

Michael O'Brien

Cabinteely And District Residents Association

Cedar Lodge

Brennanstown Road

Cabinteely

Dublin 18

AN BORD PLEANÁLA

LDG- 053377-22

ABP-

16 MAY 2022

Fee: € 20 Type: cheque

Time: 10.05 By: hand

The Secretary

An Bord Pleanála

Strategic Housing Unit

64 Marlborough Street

Dublin 1

Sunday, 15th May 2022

Ref: ABF;313281-22

Dear Sir/Madam,

Observation on Strategic Housing Application by Cairn Homes Properties Limited: Demolition of 'Winterbrook', and the former dwelling attached to Barrington Tower (a protected structure), construction of 534 no. Build to Rent apartments, creche and associated site works. Address of development: "Barrington Tower", Brennanstown Road, Dublin 18. (ABP Ref. 313281)

INTRODUCTION

This is the Cabinteely and District Residents Association ('the Residents'), c/o Michael O'Brien, 'Cedar Lodge', Brennanstown Road, Cabinteely, Co. Dublin, observation on ABP Ref. 313281-22.

Payment of €50 is enclosed in respect of the statutory fee for making this Observation.

Permission should be refused permission on the basis that the development:

1. Materially contravenes the site's zoning objective. In the circumstances the Board has no jurisdiction to grant permission for the development;
2. Materially contravenes various policies of the operative DLRCC County Development Plan 2022-2028;
3. Represents overdevelopment;
4. Does Not Comply with Article 297 of the Planning and Development Regulations;
5. Is not adequately described in the statutory notices.

These issues are considered in more detail below.

For the avoidance of doubt references to material contraventions of the current Development Plan policies should also read as references to the equivalent policies in the previous Development Plan (the previous Development Plan having been replaced by the current Development Plan on 21st April 2022) that are referred to in the Applicant's Planning Report, the equivalent policies being substantially similar to those in the current Development Plan.

GROUNDINGS OF OBJECTION/OBSERVATIONS ON APPLICATION

Material Contravention of Zoning

The site is zoned Objective A *"To provide residential development and improve residential amenity while protecting the existing residential amenities"* in the current Development Plan.

Section 12.6.3 (page 273) of the Development states that: *"A small/local convenience shop will be open for consideration within a residential area (lands zoned Objective 'A' – "To provide residential development and improve residential amenity while protecting the existing residential amenities"). When assessing any such proposals, the Council will have regard to the distance from the proposed development to established local shopping facilities and to its impact on the amenity of adjoining dwellings. Local convenience shops **shall** not have a floorspace greater than 100 sq.m. net. (refer also to Policy RET7, Section 7.5.5.1)." [emphasis added]*

A c.336 sq m shop is proposed as part of the development. The Planning Report submitted by the Applicant states (at pg 200) that is considered prudent to assume that the that it would potentially exceed the 100 sq. m net maximum.

Whereas a Shop-Neighbourhood use is an open for consideration use it would seem to follow from the text at 12.6.3 that the retail unit is not Shop-Neighbourhood use as it exceeds 100 sq m net. Larger shops are not permitted by the zoning. It seems to follow that the development materially contravenes the zoning of the site.

In addition to the above, it is also considered, by reason of the excessive height, density, inadequate separation distances between blocks, inappropriate mix of units and serious traffic impacts (as set

out elsewhere in this observation), and as shown in the conclusions of the Daylight, Sunlight and Overshadowing Report submitted by the Applicant (which shows at pg 56 thereof that in several instances BRE standards are not met in the development) that the development materially contravenes the sites objective *"to provide residential development and improve residential amenity while protecting the existing residential amenities"* in that the development will not improve residential amenity on the site for future residents and will not protect existing residential amenities of adjoining residents.

Material Contravention of Development Plan Policies and Objectives

In addition to contravening the zoning of the site the development also materially contravenes the following Development Plan policies:

Retail Unit

Section 12.6.3 of the Development Plan restricts where the net retail space of units on Objective A lands to 100 net. sq m. The net retail floor space in this case will exceed 100 sq m. Whereas the Applicant states at pg 199 of the Planning Report that this can be justified because there are conflicting objectives in the Development Plan the Residents cannot see where a conflict in policy arises. There is a risk that a unit of that size will attract traffic from outside the site contributing to higher traffic movements in the area. Permission should be refused.

SLO73

SLO73 of the Development Plan states that *"It is an Objective of the Council: To limit development along the Brennanstown Road to minor infills and extensions until a Traffic Management Scheme for the area has been completed and its recommendations implemented."*

This objective is also marked on the Development Plan Zoning Maps and may therefore also be a form of zoning objective.

The proposed development is situated along the Brennanstown Road. Some 534 apartments are proposed. It is clearly more than minor infill development and further, as acknowledged by the applicant, a Traffic Management Plan has not been completed for the area as required by SLO73. The development therefore both materially contravenes this SLO73 (which may, depending on its

construction, be a zoning objective insofar as it features on the Zoning Map), and is premature pending the adoption and implementation of the recommendations of that Traffic Management Plan.

The Applicant has sought to justify the contravention at pg 198 of the Planning Report by reference to incremental upgrades that have been previously permitted as part of other SHD schemes in the area. In particular it is stated that: *"It is highly unlikely that any traffic management scheme for the Brennanstown Road will be implemented as a single package in the near future. It is far more likely that the required works will be implemented incrementally through the planning process over a period of years... As set out in both of these [permitted SHD schemes] previous inspectors reports in the absence of an adopted Part 8 scheme which would allow for the implementation of a traffic management scheme along Brennanstown Road, the only mechanism to deliver on the requirements of this policy is a developer-led proposal."*

With respect to the permitted SHD schemes referred to in the Planning Report it is difficult to understand how piecemeal developer led ad-hoc improvements to the Brennanstown Road is reasonable or appropriate mechanism to deliver a solution to the noted issues with the Brennanstown Road in the absence of an overall agreed Traffic Management Scheme for the entire area. Piecemeal development is contrary to and is inconsistent with proper planning and sustainable development.

It is further (insofar as the provisions of Section 37 2) b) of the Planning and Development Act, 2000 are concerned) considered that:

- The proposed upgrades to a small section of the Brennanstown Road are not of strategic or national importance within the meaning of Section 37 2) b) particularly when one considers that piecemeal upgrades of the road are proposed only;
- Special Local Zoning Objective SLO73 does not conflict with other objectives in the Development Plan; it is designed to ensure that lands along Brennanstown Road are developed in a safe and sustainable manner;
- The site is not a brownfield site; it is more akin to an infill/greenfield site. It is neither a former industrial site nor does it contain many structures or concrete aprons. In this context we respectfully submit that its development will not give effect to the

prioritization of redevelopment of brownfield sites per *National Planning Framework 2040* imperatives.

Residential Quantitative Standards

Unit Mix

The apartment mix does not comply with the prescribed mix of unit types set out in Table 12.1 of the Development Plan. The Applicant states that a contravention of those requirements is justified as the standards in the Development Plan are contrary to SPPR8 of the Apartment Guidelines. However, the Applicants evaluation of the compliance with the scheme with the Guidelines is confused. For example, on page 195 of the Planning Report in the column next to the column headed Section 2.18 it is stated that "*It is noted the Dun Laoghaire Rathdown County Council have a Housing Need and Demand Assessment...*" but it is later stated in another column on page 195/196 or the Planning Report next to a column headed Specific Planning Policy Requirement 1 that "... *the current Development Plan does not include a HDNA*". We note that the Development Plan does include a Housing Need and Demand Assessment and moreover note that SPPR1 allows statutory development plans to specify a mix for apartments further to a HDNA. The housing mix is therefore inconsistent with both the requirements of the Development Plan and SPPR1. An appropriate mix of units contributes to sustainable communities and is consistent with proper planning. The mix of units in this case does not contribute to the proper planning of the area.

Separation Between Blocks

Section 12.3.5.2 of the Development Plan requires that a minimum clearance distance of c. 22 metres is, in general, required, and in taller blocks a greater distance may be prescribed. As acknowledged on page 196 of the Planning Report in a number of instances the distance between the up to 10 storey high blocks is less than 22m.

We note (based on the Proposed Site Plan drawing) that Block G and H are located within c. 12 m of each other and include (from elevational drawings) what appear to be windows on the elevations that face each other. It is unclear from the elevational drawings, for example for the northern elevation of Block H (which contains windows) and the southern elevation Block G (which contains windows) if windows are to contain translucent glazing or how overlooking from windows will be properly mitigated. See also page 50 of the Architects Urban Design Report which shows that there

is a distance of less than 10m between Blocks I and J, and less than 10m between Block F and E where similar issues arise.

Page 51 of the Architects Urban Design Report states that difference in levels will help to avoid overlooking when distances between blocks are shorter. It also states that windows will be also strategically positioned or have translucent glass to avoid direct view to neighbouring buildings.

The suggestion that changes in ground level will result in no overlooking in relation to up to 10 storey buildings is not satisfactory when one looks at the sectional drawing in the Architects Design Report which tends to show that irrespective of changes in level it may still be possible to look down into residents' windows. It is also noted that the design of the balconies in the scheme do not appear to employ any means of mitigating overlooking from apartment to apartment bar moving along of opposing windows or obscure glazing. There are no projecting glazing screens or 1.4m opaque balcony screens to address the potential for overlooking of the apartments or nearby existing development.

In the circumstances the scheme represents a substandard form of residential development that will adversely affect the amenities of future residents of the scheme as well as the amenities of adjoining property owners. It will diminish local property values.

Parking

Table 12.5 of the Development Plan sets out the various required parking standards. The carparking provision is this case significantly (at least 166 no spaces) below those Development Plan requirements.

The applicant has included, at page 190 of the Planning Report, a table with two columns purporting to show how the development meets section 12.4.5.2 Development Plan criteria for reduced car parking standards.

We do not accept that Applicants findings in respect of the column headed 'Evaluation of consistency'. In fact several matters referred to the 'evaluation of consistency' column are inconsistent with statements made elsewhere by the Applicant in the Planning Report that are used as a justification for materially contravening Development Plan policy in relation to the size of local retail units. For example, it is asserted on page 190 that the site has good access to shops (in

support of a reduction in parking standards) but by contrast it is later stated at page 202 that *“there are no convenience shops within 20 minutes walk of the site”* and further stated that this is contrary to the concept of the 10 minute neighbourhood.

In this context the Applicant’s position that deficient parking is appropriate should be dismissed as the scheme does not appear to be able to support its design population in terms of the need to rely on private cars. This also points to overdevelopment of the site.

Height and Overdevelopment

The proposed development includes up to 10 storey apartment blocks on a site surrounded by 2 storey development.

Appendix 5 of the Development Plan includes the Council’s Building Height Strategy. Policy BHS 1 – ‘Increase Height’ refers to support for increased height in areas well served by public transport (i.e. within 1000 metre/10 minute walk band of LUAS stop) provided that proposals ensure a balance between the reasonable protection of existing amenities and environmental sensitives, protection of residential amenity and the established character of the area.

Policy BHS 3 ‘Building Height in Residual Suburban Areas’ states that is a policy objective to promote general building height of 3 to 4 storeys , coupled with appropriate density in what are termed the residual suburban areas of the County provided that proposals ensure a balance between the reasonable protection of existing amenities including residential amenity and the established character of the area.

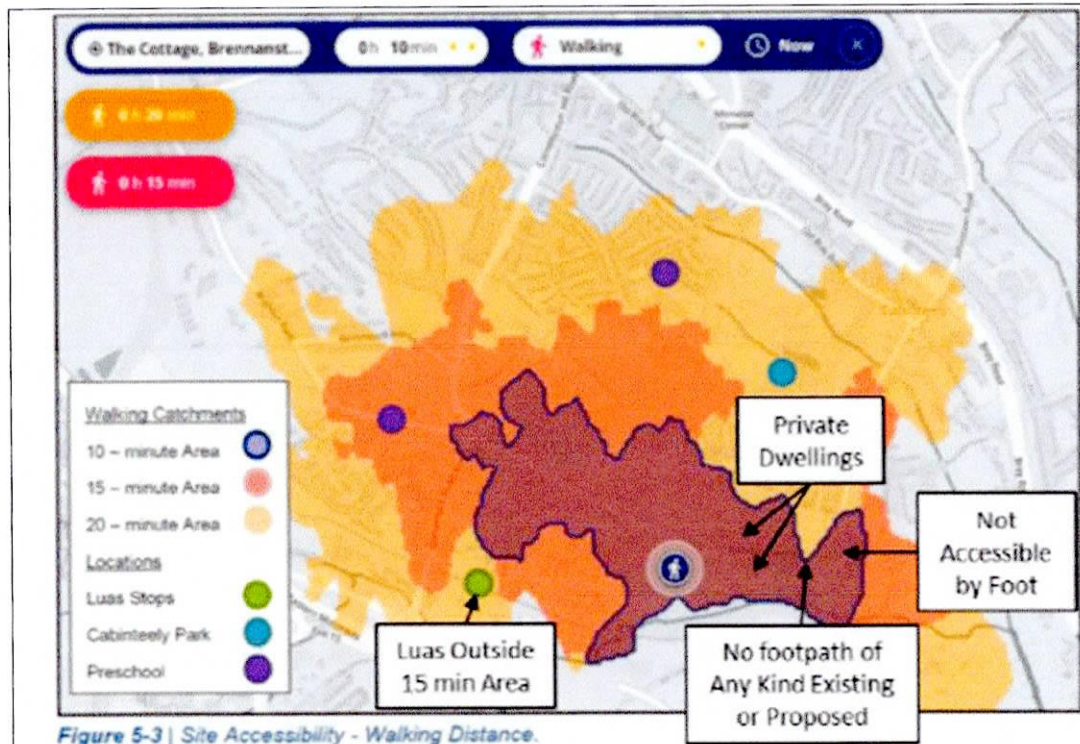
Section 4.3.1.3 Policy Objective PHP20 of the Development Plan states that: *“It is a Policy Objective to ensure the residential amenity of existing homes in the Built Up Area is protected where they are adjacent to proposed higher density and greater height infill development.”*

The development, at up to 10 storeys in height, on a site that as acknowledged on page 181 of the Planning Report and in Figure 5.3 of the Applicants TTA, is in excess of a 10 minute walk from the nearest operational LUAS stop, and materially contravenes the above policies.

The Applicant has sought to justify the material contravention by reference to the Building Height Guidelines and the SPPRs therein and includes a table at page 182 of the Planning Report outlining purported compliance with the Development Management Criteria in those Guidelines. There are significant issues with the Applicant's assessment of compliance with those criteria in particular the requirement that *"the site be well served by public transport with high capacity, frequent service and good links to other modes of public transport"*. For example:

1. As confirmed by Mr Justice McDonald at para 182 of his judgement in *O'Neill v An Bord Pleanala* [2020] IEHC 356 the requirement in para 3.2 of the Building Height Guidelines is that *"the site is well served by public transport with high capacity, frequent services and good links to other modes of public transport"*. As stated in that judgment this criterion is expressed in the present tense. Thus, the site must therefore, currently, be well served by public transport with high capacity and must, currently have good links to another form of transport.
2. The Applicant states however that: the nearby Brennanstown Luas stop is not currently operational; that Bus Connects stops will be located approximately 670 m from the site; that Bus Connect Route E1 will also be available approximately 1 km from the subject site.
3. It is stated that the site is a c. 9 minute walk from bus stops along Glenamuck Road North and Brighton Road that are served by bus routes 63 and 63A. However, the we understand that this bus route operates a maximum frequency of one bus every 30 minutes at peak times.
4. Insofar as is also stated that the Carrickmines Luas stop and the Laughanstown Luas stops are a c. 13 minute and 15 minutes walk from the site we note the nearest Luas stop (Carrickmines) appears to be more than a 1.5 kilometre walk from some parts of the site and contrary to what is stated in Planning Report (13 minute walking distance from the site to Carrickmines Luas stop) Figure 5.3 of the Applicant's own TTA shows that Carrickmines Luas stop is in excess of a 15 minute walk from the application site (annotated extract from the TTA below).
5. Should any Planning officer justify that the walk along Brennanstown Road to access Transport/ Shops Parks is reasonable, is both unreasonable and irresponsible. The standard of this Roadway built 300years ago, is inferior in all respects. Footpaths exist in parts, and

missing completely in sections. Road width, is substandard and dangerous for all Road users, motorised and pedestrian alike.



Extract from the Applicants TTA with additional annotation.

It is a requirement that all and not just some of the Development Management Criteria be met by an Applicant and this is not the case with this development.

Overdevelopment

The scheme proposes a density of 140 units per hectare, on a site that:

- is located in a suburban area;
- contains a Protected Structure;
- adjoins low density two storey dwellings; and is
- poorly served by public transport at present.

The fact that the development cannot be permitted without materially contravening Development Plan policies in respect of parking standards (significant under provision of parking), height (up to ten 10 storey apartments next to pre-existing 2 storey detached development), unit mix, separation

distances, and a specific local planning objective restricting development along the Brennanstown Road to minor infill all point to significant over development. Permission should be refused.

Non-Compliance with Article 297 of the Planning and Development Regulations

Where an Applicant is not the owner of land Article 297 (2)(i) of the Planning and Development Regulations 2001 (as amended) requires applicants for Strategic Housing Development to provide the written consent of the owner to make the application. This is a mandatory requirement.

The Applicant's reply to question 7 on the Application Form indicates that the applicant does not own all of the land subject to the application and states *"Please refer to Appendix B for letter of consent from Dun Laoghaire Rathdown"*.

The letter of consent at Appendix B (referred to at question 7 of the application form) headed 'Inclusion of Council Lands' expressly states that the portion of Brennanstown Road that is has in charge but is within the application boundary is not in Dun Laoghaire-Rathdown County Council's ownership.

Insofar as Dun Laoghaire Rathdown does not own the land its letter of consent does not meet that mandatory requirements of Article 297(2)(i) and it is considered that the application is therefore invalid and/or the Board does not have the jurisdiction to grant permission for the development.

Statutory Notices

Having reviewed the application drawings it would appear that the scheme includes the development of a new vehicular entrance point on the opposite side of Brennanstown Road to lands to the north of Brennanstown Road. It is unclear what the purpose of this entrance is and it not referred to in the statutory notices. This is an important omission insofar as the Brennanstown Road is a narrow hazardous road where development is limited by SLO73 to minor infill only. The statutory notices are therefore deficient in that they do not include a proper description of the development, public participation rights have been undermined, and permission should be refused.

CONCLUSION

The Development Plan objective SLO73 states that development on Brennanstown Road will be limited to: *minor domestic infills and extensions until a Traffic Management Scheme for the area has been completed and its recommendations implemented.* No such scheme has been adopted and implemented and the development would contravene this provision. It would also materially contravene Development Plan policies regulating height, unit mix, and parking. The scheme also materially contravenes the site's zoning.

The proposed development, in addition to materially contravening the Plan, also relies on Third Party lands to affect piecemeal works to the Brennanstown Road – piecemeal development is not consistent with the proper planning of the area.

The development is substantially taller and significantly more dense than existing development in the immediate vicinity of the site and would impact negatively on the Brennanstown Road. In short, the proposed development pinches in too many places and clearly represents overdevelopment of the application site.

Some development on this site may be inevitable, but the form of that development must have regard to its context. In this instance sufficient regard to context is not demonstrated and we must ask that the Board refuse planning permission for the currently proposed development.

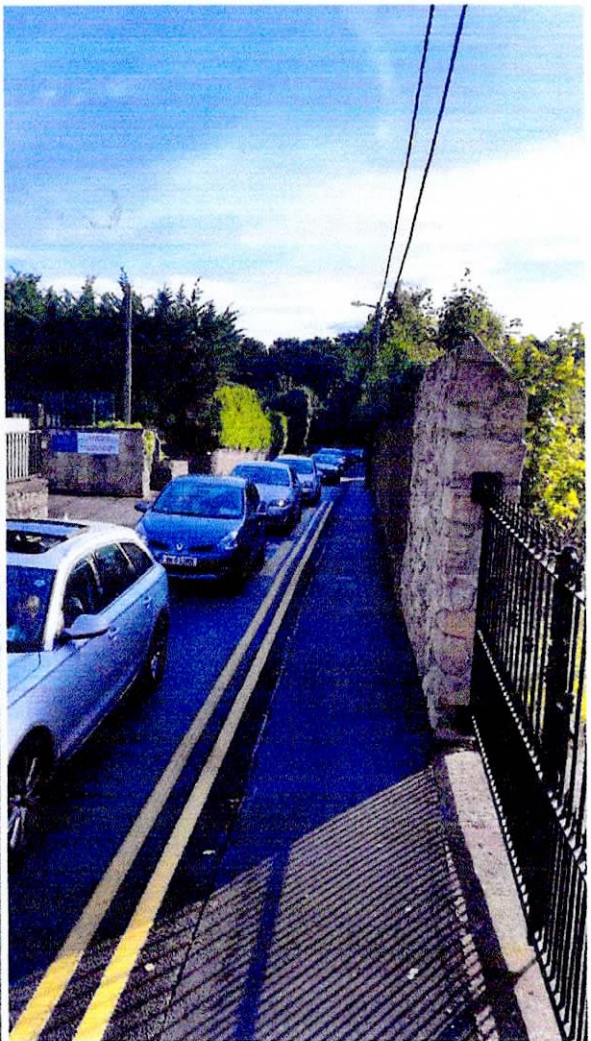
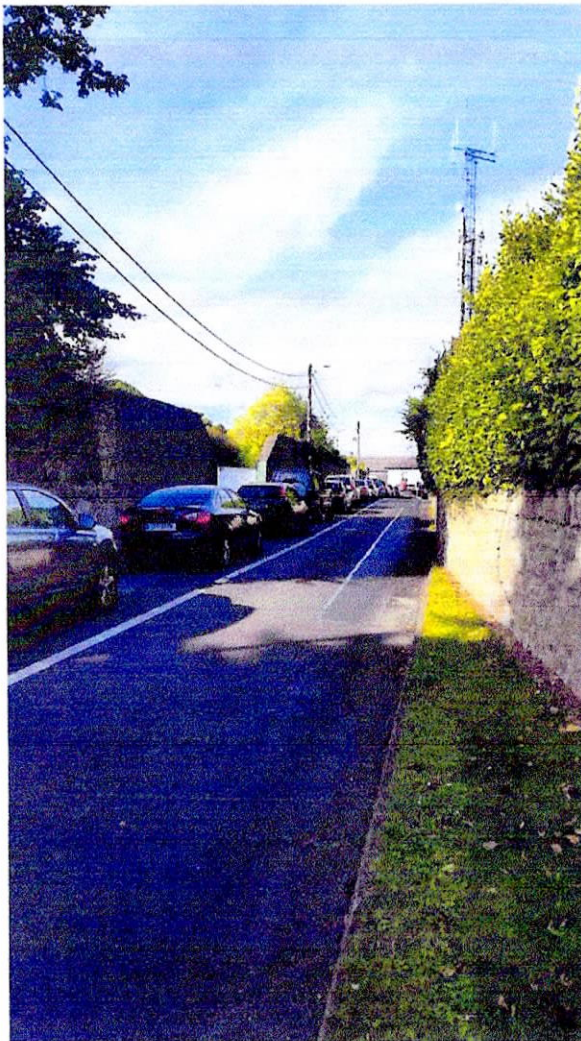
We would encourage An Bord Pleanála, to refuse this application as it is unsuitable and creates untold risks for all of the residents (1000people), which will live there. The unacceptable risk which will face Road users exiting this development, motorists and pedestrians alike, is unacceptable.

Yours Sincerely,

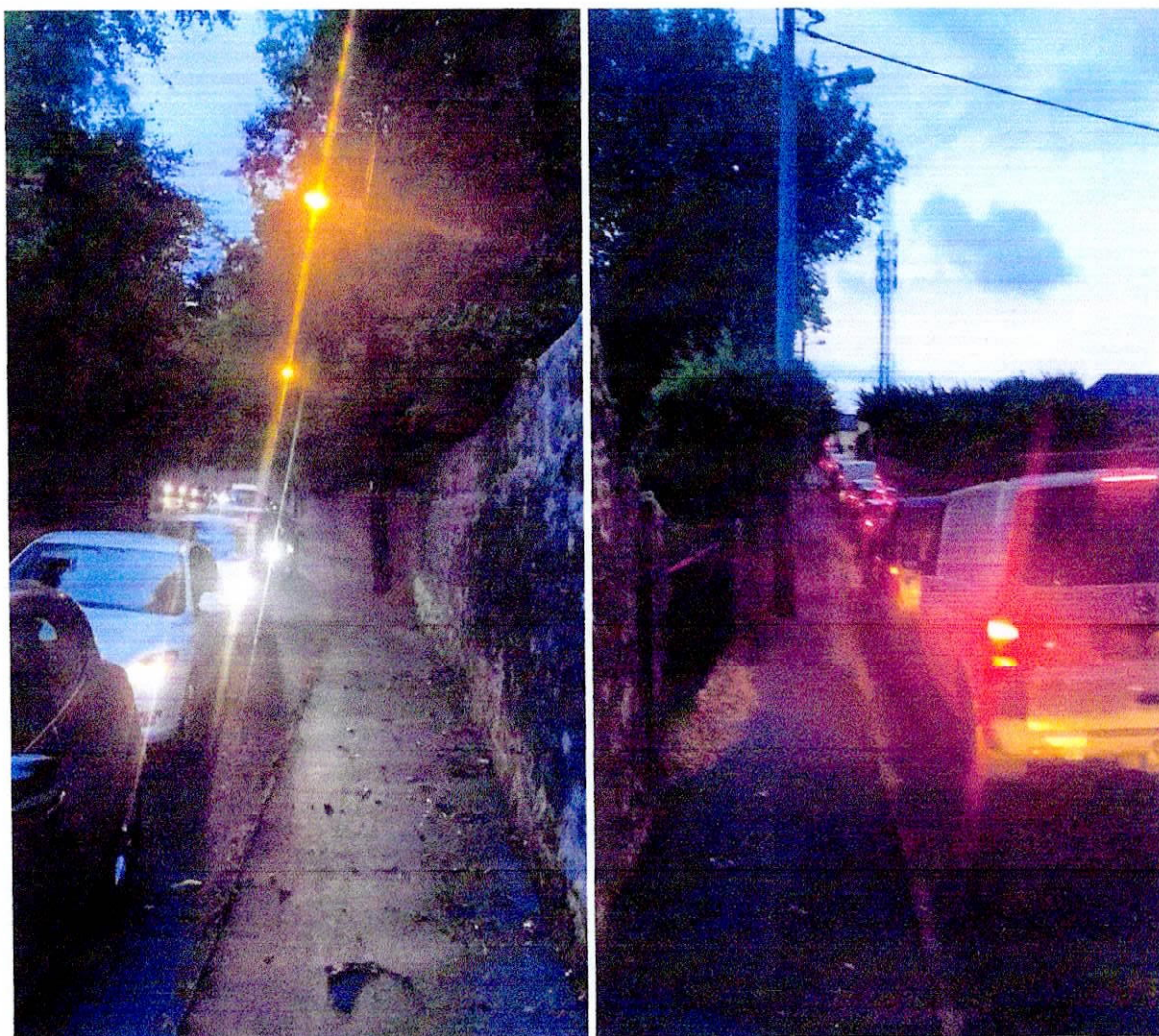
Michael O'Brien

Cabinteely And District Residents Association

Encl. (€50.00)



Traffic Brennanstown Road AM



Traffic Brennanstown Road PM