorporates communal open space to the front and rear of the building. Whilst not raised directly by either the appellants or observer, the proposal does not include any public open space, and this was highlighted by the parks section.
- 8.8.8. In this regard, I note that policy GI28 seeks to ensure sufficient open space in new residential development and Section 15.8.6 (Table 15-4) provides that a minimum quantum of 10% of the overall site area on zoned Z1 lands shall be dedicated to public

open space. Section 15.8.7 of the Development Plan does, however, provide for a financial contribution in lieu of open space in certain cases, such as site constraints or where it is deemed that an existing provision in the vicinity would be better upgraded. This is supported by policy GI26 where on-site provision is not feasible or realistic.

8.8.9. Notwithstanding the park section comments, the Planning Officer considered it reasonable to provide no open space based on site size and proximity to Phoenix Park and the planning authority attached a financial contribution condition to their decision.

8.8.10. Having regard to the proximity to the Phoenix Park and given the obvious site constraints, I am satisfied that the proposed development meets the criteria to forego open space in lieu of a financial contribution in accordance with policy GI26. I recommend the Board attach such a condition in the event of a grant of permission.

Security

8.8.11. As noted, the appeal site is within 420m of Áras an Uachtaráin. Whilst I have not attached significant weight to the drone survey in terms of visual amenity impacts, as noted above, I do believe it a useful tool to generally consider the security concerns. In this regard, the survey indicates that Áras an Uachtaráin is not visible from the upper floor levels, or indeed any height up to twice the height of the proposed development i.e., 14.4m above roof level. Whilst this may be subject to change in the winter months with reduced leaf cover on the intervening trees, as alluded to above, in the absence of evidence to the contrary, I am generally satisfied that no security concerns arise.

8.8.12. Moreover, the observer correctly, albeit perhaps inadvertently refers to Section 44A of the Planning Act which empowers the Minister, upon the request of the Minister for Justice etc. to revoke or modify a grant of permission if they are satisfied the associated development is likely to harm the State's security and relationships etc.

Conclusion on Other Issues

8.8.1. I have no residual concerns regarding the proposed development, subject to the omission of the third floor, as noted above. This assessment, therefore, represents my *de novo* consideration of all planning issues material to the proposed development.

8.8.2. Alleged inconsistencies in the Council's reports are beyond the scope of this appeal and I note that the Board does not have an ombudsman role in relation to such matters.

9.0 AA Screening

9.1. Introduction

- 9.1.1. The planning application was accompanied by an 'Appropriate Assessment Screening Report' prepared by Biosphere (September 2019). Section 2.1 describes the proposal and site. It states that there are no open watercourses or drains within or adjoining the site and notes the distance to the Royal Canal (>1km) and River Liffey (<2km).
- 9.1.2. Section 2.2 relates to demolition and construction and indicates that a Construction and Demolition Waste Management Plan (now RWMP) and CEMP will be prepared.
- 9.1.3. Section 2.3 of the report identifies the relevant European Sites; however I note that it predates the designation of the Northwest Irish Sea candidate SPA (004236).

9.2. Stage 1 (Screening)

- 9.2.1. Having reviewed the documents and submissions, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the proposed development, alone, or in combination with other plans and projects on any of the designated European sites. The Inspectorate Ecologist has carried out a full screening determination for the development and it is attached to this report (Appendix 3). For completeness, the sites included in the screening exercise are:

- South Dublin Bay SAC (000210)
- South Dublin Bay and Tolka Estuary SPA (004042)
- North Dublin Bay SAC (000206)
- North Bull Island SPA (004006)
- Northwest Irish Sea candidate SPA (004236)

Screening Determination

- 9.2.2. In accordance with Section 177U of the Planning and Development Act 2000, as amended, and on the basis of the information considered in this AA screening, I conclude that the proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on any European Sites and is therefore excluded from further consideration. AA is not required.

9.2.3. This determination is based on:

- Low potential for source impacts of any magnitude
- Development within a fully serviced residential urban area
- Location and distance from European sites and lack of meaningful ecological connections
- Tenuous and weak hydrological connection via surface water pathway through public drainage and the River Liffey with dilution and tidal influences of the receiving River Liffey quickly dispersing any surface water borne silt or pollutants that could be attributed to the proposed development to imperceptible levels.
- Consideration of the conservation objectives of:
 - South Dublin Bay SAC (000210)
 - South Dublin Bay and Tolka Estuary SPA (004042)
 - North Dublin Bay SAC (000206)
 - North Bull Island SPA (004006)
 - Northwest Irish Sea candidate SPA (004236)

10.0 Recommendation

I recommend that permission be **granted** for the reasons and considerations below.

11.0 Reasons and Considerations

Having regard to the provisions of the Dublin City Development Plan 2022-2028, as varied, and the location of the proposed development on zoned and serviced lands within a 'city urban neighbourhood', it is considered that, subject to compliance with the conditions set out below, the demolition of the buildings on site would not detract from the setting or character of the area or protected structures and conservation area in the vicinity, would not result in the demolition of buildings of significant historic value that contribute to that setting or character, and the proposed development would therefore make efficient use of an underutilised brownfield site and positively contribute to this neighbourhood, would positively contribute to an increase in housing

stock in this accessible urban location with a range of social, commercial, and public transport infrastructure, would be acceptable in terms of urban design and building height, would be acceptable in terms of pedestrian and traffic safety, and would provide an acceptable form of residential amenity for future occupants. The proposed development would not seriously injure residential or visual amenities or significantly increase traffic volumes in the area, or negatively impact on human health, or natural or cultural heritage. The proposed apartment development would, therefore, be in accordance with the proper planning and sustainable development of the area.

12.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by An Bord Pleanála on the 17th day of October, 2024, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interests of clarity.

2. The proposed development shall be amended as follows:
 - (a) The third-floor level of the apartment block shall be omitted.
 - (b) The roof terraces shall be omitted and a green roof incorporated uniformly.
 - (c) The parking spaces to the north of the access road, identified as nos. 1 to 6, shall be omitted and replaced with an area of landscaped open space.
 - (d) The provision of a separation railing from the access to the children's play area along the pedestrian route bordering space nos. 13, 14, 15 and 16.
 - (e) The provision of a minimum 2m wide footpath along the application site boundary with Blackhorse Avenue and Villa Park Road.

For clarity, this permission shall relate to 26 apartment units only.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of proper planning and sustainable development.

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

Reason: In the interest of visual amenity.

4. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

5. (a) The developer shall engage a suitably qualified (licensed eligible) archaeologist to monitor (licensed under the National Monuments Acts) all site clearance works, topsoil stripping, groundworks, dredging and/or the implementation of agreed preservation in-situ measures associated with the development following consultation with the National Monument Service (NMS).

(b) Prior to the commencement of such works the archaeologist shall consult with and forward to the Local Authority archaeologist or the NMS as appropriate a method statement for written agreement. The use of appropriate tools and/or machinery to ensure the preservation and recording of any surviving archaeological remains shall be necessary.

(c) Should archaeological remains be identified during the course of archaeological monitoring, all works shall cease in the area of archaeological interest pending a decision of the planning authority, in consultation with the NMS, regarding appropriate mitigation (e.g. preservation in-situ, or excavation). The developer shall facilitate the archaeologist in recording any remains identified. Any further archaeological mitigation requirements specified by the

planning authority, following consultation with the National Monuments Service, shall be complied with by the developer.

(d) Following the completion of all archaeological work on site and any necessary post-excavation specialist analysis, the planning authority and the National Monuments Service shall be furnished with a final archaeological report describing the results of the monitoring and any subsequent required archaeological investigative work/excavation required. All resulting and associated archaeological costs shall be borne by the developer.

Reason: To ensure the continued preservation (either in situ or by record) of places, caves, sites, features or other objects of archaeological interest.

6. Proposals for a development name and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all such names and numbering shall be provided in accordance with the agreed scheme.

Reason: In the interest of urban legibility.

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

Reason: In the interests of visual amenity.

8. The internal road network serving the proposed development, including junctions, parking areas, footpaths and kerbs shall be in accordance with the requirements of the Design Manual for Urban Roads and Streets (DMURS) and the detailed construction standards of the planning authority for such works.

Reason: In the interest of amenity and of traffic and pedestrian safety.

9. (a) The maximum number of car parking spaces serving the proposed development shall be 21 in number. A minimum of 1 no. car parking space within the development shall be permanently allocated to car club use. The location and layout of these spaces shall be agreed in writing with the planning authority prior to the commencement of development.

(b) Residential car parking spaces shall be permanently allocated to residential use and shall not be sold, rented, or otherwise sub-let or leased to other parties.

(c) A minimum of 50% of all residential car parking spaces shall be provided with functioning electric vehicle charging stations or points, and ducting shall be provided for all remaining car parking spaces, facilitating the installation of electric vehicle charging points or stations at a later date. Where proposals relating to the installation of electric vehicle ducting and charging stations or points have not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted and agreed in writing with the planning authority prior to the occupation of the development.

(d) The bicycle parking quantity shall be provided as per the bicycle parking standards of the Dublin City Development Plan 2022-2028. Resident cycle parking spaces shall be secure, conveniently located, sheltered, and well lit. Key/fob access shall be required to resident bicycle compounds. All cycle parking design including visitor parking shall allow both wheel and frame to be locked. Electric bike charging facilities within the resident cycle parking areas shall be provided. All cycle parking shall be *in situ* prior to the occupation of the development.

(e) Prior to the occupation of the development a Parking Management Plan shall be prepared for the development and submitted to and agreed in writing with the planning authority. The plan shall include measures to ensure that the car parking spaces shall not be sold, rented, or otherwise sub-let or leased to other parties.

Reason: In the interest of sustainable transportation.

10. The development shall be carried out and operated in accordance with the provisions of a revised Mobility Management Plan (MMP) which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The MMP shall include specific objectives and measures to achieve modal split targets for the development which shall be implemented in full upon first occupation. The developer shall undertake an annual monitoring exercise to the satisfaction of the planning authority for the

first 5 years following first occupation and shall submit the results to the planning authority for consideration and placement on the public file.

Reason: To achieve a reasonable modal split in transport and travel patterns in the interest of sustainable development.

11. Prior to the commencement of any works associated with the development hereby permitted, the developer shall submit a Traffic Management Plan (TMP) for the construction phase of the development for the written agreement of the planning authority. The TMP shall incorporate details of the road network to be used by construction traffic including oversized loads, detailed proposals for the protection of bridges, culverts and other structures to be traversed, as may be required. The agreed TMP shall be implemented in full during the course of construction of the development.

Reason: In the interest of sustainable transport and safety.

12. Public lighting shall be provided in accordance with a scheme prepared in line with the principles of the Bat Conservation Trust *Guidance on Bats and Artificial Lighting at Night*. The scheme shall include lighting along pedestrian routes through open spaces, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the occupation of any dwelling.

Reason: In the interests of amenity and public safety, and wildlife protection.

13. Prior to the commencement of development (including demolition and tree clearance), a bat survey shall be undertaken by a bat specialist and submitted to, and agreed in writing with, the planning authority. Any demolition of structures or tree clearance that supports a new record of bat roost shall be carried out only under licence from the National Parks and Wildlife Service (NPWS) and details of such licence shall be submitted to the planning authority.

Reason: In the interest of wildlife protection.

14. The attenuation and disposal of surface water shall comply with the requirements of the planning authority for such works and services. Prior to the commencement of development, the developer shall submit details for the

attenuation and disposal of surface water from the site for the written agreement of the planning authority.

Reason: To prevent flooding and in the interests of sustainable urban drainage.

15. A comprehensive boundary treatment and landscaping scheme, incorporating the planting principles from the all-Ireland Pollinator Plan, shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. This scheme shall include the following:

(a) details of all proposed hard surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development;

(b) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings;

(c) details of proposed street furniture, including bollards, lighting fixtures and seating;

(d) details of proposed boundary treatments at the perimeter of the site, including acoustic measures, heights, materials and finishes.

The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.

Reason: In the interest of visual and residential amenity.

16. (a) The open spaces, including hard and soft landscaping, car parking areas and access ways, communal refuse/bin storage, and all areas not intended to be taken in charge by the local authority, shall be maintained by a legally constituted management company.

(b) Details of the management company contract, and drawings/particulars describing the parts of the development for which the company would have responsibility, shall be submitted to, and agreed in writing with, the planning authority before any of the residential units are made available for occupation.

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

17. (a) A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority not later than 6 months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan.

(b) This plan shall provide for screened communal bin stores, the locations, and designs of which shall be included in the details to be submitted.

Reason: In the interest of residential amenity and to ensure the provision of adequate refuse storage.

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

Reason: In the interest of sustainable waste management.

19. A Construction and Environmental Management Plan (CEMP) shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. The CEMP shall include but not be limited to construction phase controls for dust, noise and vibration, waste management, protection of soils, groundwaters, and surface waters, site housekeeping, emergency response planning, site environmental policy, and project roles and responsibilities.

Reason: In the interest of residential amenities, public health and safety and environmental protection.

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

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

21. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

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

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

Reason: To ensure the satisfactory completion of the development.

23. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on

behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

24. The developer shall pay a financial contribution to the planning authority in lieu of a shortfall in public open space as set out in the Dublin City Council Development Contribution Scheme 2023-2026, or any subsequent scheme. The amount of the contribution shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála for determination. The contribution shall be paid prior to commencement of development or in such phased payments as may be agreed prior to the commencement of the development, and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the terms of payment of this financial contribution shall be agreed in writing between the planning authority and the developer.

Reason: To ensure compliance with policy GI26 and Section 15.8.7 of the Dublin City Development Plan 2022-2028.

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.

Philip Maguire

Inspectorate

25th June 2025

Appendix 1 (EIA Screening)

Form 1 – EIA Pre-Screening

Case Reference	ABP-320640-24		
Proposed Development Summary	Construction of 33 residential units comprising 2 no. semi-detached house and 31 no. apartments		
Development Address	353 and 363 Blackhorse Avenue, Dublin 7		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X
		No	
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes	X	Class 10(b)(i) of Part 2 of Schedule 5 Class 10(b)(iv) of Part 2 of Schedule 5	Proceed to Q3.
No			No further action required
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			EIA Mandatory EIAR required
No	X	Class 10(b)(i) 'more than 500 dwelling units' Class 10(b)(iv) 'urban development - 10ha etc.'	Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes	X	500 dwelling unit threshold – 33 units proposed 10ha urban development threshold – 0.35ha site	Prelim. exam. required (Form 2)
5. Has Schedule 7A information been submitted?			
No		Pre-screening determination conclusion remains as above (Q1 to Q4)	
Yes	X	Screening Determination required	

Inspector: _____

Date: _____

Form 3 – EIA Screening Determination

A. CASE DETAILS		
An Bord Pleanála Case Reference	ABP-320640-24	
Development Summary	Construction of 33 residential units comprising 2 no. semi-detached house and 31 no. apartments (as per the initial statutory notices) and reduced to 31 no. apartments only at significant further information stage.	
	Yes / No / N/A	Comment (if relevant)
1. Was a Screening Determination carried out by the PA?	No	The Planning Officer's Report, which forms the basis of the planning authority's decision, screens out the proposal for EIA at preliminary examination stage.
2. Has Schedule 7A information been submitted?	Yes	Contained within the EIA Screening Report (Downey, October 2024) submitted on foot of a Section 131 Notice dated 1 st October 2024 ('the EIA Screening Report' hereafter).
3. Has an AA screening report or NIS been submitted?	Yes	AA Screening Report (Biosphere, September 2019) submitted with the planning application. Whilst reference is made to an AA Screening Report and Natura Impact Statement (Biosphere, March 2022) in applicant's Section 131 response dated 17 th October 2024, neither of these documents have been submitted. Please see Memo dated 18 th December 2024.
4. Is a 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?	No	N/a
5. Have any other relevant assessments of the effects on the environment which have a significant bearing on the project been carried out pursuant to other relevant Directives – for example SEA	Yes	Appeal site is zoned 'Z1' Sustainable Residential Neighbourhoods. Strategic Environmental Assessment (SEA) undertaken as part of the Dublin City Development Plan 2022-2028 (Vol. 5 – Environmental Report). Appropriate Assessment (Natura Impact Report) and Strategic Flood Risk Assessment also undertaken (Vols. 6 and 7).

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) Mitigation measures –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
This screening examination should be read with, and in light of, the rest of the Inspector's Report attached herewith			
1. Characteristics of proposed development (including demolition, construction, operation, or decommissioning)			
1.1 Is the project significantly different in character or scale to the existing surrounding or environment?	No	<p>The project comprises of the construction of a residential development on lands zoned 'Z1' Sustainable Residential Neighbourhoods.</p> <p>The appeal submission relates to 31 no. apartments in a 3-4 storey block. This is confirmed in the Section 131 response. The EIA Screening Report states that the proposed height and layout have been carefully configured to ensure that the overall height and building lines do not affect the prevailing character of the area.</p> <p>The development is generally in keeping with the predominantly urban/suburban surrounding landscape, and whilst the scale and density is higher than other residential development in the area, it is not regarded as being of a scale or character significantly at odds with the surrounding pattern of development.</p>	No
1.2 Will construction, operation, decommissioning or demolition works cause physical changes to the locality (topography, land use, waterbodies)?	Yes	There will be moderate physical changes to the locality in terms of land use where two detached houses, sheds and outbuildings, albeit derelict and significantly overgrown with vegetation, will be replaced with a 3-4 storey apartment building.	No

		There will be no significant changes to the topography of the locality with imperceptible changes to ground level to facilitate access road, car parking and finished floor levels. Nor will there be significant impacts on ground or surface waterbodies in the absence of abnormally deep excavations such as those associated with basement levels etc.	
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	<p>Project enabling works comprise the demolition of two derelict houses, sheds and outbuildings and the removal of trees and vegetation, the loss of which will be permanent, albeit replaced in the new development. New construction would comprise the removal of any remaining foundations and bulk dig, including the excavation of topsoil, and the construction of a 3-4 storey apartment building.</p> <p>Section 5.1.3 of the EIA Screening Report notes that whilst exact quantities of materials required have not yet been determined, large amounts of aggregates will be used during construction phase, and this material will need to be imported.</p> <p>Such construction materials will be typical of such urban development. The loss of natural resources or local biodiversity as a result of the development of the site are not regarded as significant in nature. I also note that Irish Water (now Uisce Éireann) had no objection to water, or wastewater connections, subject to condition.</p>	No
1.4 Will the project involve the use, storage, transport, handling or production	Yes	Section 5.3.6 of the EIA Screening Report acknowledges the potential effects on human health arising from dust, noise, increased traffic	No

<p>of substance which would be harmful to human health or the environment?</p>		<p>and vibration during the construction phase but states that the implementation of measures contained within a construction environmental management plan (CEMP) and a construction and demolition waste management plan (CDWMP, also known as a RWMP) will minimise and prevent such construction-related impacts.</p> <p>Project construction activities will require the use of potentially harmful materials, such as fuels, concrete and other such substances. Such use will be typical of construction sites. Any impacts would be localised and temporary in nature and I agree that the implementation of a CEMP will satisfactorily mitigate any such potential impacts.</p> <p>No operational impacts in this regard are anticipated.</p>	
<p>1.5 Will the project produce solid waste, release pollutants or any hazardous / toxic / noxious substances?</p>	<p>Yes</p>	<p>Section 5.1.4 of the EIAR Screening Report anticipates that the majority of excavated material will need to be removed offsite and taken for appropriate reuse, recycling or disposal under the necessary licence or permit.</p> <p>The project will involve demolition wastes in the form of tarmac, brick, blocks and concrete in addition to excavated soils, boulder clay and rock. Construction activities will require the use of potentially harmful materials, such as fuels, concrete and other such substances and give rise to waste for disposal. Such wastes will be typical of construction sites.</p> <p>Noise and dust emissions during construction are likely. Such construction impacts would be</p>	

		<p>localised and temporary in nature and implementation of a CEMP will satisfactorily mitigate any such potential impacts.</p> <p>I also note that a Preliminary Construction Waste Management Plan (Pinnacle, September 2019) has been prepared which sets out the waste management procedures to be implemented, including during demolition. Operational waste will be managed accordingly to obviate potential environmental impacts. Other significant operational impacts are not anticipated.</p>	
<p>1.6 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>	No	<p>No significant risks identified. Operation of a CEMP will satisfactorily mitigate emissions from spillages during construction and contamination of groundwater is highly unlikely in the absence of any abnormally deep excavations such as those associated with basement levels etc.</p> <p>The disposal of any water generated during the construction phase will subject of a temporary discharge licence and the pollution control measures contained therein.</p> <p>The operational development will connect to mains services. Surface water drainage will be separate to foul services.</p>	No
<p>1.7 Will the project cause noise and vibration or release of light, heat, energy or electromagnetic radiation?</p>	Yes	<p>Limited and temporary noise and vibration impacts are anticipated during the demolition and construction phase through the presence of dumper trucks, excavators, pneumatic drills etc. Such emissions will be localised, short term in nature and their impacts may be suitably mitigated by the operation of a CEMP.</p>	No

		<p>Management of the scheme in accordance with an agreed Management Plan, as indicated in the Building Lifecycle Report, will mitigate potential operational impacts.</p> <p>Section 5.1.5 of the EIA Screening Report notes that there will be some increase in noise and traffic levels on the adjoining road network during the operational phase, however, I do not consider it will result in a significant impact. In this regard, I note that the supplementary noise impact assessment (TMS Environmental, September 2022) concludes that there will be no adverse noise impact from mechanical plant on either existing or potential future residents of the proposed development with the previous assessment (TMS Environmental, September 2021) concluding that the proposed mitigation measures ensure that the noise impact on the community garden and the internal noise environment will meet relevant standards and that adverse noise impacts on potential future residents will not arise.</p>	
<p>1.8 Will there be any risks to human health, for example due to water contamination or air pollution?</p>	<p>Yes</p>	<p>As noted above, construction impacts including noise, dust, construction and haulage traffic have the potential to affect human health. However, due to the scale and nature of the proposed works and having regard to CEMP/industry standards and best practice measures in respect of construction noise, dust and sediment, it is not anticipated that significant impacts on human health will arise from air, water or other media e.g., CIRIA C532 and CIRIA C649.</p>	<p>No</p>

		No significant operational impacts are anticipated, including from increased traffic emissions.	
1.9 Will there be any risk of major accidents that could affect human health or the environment?	No	<p>Section 5.1.6 of the EIA Screening Report states that the construction methods will be subject to the appointed contractor's Safety Statements and Risk Assessments and the likelihood of an accidental spillage into any sensitive environment will be managed through the adoption of strict best practice construction management.</p> <p>No significant risk having regard to the nature and scale of development. Any risk arising from construction will be localised and temporary in nature. The site is not at risk of flooding as detailed in the submitted Flood Risk Assessment.</p> <p>Appendix A of the EIA Screening Report states that there are no Seveso sites within notification ranged of the subject site.</p> <p>There are 8 no. upper tier and 6 no. lower tier Seveso/COMAH sites in the Dublin City Council area according to Appendix 8 of the City Development Plan. Having reviewed the zoning maps, in addition to the zoning maps of neighbouring planning authority's, I agree that there are no Seveso/COMAH sites located in the immediate vicinity of the appeal site. The closest would appear to be the Iarnród Éireann Maintenance Works, c. 3.3km away at Inchicore, Dublin 8.</p>	No
1.10 Will the project affect the social environment (population, employment)	No	Redevelopment of the site, as initially proposed, would result in a net increase of 31 no. units, or 29 no. units following revisions at further	No

		<p>information stage. Both are considered commensurate with the development of a site within Dublin City and Suburbs.</p> <p>It is not anticipated that the project will result in any long-term employment outside perhaps management company employees. The construction period will, however, provide significant short-medium term employment.</p>	
<p>1.11 Is the project part of a wider large scale change that could result in cumulative effects on the environment?</p>	<p>No</p>	<p>Stand-alone development, with other established residential developments in the immediately surrounding area on zoned lands.</p> <p>Section 5.1.2 of the EIA Screening Report considers the potential cumulative impacts with other developments by outlining planning history relating to the subject site and surrounding area. I note the relative paucity of extant permissions in the area.</p> <p>Having regard to its scale, I do not consider the project would result in significant cumulative effects on the environment, either during the construction or operational phases.</p>	<p>No</p>

2. Location of proposed development

2.1 Is the proposed development located on, in, adjoining or have the potential to impact on any of the following:

- European site (SAC/ SPA/ pSAC/ pSPA)
- NHA/ pNHA
- Designated Nature Reserve
- Designated refuge for flora or fauna
- 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

No

Section 5.2.3 of the EIA Screening Report considers the absorption capacity of the natural environment. It notes that the site is not within nor adjoins any European site, and whilst it refers to an NIS, no such document has been submitted with this application.

The site is located c. 5.6km west of the South Dublin Bay and River Tolka Estuary SPA (site code 004024) and c. 7.6km west, northwest of South Dublin Bay SAC (site code 000210). The conservation objectives for these sites relate to waterbirds, wintering waterfowl and coastal habitats.

An AA Screening Report (Biosphere, September 2019) has been prepared. It includes North Dublin Bay SAC (site code 00206) and North Bull Island SPA (site code 04006), in addition to the aforementioned European sites, for the purposes of the screening assessment. It concludes that Stage 2 appropriate assessment is not required. I note this conclusion predates the designation of the North-west Irish Sea SPA (site code 004236).

I further note that Sandymount Strand/Tolka Estuary (site code 832) and North Bull Island (site code 406) are also Ramsar sites, and the Royal Canal (site code 002103), c. 1.3km north of the appeal site, is a pNHA.

Having regard to the above, I consider there will be no significant negative impact to any valued

No

		habitats, designated site or individual or groups of species as a result of the proposed development, subject to the mitigation measures outlined in the various supporting documents. I am also satisfied that the proposal is unlikely to significantly impact on any of these designations/sites during the operational phase.	
2.2 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?	No	<p>A Bat Assessment by Keeley, B. and Mullen, D. (August 2019, updated October 2021) has been prepared. It identifies very low levels of bat activity on site, with no bats entering or exiting the buildings, no swarming activity and 4 no. species of bats commuting through the gardens.</p> <p>A Badger Assessment (Keeley, B., November 2022) has been prepared. No badger setts are identified within the site nor is there any clear evidence of badger activity. It does, however, identify a badger sett within 75m of the site and foraging and commuting on nearby lands. It notes that the main mammal evidence is of a fox.</p> <p>Both badger and bat, and indeed fox and other fauna, will experience short-term impacts during construction. These impacts are not considered to be significant.</p> <p>Just one of the SCI species for which the South Dublin Bay and River Tolka Estuary SPA and North Bull Island SPA are designate, the black-headed gull, and two species for which the North-west Irish Sea SPA is designate, the black-headed gull and herring gull, appear in the National Biodiversity Data Centre 1km grid around the appeal site (NBDC ref. O1236) and</p>	No

		neither species is likely to be significantly affected by the project given the general lack of suitability of the appeal site for roosting and foraging.	
2.3 Are there any other features of landscape, historic, archaeological, or cultural importance that could be affected?	Yes	<p>The EIA Screening Report notes the appeal site's proximity to Phoenix Park, and Cabra Gate and Lodge, and its location within a site of archaeological interest. In this regard, it states that the proposal will not give rise to any direct negative impact on the Park, lodge or gates, and notes that on-site monitoring is sufficient for potential archaeological records on site.</p> <p>The appeal site is due north of Cabra Gate Lodge and Gate, which are listed in the record of protected structures (RPS ref. 6772) and in the national inventory of architectural heritage (NIAH refs. 50060022 and 50060023). It is also adjacent to the Phoenix Park architectural conservation area (ACA) but similarly separated by Blackhorse Avenue and the Park walls.</p> <p>I note the content of the Architectural Heritage Impact Assessment (ARC, September 2019) and Landscape and Visual Impact Assessment (Downey, October 2019) submitted with the application, along with the Verified Views (Urban 3D, September 2019). Given the proximity, the proposed development has the potential to affect the setting of these protected structures and ACA albeit not likely to be to a significant extent.</p> <p>The City Development Plan zoning map illustrates the appeal site partially within a zone of potential for an archaeological record known</p>	No

		<p>as 'Poor Man's Well' (ref. 018-021) however I note that it falls outside the zone of notification and is c. 25m from the appeal site boundary, on the opposite side of Blackhorse Avenue. I also note that the zone of notification for the Phoenix Park skirts Blackhorse Avenue but does not overlap with the appeal site.</p> <p>An Archaeological Assessment (IAC, September 2019) has been prepared. It notes that there may be adverse impact on previously unrecorded features or deposits through ground disturbance and recommends mitigation by way of archaeological monitoring. Thus, I do not consider such impact will be significant.</p> <p>I also note that the appeal site is within 450m of Áras an Uachtaráin, official residence of the President of Ireland, a protected structure (RPS ref. 6742) and a building of utmost cultural importance. Whilst I am cognisant of the submissions and observations in respect of same, including that of the Office of Public Works (OPW), I consider these can be dealt with through the normal development management process. Given the appeal site does not abut the park, and having regard to the reasonable separation distances, I do consider any significant direct impacts will arise.</p>	
<p>2.4 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:</p>	No	<p>The surrounding area is characterised by a mix residential, civic and cultural uses with concentrations of suburban style housing along the northern side of Blackhorse Avenue with the</p>	No

forestry, agriculture, water/coastal, fisheries, minerals?		<p>vast expanses of Phoenix Park to the south, including forested areas.</p> <p>There are no areas in the immediate vicinity which contain important resources.</p> <p>Impacts on high quality or scarce resources are not anticipated during the construction or operational phases.</p>	
2.5 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	<p>Given the lack of rivers, streams or open ditches on, or bounding, the appeal site, it is highly unlikely that the project will impact on any water resources, surface or ground, during the construction phase in terms of volume or flood risk. Whilst I note a reference to 'underground watercourses', this has not been advanced by the appellants to any significant degree.</p> <p>The development will implement SuDS measures to control surface water run-off. The appeal site is not at risk of flooding. Potential indirect impacts are considered with regard to surface water and groundwater, however, no likely significant effects are anticipated.</p> <p>Potential impacts on water resources during the operational phase in terms of volume and flood risk are similarly negligible.</p>	No
2.6 Is the location susceptible to subsidence, landslides or erosion?	No	The appeal site is generally flat around the 37-38mAOD contours and there is no evidence that it would be susceptible to subsidence, landslides or erosion during construction or operation.	No

<p>2.7 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?</p>	<p>No</p>	<p>I note the content of the Residential Travel Plan (Pinnacle, September 2019) and Traffic Statement (Pinnacle, September 2019) submitted with the application.</p> <p>The appeal site is served by a local urban road network. Any congestion will be localised, short term in nature and suitably mitigated during the construction phase by the operation of a CEMP and Construction Traffic Management Plan.</p> <p>It is not anticipated that the operational phase is likely to result in significant effects on the environment.</p>	<p>No</p>
<p>2.8 Are there existing sensitive land uses or community facilities (such as hospitals, schools etc.) which could be affected by the project?</p>	<p>Yes</p>	<p>The project will result in the demolition of two houses along with some sheds and outbuildings. These buildings are derelict and currently have no functional use. Their replacement is considered a positive impact.</p> <p>There are no other existing sensitive land uses or substantial community uses which could be affected by the project during the construction or operational phases.</p>	<p>No</p>

3. Any other factors that should be considered which could lead to environmental impacts			
3.1 Cumulative Effects: Could this project together with existing and/or approved development result in cumulative effects during the construction/ operation phase?	No	Permitted and under construction residential developments in the wider area have been considered. No developments have been identified in the vicinity which would give rise to significant cumulative environmental effects.	No
3.2 Transboundary Effects: Is the project likely to lead to transboundary effects?	No	Section 5.3.2 of the EIA Screening Report states that there are no trans frontier impacts associated with the proposed development. The appeal site is remote from any transboundary location (c. 78km from the border with N. Ireland) and the nature of the project is such that any impact would not affect a large geographical area.	No
3.3 Are there any other relevant considerations?	No	The appeal site is 'Z1' Sustainable Residential Neighbourhoods where residential uses are permissible. This zoning was subject to SEA, AA and SFRA as part of the City Development Plan process. No likely significant effects on the environment arising from this zoning were identified during that process. The appeal site was not identified as Flood Zone A or B in the SFRA.	No
C. CONCLUSION			
No real likelihood of significant effects on the environment.	<input type="checkbox"/>	EIAR Not Required	
Real likelihood of significant effects on the environment.	<input type="checkbox"/>	EIAR Required	
D. MAIN REASONS AND CONSIDERATIONS			

Having regard to: -

1. the criteria set out in Schedule 7, in particular:
 - (a) the limited nature and scale of the proposed housing development, in an established residential area served by public infrastructure;
 - (b) the absence of any significant environmental sensitivity in the immediate vicinity, the setback from the Phoenix Park including physical separation provided by Blackhorse Avenue, the separation distance to Áras an Uachtaráin and the location of the proposed development outside of any designated archaeological zone of notification; and
 - (c) the location of the development outside of any sensitive location specified in Article 109(4)(a) of the Planning and Development Regulations 2001, as amended,
2. the results of other relevant assessments of the effects on the environment submitted by the applicant including:
 - the Appropriate Assessment Screening Report, including the findings of the local authority that, having regard to the nature and scale of the proposed works, concluded that there is no direct link from the site to the Natura 2000 receptors and, as such, direct, indirect and in-combination impacts be ruled out;
 - the Appropriate Assessment (Natura Impact Report) of the Dublin City Development Plan, 2022 to 2028;
 - the EIA Screening Report, the findings of the local authority that concluded there is no real likelihood of significant effects on the environment arising from the proposed development and ruling out the need for EIA;
 - the Strategic Environmental Assessment (SEA) of the Dublin City Development Plan, 2022 to 2028.
3. the features and measures proposed by applicant envisaged to avoid or prevent what might otherwise have been significant effects on the environment, including measures identified to be provided in the Bat Assessment, the Badger Assessment, the Noise Impact Assessment, including supplementary assessment, and the Archaeological Assessment, and the measures proposed in a construction environmental management plan (CEMP), a construction and demolition waste management plan (CDWMP) and construction traffic management plan (CTMP) referenced in the EIA Screening Report.

The Board concluded that the proposed development would not be likely to have significant effects on the environment, and that an environmental impact assessment report is not required.

Inspector: _____

Date: _____

Approved (DP/ADP): _____

Date: _____

Appendix 2 (WFD Screening)

WFD IMPACT ASSESSMENT STAGE 1: SCREENING			
Step 1: Nature of the Project, the Site and Locality			
An Bord Pleanála ref. no.	ABP-320640-24	Townland, address	353 and 363 Blackhorse Avenue, Dublin 7
Description of project		Construction of 33 residential units comprising 2 no. semi-detached house and 31 no. apartments (as per the initial statutory notices) and reduced to 31 no. apartments only at significant further information stage.	
Brief site description, relevant to WFD Screening,		<p>Relatively flat brownfield site with 2 no. derelict houses and outbuildings set amongst mature trees. Site served by traditional surface water system which discharges unrestricted into an existing combined sewer (as per drainage report).</p> <p>Habitats are classified as Buildings and artificial surfaces (BL3), Amenity grassland (GA2) and ornamental/ nonnative shrubs (WS3). There are no open watercourses or drains within or adjacent to the appeal site.</p> <p>Trial holes revealed topsoil overlying firm brown sandy gravelly clay with cobbles to a depth of 1.8mBGL and the underlying grey gravelly clay was found to contain some angular boulders. No water ingress observed during trial hole excavation (as per drainage report).</p>	
Proposed surface water details		SUDs system proposed with hydrocarbon interceptor.	
Proposed water supply source & available capacity		Uisce Éireann mains water connection – capacity available with LoS improvement.	

Proposed wastewater treatment system & available capacity, other issues			Uisce Éireann wastewater connection – capacity available at Ringsend WwTP and the surface waters receiving the treated wastewaters are at moderate status.			
Others?			N/A			
Step 2: Identification of relevant water bodies and Step 3: S-P-R connection						
Identified water body	Distance to (m)	Water body name(s) (code)	WFD Status	Risk of not achieving WFD Objective e.g.at risk, review, not at risk	Identified pressures on that water body	Pathway linkage to water feature (e.g. surface run-off, drainage, groundwater)
River Waterbody	c. 1200m (overland)	LIFFEY_190 IE_EA_09L0123 60	Poor	At risk	Urban run-off (UR), Urban wastewater (UWW)	No – owing to distance, intervening environment and lack of surface water connectivity
River Waterbody	c. 1300m (overland)	Royal Canal Main Line (Liffey and Dublin Bay) IE_09_AWB_RC MLE	Good	Review	No pressures	No – owing to distance, topography, intervening environment and lack of surface water connectivity

Transitional Waterbody	c. 1700m (overland)	Liffey Estuary Upper IE_EA_090_040 0	Good	Review	No pressures	Yes – Indirect, Tentative/tenuous, long via surface water (public drainage)
Transitional Waterbody	c. 4450m (overland)	Liffey Estuary Lower IE_EA_090_030 0	Moderate	At risk	Urban wastewater (UWW)	Yes – Indirect, Tentative/tenuous, long via surface water (public drainage)
Groundwater Waterbody	Underlying site	Dublin IE_EA_G_008	Good	Review	No pressures	Yes – but poorly draining clay soils offer protection to groundwater

Step 4: Detailed description of any component of the development or activity that may cause a risk of not achieving the WFD Objectives having regard to the S-P-R linkage.

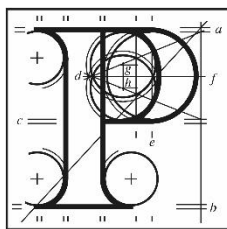
CONSTRUCTION PHASE

No.	Component	Waterbody receptor (EPA Code)	Pathway (existing and new)	Potential for impact/ what is the possible impact	Screening Stage Mitigation Measure*	Residual Risk (yes/no) Detail	Determination** to proceed to Stage 2. Is there a risk to the water environment? (if 'screened' in or 'uncertain' proceed to Stage 2.
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1.	Surface	Liffey Estuary Upper IE_EA_090_0 400	Surface water network	Siltation, pH (Concrete), hydrocarbon spillages	Standard construction measures / Conditions, CEMP etc.	No	Screened out
1.	Surface	Liffey Estuary Lower IE_EA_090_0 300	As above	As above	As above	No	Screened out
3.	Ground	Dublin IE_EA_G_008	Pathway exists but poor drainage characteristics	Hydrocarbon spillages	As above	No	Screened out
OPERATIONAL PHASE							
4.	Surface	Liffey Estuary Upper IE_EA_090_0 400	Surface water network	Hydrocarbon spillages	SUDs features	No	Screened out
5.	Ground	Dublin IE_EA_G_008	Pathway exists but poor drainage characteristics	Hydrocarbon spillages	SUDs features	No	Screened out
DECOMMISSIONING PHASE							
5.	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Appendix 3 (Inspectorate Ecologist Report incl. AA Screening)

[Note: Report of the Inspectorate Ecologist is attached in full below.]



An
Bord
Pleanála

Technical Report to Inspector (Ecology)

ABP-320640-24

Development

Residential development at 353 & 363
Blackhorse Avenue, Dublin 7

Type of Application

Normal Planning Appeal/ Remitted
case

Topic:

Protected species and Screening for AA

Adequateness of information for
purpose of Ecological Impact
assessment (Bats and Badgers) and
Screening for Appropriate
Assessment
(recommendation)

Ecologist

Maeve Flynn BSc. PhD. MCIEEM

Planning Inspector

Philip Maguire

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1.0 Introduction

1.1. Scope of 'Report to Inspector'

- 1.1.1. Case no 320640 relates to a proposed residential development at Blackhorse Avenue, Dublin 7. This is a remitted case (308308) and in view of a number of ecological issues raised, the Planning Inspector referred the case to the Inspectorate Ecologist team.
- 1.1.2. This report to the Planning Inspector and available to the Board is a written record of my review and examination of the submitted information on this case as it relates to nature conservation issues including protected species. The report also details screening for Appropriate Assessment in line with the provisions of Article 6(3) of the Habitats Directive (92/43/EEC) and S177U of the Planning and Development Act 2000 (as amended).
- 1.1.3. In my capacity as Inspectorate Ecologist, with over 20 years professional experience I have the relevant expertise and competence to provide a professional opinion as to the adequacy of the ecological information for the Inspector and the Board and to provide a professional opinion on the likelihood of significant effects on a European Site as part of Screening for Appropriate Assessment (stage 1).
- 1.1.4. I have taken account of submissions related to protected species and the Habitats Directive.
- 1.1.5. I have reviewed and examined the following documents including relevant appendices and figures (plans and particulars):
 - Appropriate Assessment Screening Report (Biosphere Environmental Services, 2019)
 - Bat Assessment Report (Brian Keeley and Donna Mullen- wildlife surveys Ireland November 2022)
 - Badger assessment report (Brian Keeley - wildlife surveys Ireland November 2022)
 - Other associated documents including Public Lighting Plan, Landscape Plan, Construction and waste management plan

- 1.1.6. I note that under a separate planning application for this site an Appropriate Assessment Screening Report and Natura Impact Statement (Biosphere Environmental Services, March 2022) was submitted. This report was not included with the information submitted by the Developer under the S131 notice and therefore no further reference or reliance is made to this document.

1.2. Expertise and technical content of Ecological Reports

- 1.2.1. The AA Screening report was prepared by Ecologist Dr Brian Madden (Biosphere Environmental Services). This report was prepared in 2019 in line with best practice guidance and most up to date information on European sites and their conservation objectives at that time.
- 1.2.2. Bat and Badger surveys were undertaken by Ecologists, Brian Keeley and Donna Mullen between in 2019 and 2022. I am satisfied that the surveys were proportionate to the proposed development and undertaken in line with published good practice methods at the optimum seasonal periods providing a robust baseline for the impact appraisal.
- 1.2.3. I note that data collected during bat surveys undertaken at the site in 2019 and 2021 are over three years old and could be considered out of date based on CIEEM Advice note on the lifespan of ecological reports and surveys (CIEEM, 2019). However, I am satisfied that the surveys undertaken for bats, in particular the examination and assessment of the buildings on site showed no evidence of use by bats and that most of these structures had low potential for bat roosts and I am satisfied that the situation would not have changed in the interim period. As bats are highly mobile species which frequently use structures and mature trees as temporary roost sites and given the passage of time between any permission that may be granted and work on the ground, a pre-demolition survey would be a requirement regardless of the time since the surveys were undertaken. I am satisfied that the baseline information provided is adequate to determine likely effects on bats and badgers.

2.0 Consideration of the Likely Significant Effects on a European Site

2.1. Article 6(3) of the Habitats Directive

The requirements of Article 6(3) as related to Appropriate Assessment of a project under part XAB of the Planning and Development Act 2000 (as amended) are considered in this section.

2.2. Screening for Appropriate Assessment

- 2.2.1. The project is not directly connected with, or necessary for, the management of any European Site and is therefore subject to the Appropriate Assessment (AA) Screening process. The following is an independent appraisal of the proposed development in terms of the potential for likely significant effects on European Sites. It is informed by reports prepared by consultants on behalf of the developer and by my own examination of the likely impacts that could be generated by the proposed development in view of the conservation objectives of European sites within a possible zone of influence of those impacts.

Screening for Appropriate Assessment Test for likely significant effects

Step 1: Description of the project and local site characteristics

Brief description of project	Construction of 33 residential units comprising of 2 no. semidetached houses and 31 apartments and all associated works and ancillary services (ESB substation, car and bicycle parking, landscaping, public lighting, waste storage, connection to public services -foul waste and water (capacity confirmed by Irish Water). Demolition of 2 no existing single story detached dwellings and associated outbuildings and sheds.
Brief description of development site characteristics and potential impact mechanisms	The site is currently unoccupied with derelict house, outbuildings and mature gardens on 0.35 ha. Habitats are classified as Buildings and artificial surfaces (BL3), Amenity grassland (GA2) and ornamental/ nonnative shrubs (WS3). There are no open watercourses or drains within or adjacent to the site. Surrounding land use is residential and the Phoenix Park is located on the opposite side of Blackhorse Ave.

	<p>Works include the demolition of buildings on the site, site clearance, excavations, construction and connection to services.</p> <p>Measures integral to the design include (AA Screening report Section 2.2):</p> <ul style="list-style-type: none"> • Demolition of buildings in compliance with British Standard 618 Demolition of buildings • Construction and waste management plan • Preparation of construction environmental management plan in line with standard guidance (CIRIA) to protect local water quality • Control of water pollution from construction sites- guidance for consultants and contractors (C532) and Environmental good practice on site (C692) • Sustainable drainage systems for management of surface water will be incorporated including hydrocarbon interceptor • Drainage for operational phase will be in line with DCC policies and guidelines – Greater Dublin Regional code of practice for Drainage works <p>These are standard measures of known efficacy that would be implemented regardless of location of the proposed development.</p> <p>Once operational, foul drainage from the residential development will be connected to the existing public sewer system for treatment at the Ringsend WWTP. This is not a feature of the proposed development that requires assessment as it falls under the operational standards and licenses of the WWTP.</p> <p>The proposed development site is located over 5Km from the nearest European Site, part of the Natura 2000 Network of sites within Dublin Bay (as measured overland, distance is greater if follow potential surface water drainage flows). There are no natural or seminatural ecological connections such as open water courses or other wildlife corridors that could directly link the proposed development site to any European Site.</p> <p>The site is within the catchment of lower River Liffey (EPA River Liffey Hydrometric area) and the natural drainage of surface water is ultimately to Dublin Bay via public drainage system into River Liffey.</p> <p>Possible Impact mechanisms Temporary impacts during construction phase from uncontrolled surface water management with suspended</p>
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	<p>solids from exposed soil and excavations and other construction related pollutants (hydrocarbons, cement washings) entering surface water drainage system.</p> <p>Given the nature of the site and scale of proposed development, the potential for fugitive emissions of significant magnitude are low.</p> <p>Drainage design and SUDS measures reduce likely risks of operational impacts for surface water.</p>
Screening report	Yes (Biosphere 2019)
Natura Impact Statement	No*
Relevant submissions	No submissions from statutory bodies on nature conservation.
Local Authority AA Screening determination	Dublin City Council screened out the likelihood of significant effects on European Sites

I note the Appellants' submissions include concern regarding application of Habitats Directive in relation to Bats and Badgers. However, these species do not fall under the provisions of Article 6(3) as they are not species listed on Annex II and are therefore not qualifying interest species for any European Site.

*(See Section 1.1.6)

Step 2. Identification of relevant European sites using the Source-pathway-receptor model

The screening report (2019) identifies four European Sites within Dublin Bay for consideration of likely significant effects based on an indirect and tenuous connection via the discharge of surface water from public drainage network into the River Liffey. These European Sites are listed in the table below and are clustered around the inner part of Dublin Bay most proximate to the discharge area of the River Liffey. I can confirm for the Board that there have been no changes to the qualifying interests or conservation objectives of these sites in the intervening period.

I have also included the more recently designated Northwest Irish Sea candidate SPA (NPWS, 2023) as it adjoins the SPA sites listed for Dublin Bay, providing protection of marine waters for Seabirds that breed or winter along the coastal SPA sites.

Given the scale of the proposed development and limited potential impact mechanisms, I am satisfied that no other European Sites in the wider area require consideration.

The Screening report (2019) employs the source pathway receptor model of impact prediction in line with best practice.

Source: The Screening report identifies very limited potential for source impacts from the proposed development site. During the construction phase, standard site management will

limit the potential for silt/ pollution laden surface water from the site to enter the public surface water drainage system. I am satisfied that even in the absence of any management measures, the scale of the development. Limited excavation/earthworks (i.e. no basement levels) and lack of open water drainage would limit the potential for fugitive emissions (temporary in nature).

Pathway: The screening report describes as tenuous any hydrological connection to Dublin Bay. This would be via surface water which enters the public drainage system and discharges at various points into the River Liffey which is a transitional water body under tidal influence within Dublin City. The river has high assimilative capacity and any fugitive emissions that could be attributed to the development site would be quickly dispersed and diluted within the river channel before entering Dublin Bay (over an estimated distance of over 9km). Therefore, I consider potential hydrological pathway to European sites from the proposed development area as indirect, weak/tenuous and long with dilution and tidal influences quickly dispersing any surface water borne silt or pollutants to imperceptible levels.

Receptors: With a low possibility of source impacts and a lack of meaningful pathways, the connection to sensitive receptors is interrupted and negative effects on European Sites can be excluded.

European Site (code)	Qualifying interests ¹ conservation objectives (NPWS, date)	Distance from proposed development (estimate via drainage and River Liffey)	Ecological connections ²	Consider further in screening ³ Y/N
South Dublin Bay SAC (000210)	Mudflats and sandflats not covered by seawater at low tide Annual vegetation of drift lines Salicornia and other annuals colonising mud and sand Embryonic shifting dunes (NPWS, 2013) ConservationObjectives.rdl	>5 km overland >9km via drainage and River Liffey	Indirect Tentative/tenuous, long via surface water (public drainage and River Liffey)	N
South Dublin Bay and Tolka Estuary SPA (004042)	Wintering water birds x 10 Breeding Terns (x 3 species) Wetland habitat (NPWS 2015) 004042 conservation obj	>5 km overland >9km via drainage and River Liffey	As above	N
North Dublin Bay SAC (000206)	Mudflats and sandflats not covered by seawater at low tide Annual vegetation of drift lines Salicornia and other annuals colonising mud and sand	>5 km overland >9km via drainage and River Liffey	As above	N

	<p>Atlantic salt meadows (Glauco-Puccinellietalia maritima)</p> <p>Mediterranean salt meadows (Juncetalia maritimi)</p> <p>Embryonic shifting dunes</p> <p>Shifting dunes along the shoreline with Ammophila arenaria (white dunes)</p> <p>Fixed coastal dunes with herbaceous vegetation (grey dunes)</p> <p>Humid dune slacks</p> <p>Petalophyllum ralfsii (Petalwort)</p> <p>(NPWS, 2013)</p> <p>North Dublin Bay SAC National Parks & Wildlife Service</p>			
North Bull Island SPA (004006)	<p>Wintering water birds x 17</p> <p>Wetland habitat (NPWS, 2015)</p> <p>ConservationObjectives.rdl</p>	<p>>8km</p> <p>>10 km via</p>	As above	N
Northwest Irish Sea candidate SPA (004236)	<p>21 marine bird species including non-breeding and breeding populations. (NPWS, 2023)</p> <p>CO004236.pdf</p>	>12km via	As above	N

¹ Summary description

² Based on source-pathway-receptor: Direct/ indirect/ tentative/ none, via surface water/ ground water/ air/ use of habitats by mobile species

³if no connections: N

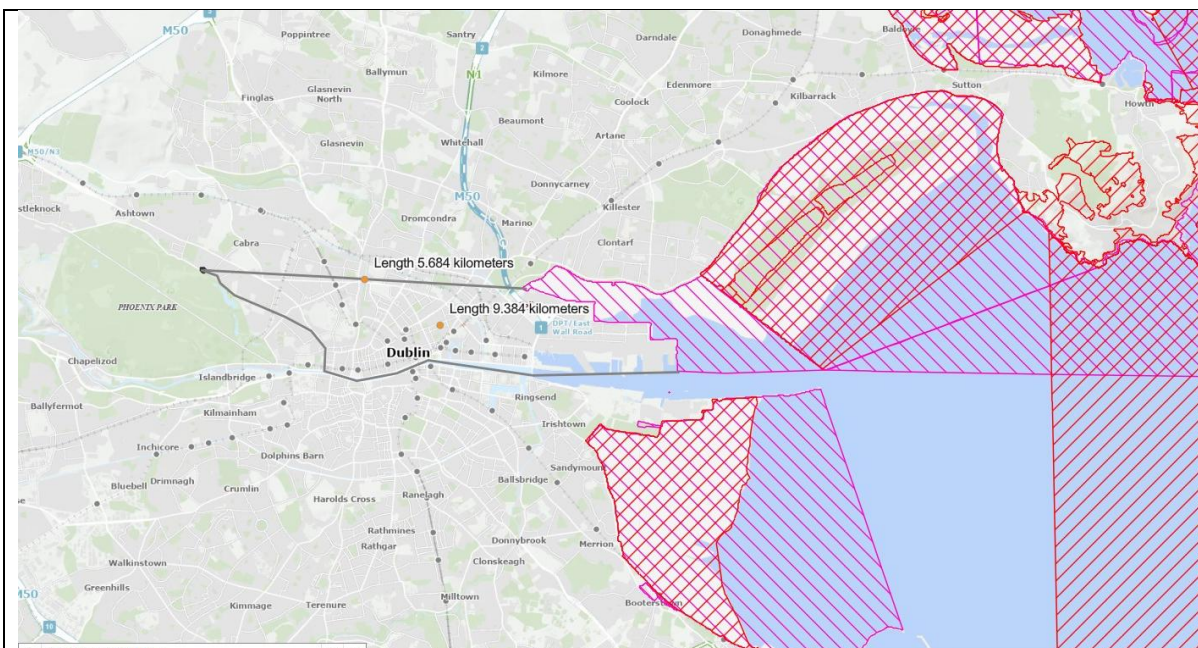


Figure 1: Map illustrating location of proposed development in relation to distances to European Sites and the intervening city center and Dublin Port

Step 3. Describe the likely effects of the of the project (if any, alone or in combination) on European Sites

Possible significant effects can be excluded for all European sites within Dublin Bay as the proposed development will not result in impacts that could significantly affect habitat quality or undermine conservation objectives related to estuarine or marine water quality. The proposed development would not generate any impact that could affect wintering waterbirds or breeding seabirds in terms of affecting the range, timing or intensity of use of areas by any wintering bird species or breeding seabirds.

The proposed development at Blackhorse Avenue would not result in impacts that could in anyway affect seabird population trends, cause disturbance of birds in the marine environment, their spatial distribution, forage distribution and abundance or cause barriers to access to the SPA or other ecologically important sites outside the Northwest Irish Sea cSPA.

As the proposed development will not result in any direct or indirect impacts on European sites, it will not add cumulatively to impacts that could arise from other plans and projects and will not add to pressures and threats documented for these sites.

Step 4 Conclude if the proposed development could result in likely significant effects on a European site

I conclude that the proposed development alone or in combination with other plans and projects would not result in likely significant effects on European Sites in Dublin Bay. No further assessment is required for the proposed development.

Screening Determination

Finding of no likely significant effects

In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that the proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on any European Sites and is therefore excluded from further consideration. Appropriate Assessment is not required.

This determination is based on:

- Low potential for source impacts of any magnitude
- Development within a fully serviced residential urban area
- Location and distance from European sites and lack of meaningful ecological connections
- Tenuous and weak hydrological connection via surface water pathway through public drainage and the River Liffey with dilution and tidal influences of the receiving River Liffey quickly dispersing any surface water borne silt or pollutants that could be attributed to the proposed development to imperceptible levels.
- Consideration of the conservation objectives of:
 - South Dublin Bay SAC (000210)
 - South Dublin Bay and Tolka Estuary SPA (004042)
 - North Dublin Bay SAC (000206)
 - North Bull Island SPA (004006)
 - Northwest Irish Sea candidate SPA (004236)

3.0 Biodiversity- consideration of protected species

3.1. This section of the report considers and assesses the potential for significant effects on protected species including bats and badgers.

3.2. Bats

3.2.1. All Irish Bats and their roost sites are afforded protection under the Wildlife Act 1976 (as amended). In addition, as all bat species are listed on Annex IV of the Habitats Directive as species requiring strict protection, they are also afforded protection under the European Communities (Birds and Natural Habitats) Regulations 2011. Regulation 51 of the Habitats Regulations prohibits, amongst other things, damaging or disturbing the breeding or resting sites of bats. Works which may have such impacts on bats may only be carried out in accordance with a

derogation under Regulation 54 issued by the Minister for Housing, Local Government and Heritage.

- 3.2.2. The survey and assessment of Bats undertaken showed low levels of bat activity at the site and no roosts were identified. Surveys were undertaken in accordance with best practice and a thorough inspection of the buildings and mature trees was undertaken. Surveys included for emergence and pre-dawn re-entrance to identify if bats were leaving/ entering roost sites.

Summary of impacts on Bat species		
Bat species	Foraging/ commuting	Roost
Soprano pipistrelle	Low levels of activity at the site over all survey occasions. All bats recorded foraging or commuting across the site	None recorded and no pre-emergence or re-entry activity recorded No swarming behaviour recorded (known roost sites in adjacent Phoenix Park for these four species)
Leisler’s Bat		
Common pipistrelle		
Brown long-eared bat		
Potential Impacts	Death or injury of individual bats: short term moderate negative to long term moderate impact in absence of mitigation depending on numbers present during demolition and site clearance Loss of roost: no evidence of building or tree roosts Disturbance from increased lighting: permanent slight negative in absence of mitigation Reduced feeding opportunities due to vegetation clearance: permanent slight negative	
Proposed mitigation (summary from bat report 2022)	Pre demolition examination of buildings by bat specialist prior to demolition. Fascia removed by hand on all buildings	

	<p>Trees identified as having low to moderate potential for bat roost/ ivy clad, have trunks greater than 30cm/ cracks services must be checked by bat specialist prior to felling.</p> <p>Installation of 3 no 2F and 3 no 1FF Schwegler bat boxes to be installed under advice and supervision of a bat specialist. Monitoring of use of boxes to be undertaken within 1 yr of installation.</p> <p>Native trees and shrubs to be used in landscaping plan with reference to All Ireland Pollinator Plan</p> <p>Public lighting designed to prevent light spillage- directional lighting i.e. use of cowls, caps and low level bollard lighting proposed in line with current best practice (see note below).</p> <p>If bats are discovered at any stage of the development, works must cease and a licensed bat specialist contacted.</p>
Impacts after mitigation	<p>Short to medium term slight loss of foraging area (due to site clearance).</p> <p>No significant impact on local bat population</p>
Conditions	<p>All mitigation measures listed for bats to be implemented and the following should also be included:</p> <p>A pre- construction bat survey shall be undertaken by a bat specialist in advance of building demolition and tree clearance to ensure that the baseline conditions haven't changed. In circumstances where a new record of bat roost is found the Developer is legally obliged to seek a derogation under S54 of the Habitats Regulations.</p>

	<p>A revised public lighting scheme will be prepared in line with principles of the Bat Conservation Trust <i>Guidance on Bats and Artificial Lighting</i> at night and submitted to the Local Authority</p> <p>The landscape plan shall be updated to incorporate planting principles from the all-Ireland Pollinator Plan</p>
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3.2.3. I am satisfied that the mitigation proposed is standard, can be implemented and will be effective in aims of preventing impacts on bats at this location. From review of the landscape plan on the file it is not clear if recommendations of the Bat mitigation have been taken into account. The species mix is a combination native trees with almost 50% native species including birch and oak. Lime and Beech are also included in the species mix. The landscape planting plan should be updated and submitted to the local Authority in line with the principles of the All-Ireland Pollinator Plan (<https://pollinators.ie/>), for example Top Ten pollinator -friendly plants for different situations <https://pollinators.ie/wp-content/uploads/2023/04/Top-Ten-pollinator-plants-Guide-WEB.pdf>

3.2.4. It is not evident from the brief public lighting plan on the file that Bats were considered. Five no. lantern style lights (LED) are detailed for the central area of the development with lux levels – of 3.75 -5.63, decreasing to average 0.75 lux min (horizontal boundary). This lantern design in not in line with mitigation measures detailed in the bat report or current best practice for public lighting in relation to bats which should be directional, reducing light spill. Public lighting in the development should be revised, incorporating principles that reduce unnecessary light spill and use warm white LED (between 2700 and 3000 kelvin). The most up to date guidance is available from the Bat Conservation Trust (2023) Guidance note 08/23 Bats and Artificial Lighting at night. <https://theilp.org.uk/publication/guidance-note-8-bats-and-artificial-lighting/>

3.3. Badgers

- 3.3.1. Badgers and their resting/ breeding places are protected under the Wildlife Act 1976 (as amended), they are not listed on Annex IV of the EU habitats Directive as species requiring strict protection therefore do not fall under provisions of the Habitat Regulations.
- 3.3.2. Concern for impacts on Badgers was raised in submissions with and several observations of badgers and setts (not specified) on the proposed development site. Based on the survey and assessment undertaken, I am satisfied that no badger setts are on the site and only minor impacts through loss of potential foraging and commuting route will occur. Badger habitat is not limited in this area as the Phoenix Park is adjacent.

Summary of impacts on Badger		
	Foraging	Badger Sett
Badger activity at the site		None recorded
		A sett with up to 3 entrances (subsidiary sett to a main sett in the Phoenix park) recorded within 75 m of the site
Impact	Minor loss of foraging and commuting route potentially disrupted	
Proposed mitigation	Allow permeability in boundary treatment	
Additional Conditions	None	

4.0 Conclusion

- 4.1. Following review and examination of the material submitted as part of the application for my findings and recommendations are as follows:
- 4.2. **Appropriate Assessment- Screening (stage 1)**
- 4.2.1. Following an independent appraisal of the proposed development in terms of the potential for likely significant effects on European Sites informed by reports

prepared by consultants on behalf of the developer and my own examination of the likely impacts that could be generated by the proposed development in view of the conservation objectives of European sites within a possible zone of influence of those impacts, I conclude that the proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on any European Sites and is therefore excluded from further consideration. Appropriate Assessment is not required.

4.3. **Biodiversity**

- 4.3.1. The proposed development will not result in significant effects on protected species including bats and badgers. Baseline surveys have shown that the site is of low importance with no bat roosts or badger setts recorded and mitigation measures are proposed to promote continued use of the site by these species.
- 4.3.2. I consider that the Planning Inspector and that the Board can be confident that obligations under the EU Habitats Directive, European Communities (Birds and natural Habitats Regulations (2011-2021) and the Wildlife (amendment) Act are met in terms of ensuring no significant effects on protected species or their habitats arise from this proposed residential development.

Signed:



Maeve Flynn BSc. PhD, MCIEEM
Inspectorate Ecologist

27th May 2025

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